

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

07 NOVEMBER 2020

DAY 301



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 07 NOVEMBER 2020

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV HOFMEYR: Good morning Chair.

CHAIRPERSON: Thank you. Good morning Ms Kwinana. Okay. Are we ready?

ADV HOFMEYR: We are indeed.

CHAIRPERSON: Okay please administer the oath again or affirmation.

10 **REGISTRAR:** Please state your full names for the record.

MS KWINANA: Yakhe Kwinana.

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

MS KWINANA: No.

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

MS KWINANA: Yes.

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

MS KWINANA: So help me God.

CHAIRPERSON: Thank you.

ADV HOFMEYR: Good morning Ms Kwinana.

MS KWINANA: Good morning Advocate.

ADV HOFMEYR: Ms Kwinana I would like to start today if we may by just going back for a moment to the decision that the board took to award the components tender to the Joint Venture of AAR and JM Aviation.

You will recall in your evidence on Tuesday you had been drawn – your attention had been drawn to the fact that they actually should have been disqualified from the bid and in fairness to you Ms Kwinana you – you conceded in the end that they ought not then to have proceeded and
10 if they had – that had been known to you at the time you accepted that they could not have been awarded the tender.

What I did not traverse with you was the board's actual decision at the time to award the contract to the Joint Venture of AAR and JM Aviation and so I would like to just deal with that briefly because I just want to be – to explain why.

As I understand your evidence at the time you had no idea about the fact of the communications that they had
20 had with Ms Memela and so you did not know that they ought to have been disqualified, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So I would like to go to the reasons the board gave for actually approving their appointment for the contract. And we need to go there because what had

happened was you have got a recommendation have you not from the acting CEO which was not to award the contract to AAR and JM Aviation. It was to award the contract to Air France, is that correct?

MS KWINANA: Sorry I can hardly hear you can someone reduce the –

CHAIRPERSON: Oh the air conditioner.

MS KWINANA: Yes please.

CHAIRPERSON: Yes okay. They will attend to that. Ja
10 sometimes it makes it difficult to hear people.

MS KWINANA: Sorry can you repeat your question Chair?

ADV HOFMEYR: Certainly. So..

CHAIRPERSON: Safdas [?] maybe do not switch it off completely in case it becomes too hot but you know let it be low. Ja.

ADV HOFMEYR: Is that clearer for you Ms Kwinana?

MS KWINANA: Not the air conditioner Chair but the sound.

ADV HOFMEYR: You need the sound a bit louder do you?

20 **MS KWINANA:** No the sound a bit higher.

ADV HOFMEYR: Oh too loud.

MS KWINANA: Too hard yes. It seems as if it has got an echo Chair. Echo. Yes.

CHAIRPERSON: Okay.

ADV HOFMEYR: Is this a bit better? Can you hear me

better now?

MS KWINANA: Yes.

ADV HOFMEYR: Okay.

CHAIRPERSON: Okay.

ADV HOFMEYR: I will also try and drop my voice maybe a bit.

MS KWINANA: Not too much.

ADV HOFMEYR: Not too much, no indeed because I have to reach it there and – so Ms Kwinana what I was just
10 confirming with you was the decision was taken as I understand it on the 9 May 2016, does that accord with your memory?

MS KWINANA: Yes.

ADV HOFMEYR: And what happened is before you at that board meeting as I understand it you had a BAC recommendation. You had a recommendation from the acting CEO and by that stage their combined recommendation was that the contract should go to Air France, correct?

20 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: If you will just speak a little bit louder so that the ...

CHAIRPERSON: And remember to look this side.

ADV HOFMEYR: So they were recommending Air France but in that meeting on the 9 May 2016 the board decided –

we will get to the reasons in a moment to award to a AAR and JM Aviation, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Now Ms Memela testified previously and I just want to check that you can confirm this part of her evidence. When those submissions come to the board you do not get all of the bid documentation or anything like that do you?

MS KWINANA: Yes Chair we do not.

10 **ADV HOFMEYR:** So you have really just got the submissions and is that all?

MS KWINANA: Ja.

ADV HOFMEYR: Yes.

MS KWINANA: The submissions.

ADV HOFMEYR: Okay so you have got the BAC recommendation; you have got the acting CEO's recommendation and at this meeting you decide to not go in accordance with their recommendation but to go to – for AAR and JM Aviation. Can you explain to us why the board
20 took that decision?

MS KWINANA: The reasons Chair in fact Air France was number 3. Lufthansa was number 1. And AAR was number 2. And then there was a recommendation of number 3. Now we asked questions as to why not number 1 and management gave reasons for not selecting number 1. And

then we asked why not number 2. Why are you jumping to number – to number 2? And then...

CHAIRPERSON: To number 3.

MS KWINANA: To number 3 yes. And then they stated the reasons which basically were not acceptable to the board. It – from top of my head without looking at the minutes but one of the reasons was that AAR never did business at SAA and therefore they do not know SAA.

And we said then if that was one of the criteria they
10 should have said it from the beginning when the tender was going out. So we rejected that reason. And then the other reason was that AAR had a lower price – much lower price compared to Air France and then there was a concern that AAR may be low balling.

And then the board requested for a mitigation to say is there a mitigation if for instance they are low balling can we not fix the price? And then we said – then this should be awarded to AAR subject to them fixing the prices if that is the low balling.

20 And we gave it back to management. That was the reason basically why AAR was selected. But maybe I need to go back to what we talked about in respect of the proposal – the attachment of the proposal that was sent to Ms Memela.

And I had an opportunity of again reading the

transcript of what was the reasoning for Ms Memela. And the reason for Ms Memela basically was that – oh in fact I do not even have to state her reasons again.

But she said the – she is not part of the cross-functional team and therefore there is no way that she should have seen the – the line in the tender document that says bidders can only contact the project managers – the project manager.

And therefore because that is not a policy a SAA
10 policy it is a policy within a specific set of people which is the cross-functional team. So basically as I was saying it would depend on the circumstances. Thank you Chair.

ADV HOFMEYR: Ms Kwinana that is again a reversion to a version that you gave on Tuesday that we moved past – you had given your fair concession that it should not have been awarded in the circumstances I am not going to go back to that. I am interested in the decision for which you were responsible which was the board's decision.

So let us go to the minutes of the meeting if we
20 may? For that purpose you will need Bundle DD22[f]. I am just going to ask my colleague to assist you. [f] yes and we will be opening it at page 2304. Correct. And Ms Mbanjwa it will be page 2304. Ms Kwinana do you have that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And Ms Mbanjwa have you got it? Okay. So Ms Kwinana this is minutes of the special meeting of the South African Airways Technical SOC Limited board of directors 201603 held on Monday 9 May 2016 at 8:30 and in attendance it seems to indicate that you were present. Can you confirm that you were present at this meeting?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And then if you go over from that first page to page 2305 you will see there is an item there
10 under 4 Matters for consideration or approval, do you see that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Now that is where the issue of the awarding of the components contract was dealt with. And I would just like to read into the record also for your benefit to refresh your memory what is minuted here as being the basis for the board's decision. It reads as follows:

“The submission was tabled and considered. According to the submission management
20 recommended that the tender awarded to Air France. A discussion on the matter ensued and the board made the following comments:

- a. Management rationale for recommendations at Air France be awarded the tender was not substantive. Considering the bidders

resistance to align itself to SAAT's developmental agenda i.e. supplier development. Furthermore the benefits as outlined by the submission as a result of selecting Air France where not compelling enough to position the latter as the preferred bidder."

And then it goes on

10 "The concerns regarding JM/AAR especially management's view that this bidder was low balling could be mitigated by reducing each parties' obligations as well as terms and conditions to writing."

And the resolution is recorded.

20 "Resolved that the request for the approval of the award of a tender for the aircraft components support and services on ATA charter for both the Boeing and airbus fleet for a period of five years to JM/AAR be and is hereby approved subject to the mitigation of all the risks highlighted in the submission."

So I would like to focus just on one or two aspects there. As I read this recordal one of the reasons for not going with management's proposal is reflected there as Air

France's resistance to aligning itself to SAAT's developmental agenda i.e. supplier development. What was that reason based on Ms Kwinana?

MS KWINANA: One of the criteria Chair was that the – the bidders should have – should comply with BEE and therefore basically Air France in fact should not even have been there because they did not have the BEE. So basically Air France was not even supposed to here.

ADV HOFMEYR: What does have BEE mean?

10 **MS KWINANA:** Like to be BEE compliant.

ADV HOFMEYR: Yes that was a requirement of the tender – they were BEE compliant.

MS KWINANA: Yes.

ADV HOFMEYR: So how could you possibly have rejected them on the basis that they did not have the requisite BEE status?

MS KWINANA: That was the critical criteria Chair.

ADV HOFMEYR: Yes. So they could not have...

20 **CHAIRPERSON:** I am not sure if you are not speaking at cross-purposes. You said Ms Kwinana that you rejected the recommendation that Air France awarded the tender because they did not have effectively BEE credentials which were required. And then Ms Hofmeyr said to you but what does that mean? And I think you agreed that it means it relates to being BEE compliant. So she says to

you, but they were BEE complaint so what were you talking about? That is where she is. So how could you reject them on the basis that they were not BEE compliant when in fact they were BEE complaint?

MS KWINANA: I – Chair my understanding according – also according to this is because they – they were not BEE compliant. So if for instance they were BEE compliant then I would have to go further and check what score did they get in respect of BEE. And secondly Chair that was not the
10 only reason why Air France was not selected.

CHAIRPERSON: Okay that...

MS KWINANA: Air France was in fact number 3.

CHAIRPERSON: Okay let – before we go into other reasons let us just make sure we are all on the same page on this one. So if it can be shown that they were BEE compliant would you accept that the reason reflected here is the reason why the board rejected them? Or the reason which you gave that they were not BEE compliant would therefore not be applicable if in fact they were compliant?

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

CHAIRPERSON: Okay alright. Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair. I am going to – the reason why I asked you what does – were not BEE mean is because the way that that requirement played out in this tender was in a particular way that we spent some time

traversing in Ms Memela's evidence. But what you did you have before you was the CEO's submission which gave you a summary of the rankings of the bidders on this aspect. Right?

MS KWINANA: Yes.

ADV HOFMEYR: And I would like to take you to that for a moment because it is just further back in the bundle you have DD22[f] and we just need to go back to page 2274. Do you see that?

10 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: Now that is the acting CEO of SAAT recommendation to the SAAT board dated 26 April 2016 and this is where the recommendation is made that Air France Industries be awarded the tender. I would like to take you to what was recorded there as the rankings on price and BEE evaluation for the tenderers and you will find that at page 2280. As I understood your evidence a moment ago Ms Kwinana – sorry you getting there. You said AAR was – sorry Air France was not BEE compliant
20 and so they should not have even proceeded through the tender process, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes that was your understanding at the time.

MS KWINANA: Yes Chair.

ADV HOFMEYR: If that was so if other tenderers were not BEE compliant they should not have been awarded the tender either, should they?

MS KWINANA: What – what they did here Chair putting the price at 90% and BEE 10% they are 100% correct. And now considering that all of them were not BEE compliant that is fine they did not get the scoring for that. Then now they would have to be scored on other things on the 90% being technical and [00:19:32] or something like that.

10 **ADV HOFMEYR:** Yes. Indeed. So BEE could never be a reason to choose one over the other of these suppliers could it?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes. But the board gave that as one of its key reasons that was irregular was it not?

MS KWINANA: Chair well if that was a critical criteria that means if they all do not meet the requirement they all do not meet the requirement and if it is a critical criteria then we need to check if the BEE was a critical criteria. So can
20 you check that for me Chair?

MS KWINANA: No MS Kwinana you see I am working just with the board's own reasons. The board's own reason which we looked at a moment ago is that despite management and the bid adjudication committee coming to the board as SAAT and saying Air France should get this

tender. The board did not go with that recommendation. And the recorded reason is because Air France had resistance to align itself with SAAT's developmental agenda ie. Supplier development.

So I began by asking you, what was underpinning that reason and your testimony this morning is Air France was not BEE compliant so they should not have even progressed in the tender process. Ms Kwinana you have now been shown that none of these tenderers were BEE
10 compliant. We have now seen that at page 2280.

I am saying that quickly because there is another explanation I am coming to. But this is what is before you. So I put it to you you cannot possibly then reject management and the BAC's recommendation for Air France not select them select AAR and JM Aviation when none of these parties were BEE compliant. How could that be a reasonable decision to make?

MS KWINANA: Chair that was not the only reason. Air France was number 3 that is number 1 and secondly when
20 management comes and recommends – make a recommendation to the board the board do not just rubberstamp and say now management otherwise there would be no reason for management to recommend anything to the board. And therefore I am confident as I am sitting here that whatever was discussed there which

basically is not the only thing that was discussed that is in the minutes. If you have got a recording of that I would very much be willing so that you – to get people to hear it so as to confirm that that is not the only requirement, the only thing that made us to decide to appoint AAR. And as I have said again management – the reason why they come to the board for the recommendation – they recommend we just do not rubberstamp. We put our heads together and discuss and we have fruitful and rigorous discussions
10 before we come to any conclusion.

Chair I said on Monday when I came here I do not regret a single decision that I made during my tenure at SAA and SAA Technical. And again this tender resulted in fact in the saving of R800 million between Air France and AAR. There was a lot of saving here and that is why I am saying I do not regret this decision. Air France was number 3. Air France was not number 1 at all. And Air France ...

CHAIRPERSON: Hang on Ms Kwinana. Two or three
20 things. One I want to give Ms Mbanjwa a chance to say something. She raised her hand. But I just want to say this because you have said something that Ms Myeni said yesterday as well. Nobody says that when a recommendation is made by management to a board the board is bound by – or must rubberstamp what

management says. Nobody says that.

But it is expected that management would apply their minds and obviously if they do not agree with the recommendation – if they do not go along it is expected that they would be able to give reasons why they do not go along. So nobody says they are expected to rubberstamp. But also I think Ms Hofmeyr wanted to engage you on the reason that you gave.

At a certain stage if you have other reasons that
10 you want to say those were also other reasons she will engage you on those. But it is important to get clarity on this particular reason that you – you gave earlier on and what is recorded. So it is not as if you will not be allowed to articulate other reasons if there were other reasons but she will engage you on that. Alright. Ms Mbanjwa – oh has your issue fallen away?

ADV MBANJWA: Thank you Chair. I am just going to make – to draw the attention of the Chair and Ms Hofmeyr to the fact that this term supplier development when it was
20 explained by Ms Memela she did not explain it as BEE she explained it as NIP obligation. I just want that to be also taken into account. Thank you.

CHAIRPERSON: Yes. I think – okay Ms Hofmeyr let me rather – ja.

ADV HOFMEYR: No I...

CHAIRPERSON: Say nothing.

ADV HOFMEYR: Indeed. Look I am well aware of Ms Memela's testimony that is why I have been saying this morning there is a different way in which it was working in this contract and that is effectively what Ms Mbanjwa as I understand it is highlighting because that is clear from Ms Memela's evidence.

But I am working with the evidence of the witness today and Ms Kwinana the Chairperson of the board of SAAT at the time was one of the people who took this decision recorded on page 2305. The reason that we are focussing on that was given by the board was that Air France management and the BAC's chosen successor for this bid was to be rejected because they had resistance to align themselves with SAAT's development agenda i.e. supplier development.

And Ms Kwinana has given her understanding of that and I have shown her and I conclude by putting this to you Ms Kwinana that if your reason for rejecting Air France was that they were not BEE compliant that is a wholly irrational reason because we have just seen from the scoring that no party then was BEE compliant. So that reason cannot be a basis for favouring one over another. Do you accept that?

MS KWINANA: And then let us go to the supplier

development.

ADV HOFMEYR: No can I have my answer – your answer to that question? It is wholly irrational to choose one bidder over another on an aspect that they are all in exactly the same position on. What is your response to that?

MS KWINANA: Chair you have just brought it to my attention that much as I am saying Air France was not BEE compliant all of these were not BEE compliant and in fact
10 you have also brought it to my attention that in the minutes we were not talking about BEE we were talking about supplier development.

ADV HOFMEYR: Oh – I will argue in due course that Ms Kwinana has been given two opportunities to answer the question whether it is irrational on the reason she gave this morning to have made the decision that she did. And she has failed on two occasions to give a clear answer to that. I am happy to move on.

CHAIRPERSON: I just want to say it is important Ms
20 Kwinana that you be judged in your own right on your own evidence what a witness you are okay. But there may be a perception that before Ms Mbanjwa made the remarks that she made earlier on you had taken a certain approach with regard to what this reason recorded here meant. But after she had spoken now you seem to say or seem to want to

shift from that. Now I am just saying that it is very important that as far as possible, you are seen to be giving your own answers as you understand the position in terms of evidence. That is important. Ms Mbanjwa.

MS MBANJWA: Thank you, Chair. Chair, I want your assistance and direction in this regard so that in future I do not raise a hand if it is a similar situation. So I would put it hypothetically.

What happens in a situation where there is a board
10 resolution that says that the reason for the board to act was X? And the witness gives an incorrect reason.

On which must she give an answer? Must she give an answer on the incorrect reasons she is giving here at the Commission?

Or must she give an answer on the reason that was given at the board meeting or by the board resolution?

CHAIRPERSON: Well, a witness who... Every witness is expected to speak the truth and give her understanding of the position. She just needs to give her understanding,
20 depending what the question is. She needs to give her understanding.

But when you re-examine, you are free to see if there is a clarification that is necessary in regard to an answer that she gave. But as long as she gives what, to her mind, is the truth as she understands the position, that is fine.

If it happens to be different from what is written somewhere, that is fine. She must stay within her oath to speak the truth. Ms Hofmeyr.

ADV HOFMEYR: Ms Kwinana, Supply Development was going to be dealt with in a very particular way in this tender. What was your understanding of it at the time?

MS KWINANA: The little I understand... I now do not even know if I should state the little I understand because if I do not read as if you have there, then you will take me
10 otherwise. So I am just so uncomfortable to... Maybe I need to Google as to what does that mean. So basically, I do not want to say in my own words this is what it is.

CHAIRPERSON: Well, as I have just explained to Ms Mbanjwa. Ms Kwinana, a witness is simply expected to give evidence as she or he understands the position or as he or she understood it at a particular time and to the best of her recollection.

You just say: At that time, this was my understanding. If it so happens that it differs from somebody else's
20 understanding, as long as you are genuine to say: This is how I understood the position. Then you are fine.

If you understood it in a certain way and you are asked what was your understanding at that time and you Google and say: I understood it like that after Googling. When actually, that is not how you understood it, then that is not

truthful.

So you just need to say the truth to the best of your ability, to the best of your recollection. Nothing more than that is being asked of you or any witness.

MS KWINANA: Thank you, Chair.

CHAIRPERSON: Ja, okay.

MS KWINANA: My understanding of the Supply Development is that a supplier must be able to develop another upcoming supplier. That is my understanding.

10 **ADV HOFMEYR**: And as the board, the reasons are recorded there, you rejected Air France because on your understanding it was not able to support an upcoming supplier. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You see, the way that Supply Development was going to work in the tender – and we confirmed this in Ms Memela's evidence.

Chair, for the record. It is... the task(?) of the 12th of February 2020, page 53, lines 6 to 11.

20 The way that the tender was structured is. Each of the tenderers had to indicate a commitment to Supply Development and they would be assessed on the basis of whether they made that commitment or not.

The tenders would then be evaluated and thereafter they could give their proposals of how precisely they would

commit to and what their plans were for Supply Development.

That was Ms Memela's evidence. The reason she gave it was because... Well, amongst other things, she was shown that AAR and JM Aviation only submitted their Supply Development plan after they were awarded the tender.

And I, in fairness, found that a bit striking because if it is a requirement of the tender, it should have been there before.

10 But she corrected me and she said: No, no. All that was needed was an indication in the bid that you were committed to it and then thereafter, you could fill it out with the details.

Now that was the Head of Procurement's understanding. I understand you to say, you rejected Air France on the basis that they did not in this bid exhibit the requisite requirements to Supply Development.

20 But what I then want to put to you is. Air France was in exactly the same position as JM and AAR. Both had indicated a commitment. Nothing more was required from them at the time of evaluation.

So I want to understand from you Ms Kwinana how that could then had been the reason to reject Air France?

MS KWINANA: As I said Chair. There were many things that we talked about that resulted in us rejecting Air France.

It would be good if we could listen to the discussions that we had in that meeting.

CHAIRPERSON: Yes, but Ms Hofmeyr wants us to make progress to say you have... there is this one reason that has been given. Can we get to a point where we know whether you agree that that reason could not be a valid reason to reject it, to reject Air France?

Then once we are done with that reason, we can go... we can move to one or more, the other reasons that you say
10 were also reasons why it was affected.

She just wants us to make progress to say: Okay, are we on the same page with regard to this reason that this was not a sound reason to reject? Let us move to the next one.

So she wants you to indicate whether you accept that since they were all... their compliance with regard to this, was the same. It would... it was irrational to rely on that to reject them.

MS KWINANA: I am not going to agree Chair. I am not sure as I am sitting here if Air France had committed to
20 Supply Development. If the minutes are saying Air France failed to commit. Or let me read it correctly so that I do not get misinterpreted. What page is that Chair?

CHAIRPERSON: Maybe, before we do that. But assume that Ms Hofmeyr will take you to where we will see that if, indeed, Air France in regard to Supply Development was on

the same level as the other ones.

Would you accept that it would not be rational? It would irrational to reject Air France on the basis of something that you could find with everybody or you could not find with everybody?

In other words, it is like if Ms Mbanjwa and my registrar here, they put in a tender for something. You reject my registrar's bid and you say it is because he is black but Ms Mbanjwa is black too. It cannot be rational. It is that
10 kind of argument.

So if, indeed, Air France had made a commitment which had been made by everyone else with regard to Supply Development. Would you accept that, to rely on that reason to reject Air France would be irrational?

MS KWINANA: Yes, Chair.

CHAIRPERSON: You accept? Okay. Ms Hofmeyr.

MS KWINANA: May I have a comfort break, please?

CHAIRPERSON: Okay alright. Let us have a break of ten minutes. We adjourn.

20 **INQUIRY ADJOURNS FOR A SHORT BREAK:**

INQUIRY RESUMES:

CHAIRPERSON: Okay Ms Hofmeyr, I think we have made some progress?

ADV HOFMEYR: Indeed.

CHAIRPERSON: Yes.

ADV HOFMEYR: So I am going to leave the Supply Development reason which Ms Kwinana you had in fairness conceded was an irrational reason. And I am going to move to the other reason that was given in the board's resolution which is the one that I think you also referenced yourself in your explanations.

You will find that resolution at page 2305 of the bundle in front of you, DD22(f). You need to go to two-thousand three-hundred-and-five.

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

CHAIRPERSON: Did you say 2035?

ADV HOFMEYR: 2305. Apologies Chair.

CHAIRPERSON: [laughing]

ADV HOFMEYR: I might have mixed them.

CHAIRPERSON: Well ...[intervenes]

ADV HOFMEYR: I do that often.

CHAIRPERSON: I think this time it was me. [laughing]

ADV HOFMEYR: Okay. [laughing]

CHAIRPERSON: [laughing]

20 **ADV HOFMEYR:** Well, the record will show Chair in due course.

CHAIRPERSON: [laughing]

ADV HOFMEYR: [laughing]

CHAIRPERSON: Maybe I was right on both... [laughing]

ADV HOFMEYR: Maybe, maybe.

CHAIRPERSON: 2305.

ADV HOFMEYR: Indeed.

CHAIRPERSON: Yes.

ADV HOFMEYR: Ms Kwinana, you... So the first reason is really recorded at the beginning of 4.1(a). Right? That is the one we have been focussing on.

10 “Management’s rationale for the recommendation that Air France be awarded the tender was not substantive, considering the bidder’s resistance to align itself with SAAT’s Developmental Agenda i.e. Supply Development.”

That is... I am going to call that the first reason. It is the one we have been dealing with. And then it goes on and it says:

“Furthermore, the benefits as outlined by the submission as a result of electing Air France, were not compelling enough to position the latter as the preferred bidder.”

20 Now I understand your evidence today to be, what is really living in that second reason is this price concern that you had. That Air France was actually more costly than the AAR/JM Aviation bid.

And that selecting AAR/JM Aviation over Air France, they were a saving to SAAT. Have I understood your evidence correctly there?

MS KWINANA: Maybe Chair, we need to go these benefits outlined in the submission.

ADV HOFMEYR: Yes, we will do that.

CHAIRPERSON: She wanted you to confirm whether her understanding of your evidence is correct before we go to that.

MS KWINANA: Yes.

CHAIRPERSON: You want her to repeat?

MS KWINANA: Yes, please Chair.

10 **CHAIRPERSON**: Okay.

ADV HOFMEYR: You see, I understood you earlier to say, the other big factor for you in making this decision to go for AAR and JM Aviation and not Air France was because AAR and JM Aviation was going to be cheaper than Air France and I think you gave a savings of about R 800 million.

Was that the key reason why you decided not to go with Air France and rather to go with AAR and JM Aviation?

MS KWINANA: Yes, Chair. And I said the other day. Air France is an airline and it gets its components from AAR
20 because AAR, basically, is the components manufacturer.

And therefore, as we have been using Air France for the past many years at SAA, we have, in fact, been using the middle-man.

So that is why, basically, Air France was more expensive than AAR. So we have considered a lot of things. And in

fact, we also did consider the risks of taking onboard AAR, considering that it is a new supplier.

So that is why Chair I am saying, it will be good if you could listen to our interactions as the board members including management.

ADV HOFMEYR: Ms Kwinana, you gave that evidence. I remember it about AAR being the sort of world supplier, the other day, of these parts. And I recall you saying that that was some of the information you learnt when you did your
10 due diligence trip in the US. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. Because that was fact was not disclosed in the bids of Air France. So you are aware of that?

MS KWINANA: No.

ADV HOFMEYR: No? Are you aware of that?

MS KWINANA: Why...[intervenes]

CHAIRPERSON: I think she did not hear. I think she did not hear the question ...[intervenes]

20 **MS KWINANA**: [Indistinct]

ADV HOFMEYR: Oh, sorry. I thought you were asking a follow-up question: Why does it matter? I thought you said so.

MS KWINANA: Yes.

ADV HOFMEYR: No, I am saying. Are you aware that that

fact that Air France secures its parts from AAR was not disclosed in any of the bids?

MS KWINANA: Yes, that is fine.

CHAIRPERSON: H'm, h'm.

ADV HOFMEYR: So you were making your decision then on the basis of something you have learnt on the due diligence trip to the US, correct?

MS KWINANA: We made the decisions based on what was recorded here in the minutes. So the fact that AAR is an
10 original manufacturer is not here and it was not one of the reasons.

But I am saying, the reason why Air France was higher is because of that but that is the reason that was put here. Yes. And therefore, the reasons that I am telling you about, confirm that the decision that we made were the best decisions Chair.

ADV HOFMEYR: Ms Kwinana, I will argue in due course that informing your decision not award Air France, despite management's recommendation that they should be awarded
20 this tender and rather to go with AAR and JM Aviation, was based on information that you obtained when you went on a trip to the US and received various benefits from AAR. Do you have a response to that?

MS KWINANA: Let me repeat Chair. When management brings a recommendation to the board, we apply our minds.

We made the best decision of the company. I am repeating again Chair. We do not rubberstamp.

That is why I am saying it would be good if you had the recordings, so that you can show how best we made the decisions at the time.

So Chair, management did make a recommendation and therefore, we did not have to agree with the recommendations. Based on the discussions by the board, we agreed that the award should go to another company.

10 **ADV HOFMEYR**: Chair, just to note that there was no denial in Ms Kwinana's answer to my question that that was information that she obtained when she was on that trip ...[intervenes] [Parties intervening each other – unclear]

MS KWINANA: I deny that ...[intervenes]

ADV HOFMEYR: ...justification was given for why the decision was made.

MS KWINANA: Chair, I deny that. I am saying, the reasons that were put here in the document are the reasons. But I am saying, as I am sitting here with the information that I
20 know, it was still the best decision.

ADV HOFMEYR: Let us go, if we may, to what you were going to do to alleviate the concerns that management had raised about given the tender to AAR and JM Aviation because that is the third thing that is recorded on this page 2305.

And you will see that under that paragraph 4.1(a), there it records:

“The concerns regarding JM/AAR especially management’s view that this bidder was low-balling, could be mitigated by reducing each parties’ obligations as well as terms and conditions to writing.”

What does that mean Ms Kwinana?

MS KWINANA: In simple terms Chair. It means that if, for
10 instance, AAR said they are going to supply spares to the extent of one million or one billion, then they cannot come back and say: We did not cost for these spares. We did not cost for these spares. They need to give us exactly what they said they were going to give us.

Because, you know, with tenders, you would low-ball and then when you are inside the client, then the cost escalates and then you find out that, after all, it was not the cheapest.

So basically, when we were saying Chair that needed to be reduce in writing. We were saying, as AAR said they are
20 going to give us things at this price, we are not going to take any interest.

So basically, that was what was said when we were saying reduce it in writing.

ADV HOFMEYR: Low-balling is a concern. If you will see in the management’s recommendation that we were looking

at previously. And if you want to find it, it is at page 2281.

MS KWINANA: [No audible reply]

ADV HOFMEYR: You will see there, management's report under the heading JM/AAR under the second bullet that... this is a section where they are identifying risks, identified within the tender.

And in respect of JM/AAR under the second bullet, management's concern was:

10 "Sudden drastic cuts to the tender prices with a reduction of more than 40 million Dollars raised the fear of low-balling to get the contract and doubts on sustainability."

Do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. So that was the concern. And as I understand it, you were not too worried about that concern because you would try(?) them into a contract that would ensure that they would not wiggle out of their commitments. Is that a fair summary?

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

ADV HOFMEYR: Yes. If we just look at... Yes, that low-balling that happened. If you go over the page to 2282, you will see at the top of the page the cost impact is recorded there. And you will see there... if you go across it, supplier is in the far left-hand column.

You have got Lufthansa, JM and AAR and Air France. Air France is sort of shaded because that was management selected preferred bidder.

And then if you go across. The columns are fleet value per annum in US Dollars, value per annum in ZAR, value for five years in US Dollars, value for five years in ZAR.

I would like us just to look at the value for five years in US Dollars. Do you see that JM/AAR price is about 82 million US Dollars and Air France is 88 million US
10 Dollars. Do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And so that difference is really just a difference of about 6 million US Dollars. Correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. And the concern was that, to get JM to this 82 million... Remember, they had been back and forth. They kept going back to the bidders to say revise your pricing, revise your pricing.

What had happened was, to get it to this 82, it had
20 dropped its prior price by 40 million. That is a considerable drop, is it not?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: H'm. So did you share management's concern that low-balling was a real issue if they had dropped as much as 40 million in the last round?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. And they were very close, actually, when they ended up. I mean, in order of magnitude, they were just 6 million less than Air France, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And there was no concern expressed, as I recall it, that Air France was low-balling, was there?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So given ...[intervenes]

10 **CHAIRPERSON**: Yes, there was? Yes, there was not?
[laughing]

ADV HOFMEYR: There was no concern that Air France was low-balling, was there?

MS KWINANA: There was no concern Chair.

ADV HOFMEYR: There was no concern.

CHAIRPERSON: Okay. [laughing]

ADV HOFMEYR: Okay thank you. I understand the ambiguity potentially.

20 **CHAIRPERSON**: Ja, they say it is a South African thing.
[laughing]

ADV HOFMEYR: Yes, yes.

CHAIRPERSON: We say, ja-nee. [laughing]

ADV HOFMEYR: [laughing] Okay so they drop by 40 million but despite that, the board resolved that if it went into the contract and they were tied to the contract terms,

then everything would be okay. Correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And did you take any steps to ensure that that was then implemented in the contract that was concluded?

MS KWINANA: As we said Chair in the minutes. We said... Let me read it again. What was said there, was said in the board meeting that we need to tie them. Yes. And now, when you say: Did we... Did I see the contract? I did not
10 see the contract Chair. The reason being that, the contracts – after the award...

In fact, that is also what I was trying to explain with Swissport. After the award is done, the legal team goes and draw the contract.

So now, whether the minutes of the board do agree with what is in the contract. Then that is basically outside us. It is now the duty of other assurance bodies within the organisation. Therefore, Chair I did not see the contract.

ADV HOFMEYR: H'm. And Ms Kwinana, you will remember
20 that Mr Phiri's evidence that we looked at the other day on affidavit, says that you did see the contract.

That you actually at a meeting demanded that it be signed and that arrangements be made to go and retrieve it. And he said that you had said, at a point in that meeting, that people were not to leave the room until the agreement

was signed.

I understand your evidence previously to be that you deny that you were ever at that meeting. Correct?

MS KWINANA: Chair, I was saying. After the award of this contract, there was a lot of unhappiness from the people who were not part of this process at all. We had... I received a letter of complaint from the chairperson of the board

I received a letter from National Treasury and the chairperson and they all... And then there was also the
10 media. And rightly so, because this is a big contract.

CHAIRPERSON: Sorry, I am going to interrupt you Ms Kwinana. Remember, the question was whether you confirm that your position is that you were not at that meeting that Mr Phiri talked about. That was the question.

MS KWINANA: I am trying to answer it Chair.

CHAIRPERSON: H'm?

MS KWINANA: I am saying ...[intervenes]

CHAIRPERSON: Try and go straight to it as much as possible because your answer maybe: No, I did not say here
20 I was not at that meeting. Or: Yes, my position is that I was not at that meeting.

MS KWINANA: Okay, I ...[intervenes]

CHAIRPERSON: I just want us to make progress.

MS KWINANA: I was at a meeting ...[intervenes]

CHAIRPERSON: H'm.

MS KWINANA: ...where I sat with management to say, there is this concern. Please, put together all the files. Put together the contract. Take it... Take everything to National Treasury. Yes, I was in that meeting.

CHAIRPERSON: Okay.

MS KWINANA: Where, basically, we were addressing this unhappiness.

CHAIRPERSON: Okay. Ms Hofmeyr.

ADV HOFMEYR: Thank you. But you deny having at that
10 meeting demanded that no one leaves the room until the agreement was signed. Is that correct?

MS KWINANA: Definitely.

ADV HOFMEYR: And you did not ask for it to go and be retrieved. Is that correct?

MS KWINANA: No, Chair.

ADV HOFMEYR: And Mr Phiri also said that before he signed ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry. Is it correct? You say no. Is it no, it is not correct? No, it is correct. I just
20 want to... I want to make sure we all understand your answer in the same way.

MS KWINANA: Chair, I was at a meeting which was addressing the specific issues. Yes. So.

CHAIRPERSON: Of unhappiness. I think Ms Hofmeyr, you might have to repeat your question.

ADV HOFMEYR: Yes.

CHAIRPERSON: So that... And then, when you answer, I just want to make sure that when you say yes or no, that my understanding is what you intend to convey.

ADV HOFMEYR: I think it will be helpful if I change the framing of the question.

CHAIRPERSON: Yes, okay.

ADV HOFMEYR: Ms Kwinana, at that meeting, did you demand that no one leave the room before the agreement
10 was signed?

MS KWINANA: I did not demand because my understanding was that the agreement was signed.

ADV HOFMEYR: Did you at any point, prior to that meeting, push for it to be urgently concluded, the drafting process?

MS KWINANA: No, Chair.

ADV HOFMEYR: Who is Ms Kuki Constance Mbeki?

MS KWINANA: She is the Head of Legal.

ADV HOFMEYR: Where?

MS KWINANA: Then she was the Head of Legal at SAAT.

20 **ADV HOFMEYR:** Right. Do you remember having an interaction with her during the drafting process for this contract?

MS KWINANA: No.

ADV HOFMEYR: Because she has previously given an affidavit to the Commission. It was dealt within Ms Memela's

evidence. I can take you there so that you can read it yourself or I could just read you... Would you like to see it in front of you?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Certainly. We will need... Chair and Ms Mbanjwa, DD 25(b). And you will open it. The first page of the affidavit is page 464.

LEGAL TEAM: [No audible reply] [microphone on mute]

10 **ADV HOFMEYR**: Yes. And page 464 is where it commences.

MS KWINANA: [No audible reply] [microphone on mute]

ADV HOFMEYR: 25(b), 464.

LEGAL TEAM: [No audible reply] [microphone on mute]

ADV HOFMEYR: No, I just... It should be in 25(b), page 464.

LEGAL TEAM: [No audible reply] [microphone on mute]

ADV HOFMEYR: 464.

LEGAL TEAM: [No audible reply] [microphone on mute]

20 **ADV HOFMEYR**: Yes. Oh, some pages fell out. [laughing]
Thank you. Ms Kwinana, do you recall having any interactions with Ms Mbeki about the drafting? Because I understood your evidence previously to be, once the board makes the decision you leave it to management to execute it. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So, am I understanding correctly, then you would not have been following up with the drafting team or anything like that. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And is your evidence that after the board gave that... made that resolution on the 9th of May, you did not thereafter become involved or follow up about the drafting at all?

MS KWINANA: No, Chair.

10 **ADV HOFMEYR:** No?

MS KWINANA: Ja.

ADV HOFMEYR: And you have already told us, you dispute Mr Phiri's version about that meeting. So I am leaving that. Now what Ms Mbeki, who was one of the people involved in drafting the contract, has said in her affidavit here and we can pick it up at page 473, paragraph 25.

MS KWINANA: [No audible reply]

ADV HOFMEYR: And if you go to page 25, she... Sorry, paragraph 25, she has been dealing with various processes
20 in the drafting and about two thirds of the way on paragraph 25, she says that she had a conversation with Ms Memela, Advocate Memela. And she says – there is a sentence about two thirds of the way down: During the telephone discussion. Can you see that Ms Kwinana?

MS KWINANA: Yes.

ADV HOFMEYR: Yes.

“It is during the telephone discussion, Advocate Memela told me that she received a complaint that I keep on raising issues which were already discussed before I joined the team the previous day, and as a result of my conduct, the discussions were taking longer than necessary.

10 She also told me that this concern was also raised with the then Chief Executive Officer of SAAT, who was also the acting Group Chief Executive Officer, Mr Moosa Zwane.

I admit that indeed I have been alerted by the team that a lot of the issues I was raising were already raised, discussed, resolved the previous day.”

And then she goes on at 26 to say:

20 “On the same day that Advocate Memela told me about the concern from the contract negotiation team, I had a telephone discussion with Mr Zwane who informed me that he was in a meeting with the then Chairperson of SAAT Board, Ms Yakhe Kwinana and that I am on speaker phone.

He told me that I am informed that I am slowing down the contract negotiation process by raising issues which had already been dealt with and that he was requested to intervene.”

Do you recall this conversation that you were placed on speaker phone?

MS KWINANA: No, Chair.

ADV HOFMEYR: Do you deny that it took place?

MS KWINANA: I do not remember Chair.

ADV HOFMEYR: So it is possible that it could have?

MS KWINANA: Not with contract negotiation ...[intervenes]

ADV HOFMEYR: You would not have been involved?

MS KWINANA: Yes.

10 **ADV HOFMEYR**: So, your answer is, you were not involved in this conversation?

MS KWINANA: I was not involved.

ADV HOFMEYR: Because if it was just you and Mr Zwane and he said that he had been requested to intervene. Do you agree that it is a fair assumption that that would request would have likely come from you?

MS KWINANA: No, that... It did not come from me.

ADV HOFMEYR: H'm. And she goes on and she says:

20 "He told me that the purpose of his call was to ascertain what was going on and that he wanted to hear my side of the story.

He gave an opportunity for me to explain my frustrations."

And then she goes on and talks in some detail about the issues, et cetera. What I am interested in is. This reads

Ms Kwinana as yet another member of the SAAT Team, now on the legal side, saying that you were involved in following up about the drafting of this contract. Is she giving false evidence by placing this version before this Commission?

MS KWINANA: She is Chair.

ADV HOFMEYR: H'm. And Mr Phiri also, correct?

MS KWINANA: Mr Phiri is also. And in fact, Chair. Maybe I should have been given Rule 3.3 here so that I can answer adequately.

10 **ADV HOFMEYR:** Were you alerted to the fact that it would be part of what was referred to today because it comprises part of Ms Memela's bundle. But you have given your answer. Is there anything that you feel that you have not been able to say?

MS KWINANA: No, Chair but I am angry that knowing the processes, how would I go and say how far is the contract? The board is not involved there. In fact, that is what I have been explaining. The board is not involved in the documentation of the contract.

20 **ADV HOFMEYR:** Ms Kwinana, let me in fairness to you say. I absolutely accept that. When processes are running correctly, the board should never be involved in that. It may on occasion. And I think this is a point that the Chair raised previously.

If it is really important that something be in a contract

when the board approves it, it may be appropriate from a corporate governance and a procurement perspective that the board checks again that it is there. But actually being involved in driving the process, in rushing it along, is something that board members should never do. Are we – agree on that?

MS KWINANA: H'm, h'm. Agreed.

ADV HOFMEYR: Yes. What we are probing today is why many people at SAAT – many might be exaggerating – at
10 least two people at SAAT say you were playing a role in this contract which is contrary to the proper role of a board member.

And we are exploring it today because the theme that is emerging from all these bits of evidence is that you played a role that is not an appropriate role for a board member to play.

And if you received any benefits out of this contract, it would indicate that you were pushing for these bidders to be favoured and the contract to be signed so that they could be
20 secured, their revenue stream.

And that is why I must, in fairness, put these to you. I just wanted you to be clear about why I am going there. Chair, I then propose to move from this aspect ...[intervenes]

CHAIRPERSON: H'm. One second.

ADV HOFMEYR: Oh, sorry.

CHAIRPERSON: Ms Mbanjwa.

MS MBANJWA: Chair, thank you. Chair, I decided to raise this concern after the witness has answered because I take cognisance of your warning to me the other day to say, I must not be seen to be assisting the witness.

What I know have Chair is a concern with the manner of questioning by Ms Hofmeyr specifically on this question. I will not be long so that I can take it to re-examination.

I just want to state my concern so that in future...
10 What Ms Hofmeyr does. She reads a statement that does not say that the witness was there. And it does not say that she was there, it is hearsay, somebody saying I am with Mr X.

And secondly, when that person speaks, that person does not speak in the plural, it is in the singular which means that – I do not mind Ms Hofmeyr putting the questions to the witness but I object to Ms Hofmeyr making the statement to be what the statement is not because this is what is causing difficulty with this witness to answer.

20 So if she can in future just be careful of that. If the statement does not say I, as Yakhe Kwinana am saying this, somebody says there was a hearsay to that and then she is bombarded and conclusions are made that we cannot answer cross-examination.

CHAIRPERSON: Well, just – do you want to draw my

attention to the specific part that you are talking about?

MS MBANJWA: Thank you, Chair. If I can use, for instance, this paragraph that we are at now. It is DD25 8473.

CHAIRPERSON: 47...?

MS MBANJWA: Yes, it is this ...[intervenes]

CHAIRPERSON: 474?

MS MBANJWA: No, it starts at 473.

CHAIRPERSON: Ja.

10 **MS MBANJWA:** And then I am reading from paragraph 26.
It says:

“I had a telephone discussion with Mr Mzwane who informed me that he was in a meeting with the then Chairperson at SAAT.

It goes over to page 474.

“...who informed me that he was in a meeting with the Chairperson of SAAT. This person did not see Ms Kwinana there.”

She says somebody phoned me and say I am in a meeting
20 with the Chairperson of SAAT, that is Yakhe Kwinana.

“He informed me that he was informed...”

And then it continues, it says:

“He told me that the purpose of his call...”

Without arguing, Chair, I know this is not the time, we can see that Mr Zwane here is speaking in the singular. He

does not say that - this lady does not say he told me that the reason for their call. So even on Mr Zwane it is [indistinct] 02.24 to this question, the witness was not part of that conversation. That is clear from this affidavit and now here as well my concern is, my concern is what now Ms Hofmeyr does is to say this statement which clearly does not say the witness said anything is confirmation of the fact that the witness – I do not mind if she makes like that but what worries me is when she pushes it and presses it and makes it a said. If she can – if we can just get [inaudible – speaking simultaneously]

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: Chair, I was quite careful to be very faithful to Ms Mbeki's words and it was in response to her very words that I asked Ms Kwinana for her version and all that I did thereafter was to explain to Ms Kwinana that, in essence, answers about the way boards usually operate is not where we are going here. I wanted to establish with Ms Kwinana that we are on common ground with that.

20 What is being explored is the extent to which there is evidence from others that suggest a greater involvement and in fairness to Ms Kwinana I must put what Ms Mbeki said, in her own words. If Ms Kwinana would like to give the answer that Ms Mbanjwa has just given which is well, look, you cannot even rely on this because it is Mr Zwane

saying that I was in a room that I was not in, that is – she is fully entitled to give that answer. What is difficult is, again with respect to my learned friend, a situation where the type of answer that it might have been useful for Ms Kwinana to give is then brought in to what it essentially argument or re-examination.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: So my request, Chair, would be that we do reserve it for that purpose.

10 **CHAIRPERSON:** Ja, ja.

ADV HOFMEYR: We are going to have a re-examination session today. My suggestion is these proceedings are going to move much more efficiently if we go that.

CHAIRPERSON: Okay, let us move on.

ADV HOFMEYR: Right, so Ms Kwinana, I would like to leave the decision that the board took and your involvement thereafter in awarding the contract to JM and AAR and I want to go back to actually where we left off on Tuesday which is these monies that you received from JM
20 Aviation, its bank account into Zanospark's bank account, Ms Hendricks who directly deposited money and the evidence that you have given the Commission on that score.

Now, Ms Kwinana, I must say after Tuesday's evidence it became clear to me certainly and please tell me

if you disagree, that you really are I think probably from about the time you left SAAT you have been running quite a serious forex trading business. Is that a fair summary of what you have been doing?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you did indicate in your evidence that you have ensure in conducting that business that you are FICA compliant, that is compliant with the Financial Intelligence Centre Act, correct?

10 **MS KWINANA:** Sorry, can you repeat the question?

ADV HOFMEYR: Yes. I understood your evidence the other day to be that you have ensured that you are, as a business, FICA compliant, is that correct?

MS KWINANA: I said the business is FICA compliant but I do not need to have a licence to do forex trading.

ADV HOFMEYR: Yes, no, no, I understand that difference. You dispute the evidence from the FSCA, we looked at their affidavit, you said notwithstanding what they say about the licences needed, I do not need that
20 licence. You and I agree on that. What I understand you to say, though, is you do accept that you are an accountable institution under FICA and so you must be FICA compliant, correct?

MS KWINANA: No, Chair, I am not an accountable institution. The accountable institution – let me get it for

you in my red file which institutions are accountable in terms of FICA.

ADV HOFMEYR: Sorry, just – could I just ask why would you need to be FICA compliant if you were not an accountable institution under FICA?

MS KWINANA: No, FICA that I am talking about is the normal FICA that everybody must comply with like for instance the copy of the ID and the proof of address but let me read to you the companies that must comply with FICA
10 as the financial institutions, it is the insurance companies. Zanospark is not an insurance company. Hedge Fund Managers, Retirement Fund Managers, Credit Ratings Companies, Capital Market companies, Forex Brokers. We are not forex brokers, we are forex traders and therefore, we do not have to comply with FSCA requirement.

ADV HOFMEYR: This is the Financial Intelligence Centre Act, right?

MS KWINANA: Yes.

ADV HOFMEYR: So you are not a forex broker, you are a
20 forex trader.

MS KWINANA: Yes and in fact even the forex brokers, it is not a mandatory requirement that they must comply because there are forex brokers that will not comply and it is not a requirement but it is advisable that they can comply.

ADV HOFMEYR: I am going to come back to FICA in a moment. Just tell me – but you said you do have an obligation to get IDs and other things. Where does that obligation come from?

MS KWINANA: From our own requirements because we need to put everything in place.

ADV HOFMEYR: But then why do you call it FICA documents or FICA compliance.

MS KWINANA: Maybe it is the loose term.

10 **ADV HOFMEYR:** Right.

MS KWINANA: Like, for instance, when you go to the bank they say they want to FICA you, they want proof of address, they want the ID. So ...[intervenes]

ADV HOFMEYR: Yes because they need to be – they are accountable institutions under FICA, right?

MS KWINANA: Yes.

ADV HOFMEYR: So I understand your evidence to be you are not an accountable institution under FICA ...[intervenes]

20 **MS KWINANA:** I am not.

ADV HOFMEYR: ...but you are just engaging good practice, is that right?

MS KWINANA: Yes.

ADV HOFMEYR: Right, okay. Under FICA – sorry, sorry, let me move on from that, I will come back to the FICA

aspect in a moment. On Tuesday you did say, though, and I think it is part of your good business practice that you get – know you client documents from your clients like if you were obliged to do so under FICA you would have been obliged to get, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Yes. And those documents you have not provided to the Commission, correct?

MS KWINANA: No.

10 **ADV HOFMEYR:** No. And were those – is that because they were on that server that was confiscated?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. Okay. Now that server, as I understood your evidence earlier, was confiscated for non-payment in February 2020, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. And similarly, the annual investment statements that you say that you prepare, you do not ever email because of confidentiality concerns, you
20 print them out and then you go and hand deliver them, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you also indicated that you deliver them in January of every year, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And those documents you also could not provide to the Commission because despite the summons that you received, because of the confiscated server – have I got the evidence other day correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You did say, however, in your evidence that you were not certain that the confiscation happened in February 2020, is that right?

MS KWINANA: Yes, Chair. I even said the date may be
10 wrong.

ADV HOFMEYR: Yes.

MS KWINANA: But the confiscation is correct.

ADV HOFMEYR: It did take place, indeed. So if we had been in contact with Onero, who said was your service provider and they indicated that the confiscation actually occurred in April of 2019, would you dispute that?

MS KWINANA: No, Chair.

ADV HOFMEYR: So – right, let us move on from that for a moment. On Tuesday in your evidence we looked at the
20 JM agreement that Ms Sikhulu sent to Ms Memela, do you remember that when the bid was still open and she was asking for Ms Memela's input on it? Do you recall that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And in terms of that JV agreement you would have seen in the email JM Aviation was going to

earn 5% on all the invoices generated by AAR. Were you aware of that at the time that these decisions were being taken?

MS KWINANA: No, Chair.

ADV HOFMEYR: I just want to get a sense of how much value this contract was for JM Aviation and I know that you are an accountant, which I am not, so you might be able to assist me. I did – the value of the components contract, we have received evidence previously in the Commission is
10 about over the five years a 1.5 billion, does that accord with your understanding?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Now 5% of 1.5 billion on my calculation is 75 million, does that sound right to you?

MS KWINANA: Ja, maybe.

ADV HOFMEYR: We could do the – I mean, I did do it but sometimes when I have had accountants here they can do it in their heads so I am always just a little bit cautious. So 5% of the total value of that contract, if I have done my
20 calculation correctly, is about R75 million worth of business for JM Aviation. Do you accept that calculation?

MS KWINANA: Let me get my calculator, Chair.

CHAIRPERSON: You cannot trust these lawyers, Ms Kwinana, on figures.

ADV HOFMEYR: Not on that [inaudible – speaking

simultaneously] numbers.

CHAIRPERSON: And I cannot blame you.

MS MBANJWA: Sorry for interrupting.

CHAIRPERSON: Yes?

MS MBANJWA: I would just like to be given the page. If Ms Hofmeyr can kindly give me the page where the 5% of ...[intervenes]

ADV HOFMEYR: Oh. I am going to have to just remember where it is. It is in that email, so it will be in the
10 Memela bundle. I will be able to find the reference, sorry, let do that.

MS KWINANA: So I am calculating 1.253? 1.253.

CHAIRPERSON: 5% of 1,5 billion, I think. Is that correct, Ms Hofmeyr?

ADV HOFMEYR: Yes.

CHAIRPERSON: 5% of 1,5 billion.

MS KWINANA: But this is 1.253 636 151.

ADV HOFMEYR: Sorry, 5% of 1.5 billion is what?

MS KWINANA: Where is 1.5, Chair?

20 **ADV HOFMEYR:** No, the value of the contract over the five years is 1.5 billion, so I just want a calculation of what 5% of 1.5 billion is.

MS KWINANA: The value of the contract, Chair, according to DD22H 2282 is 1.253 ...[intervenes]

CHAIRPERSON: Well, 5% of 100 million is 5 million and

...[intervenes]

ADV HOFMEYR: Oh, sorry, I understand where Ms Kwinana and I are at odds. You are absolutely right. On that page when the submission was made to the board it was valued at about 1.25 billion, right? The evidence of Mr Human who appeared before the Commission who is – well, at the time was employed at SAAT was that there had been overruns on the contract and that it was in the end going to be 1.5 billion, so that is why I give you that figure.

10 **MS KWINANA:** Oh, I see.

ADV HOFMEYR: We are on the same page. So can you just give me a calculation of 5% of 1.5 billion?

CHAIRPERSON: I think you are about 75 million.

ADV HOFMEYR: I think so too but I want to give the witness and opportunity.

CHAIRPERSON: I am not an accountant but I think you are right because 5% of 1 billion would be 50 million, I think.

MS KWINANA: That is 75 million.

20 **ADV HOFMEYR:** Yes, so we are agreed on that.

CHAIRPERSON: So lawyers are not so bad with figures, Ms Hofmeyr.

ADV HOFMEYR: Yes, sorry, Ms Mbanjwa had the request. I can give it to you, Ms Mbanjwa, the reference is DD18 page 339

MS MBANJWA: If maybe we can also be assisted with one other thing, Chair, because for us it will help with re-examination as well. According to also what Ms Kwinana raised is also what I saw because I thought that the value of the contract was supposed to be in the submission, in that board submission. Now is it Ms Hofmeyr's conclusion that actually that value that was in the board submission was an incorrect value?

ADV HOFMEYR: No, no, no, no, no, Ms Mbanjwa, it is the
10 evidence of Mr Human. He said – there is nothing that is wrong, he said as the contract has developed over time it has become more costly. So in the end – because it was running currently – I understand it has now been cancelled but it was running currently and so what it was going to end up costing SAAT was about 1.5 billion. That is why I am using that because if that is what it did end up costing SAAT then JM Aviation had a look through to 5% and that is about 75 million.

MS MBANJWA: You know, Chair, I really do not want to
20 hold up, I hear this evidence of Mr Human but can we be referred to something that proves that at the end this was the value?

ADV HOFMEYR: Chair, this is really not the
...[intervenens]

CHAIRPERSON: Yes, she is saying Mr Human's evidence,

Mr Human came and gave evidence and that is what he said. Obviously if you want to calculate 5% of the amount that is reflected there you are free to do so.

MS MBANJWA: No, I think I have held you up enough so thank you, you may continue.

CHAIRPERSON: Okay, alright.

MS MBANJWA: Thank you, Chair.

CHAIRPERSON: Let us move on. Thank you, Ms Kwinana, for confirming that the lawyer was right about
10 figures.

ADV HOFMEYR: Okay, so out of the AAR JM Aviation contract. JM Aviation stood to receive revenue about 75 million. If Mr Human is right, that is its ultimate value of 1.5. If it is a bit less, 1.2, we can do the calculation and it will be some tens of millions less than 75 million. Do you accept that as well, Ms Kwinana?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. And then they also benefited from the sale of the GPUs to them and then their ability to on-
20 sell it to Swissport, is that correct?

MS KWINANA: What was your question?

ADV HOFMEYR: That JM Aviation also benefited from the fact that SAAT sold its GPUs which it was then able to sell on to Swissport, correct?

MS KWINANA: I cannot confirm this one.

ADV HOFMEYR: Do you not have knowledge of that?

MS KWINANA: I do not know if they on-sold and benefitted.

ADV HOFMEYR: Oh, okay, let me help you again. The evidence is that SAAT sold it to JM Aviation at about 3 million, it was 3.3 or something, and the next day Swissport paid for those same GPUs at about 9.8. So I have always worked with a difference being about R6 million. Do you accept that if JM Aviation bought them for
10 about 3 million and the next day they could sell them for 9 million they benefitted by the difference which I am going to say is about 6 million. Do you accept that?

MS KWINANA: There was also a board submission in respect of this.

ADV HOFMEYR: Yes, my question is do you accept that if they bought them for 3 million and sold them for 9 million the next day they made 6 million out of that transaction?

MS KWINANA: There was a board resolution in respect of this Chair and in this board resolution there were some
20 also questions that were raised in this ...[intervenes]

CHAIRPERSON: Yes but hang one, Ms Kwinana, she is just asking you whether you accept that reasoning. She is saying if you buy something for 3 million today and you sell it for R9 million tomorrow, do you accept that it means you have made R6 million profit?

MS KWINANA: Not necessarily, Chair.

CHAIRPERSON: Okay, alright. Ms Hofmeyr?

ADV HOFMEYR: Why not?

MS KWINANA: It is because - if I make an example an example of a car. You sell a car – you buy a car today, Chair, for 200 000, it gets registered today and you sell it tomorrow, you sell it tomorrow, you can sell it tomorrow at 150 because of the depreciation.

ADV HOFMEYR: Indeed, indeed, but the facts are they
10 bought it on day one for 3 million and they did not sell it at a depreciated value, they sold it the next day at 9 million. How could they possibly not have benefitted in the order of 6 million? There is no depreciation issue. Buy on day one at 3 million, sell on day two at 9 million.

MS KWINANA: Still, Chair, it also depends on a whole lot of things. I am talking about the depreciation. We all know that the car depreciates it the moment it gets out of the showroom, it has already depreciated.

CHAIRPERSON: Yes, but you see you are responding to a
20 general principle. You are saying in effect that is not always the case, there are circumstances where you might have to sell something for lower than the amount you bought it the previous day.

MS KWINANA: Yes, Chair.

CHAIRPERSON: You made the example of a car. But

what she is talking about, is where it is a fact that they sold it for more than the price they paid for it, so your example does not apply. They have bought it for – they bought this for 3 million today, tomorrow they were able to – the following day they were able to sell it for 9 million. How can it not be that they made a profit of 6 million? How can you not agree with that?

MS KWINANA: Again, Chair, in the example of the car ...[intervenes]

10 **CHAIRPERSON:** Yes but leave out the example of a car, talk about what she is talking about.

MS KWINANA: You talk about the GPUs?

ADV HOFMEYR: Talk about any purchase ...[intervenes]

MS KWINANA: Then let me talk about ...[intervenes]

ADV HOFMEYR: Day one 3 million, tomorrow sell for 9 million.

MS KWINANA: Then let me talk about the purchase of a car, Chair, let me make an example of the purchase of a car.

20 **ADV HOFMEYR:** No, but ...[intervenes]

CHAIRPERSON: But your own evidence says in the case of a car you will not sell the car for higher, for a higher price than the one you bought it for. That is your own evidence.

MS KWINANA: Yes, Chair.

CHAIRPERSON: But she is saying to you if you buy anything today and you are able to – for R3 million and you are able to sell it for R9 million tomorrow, obviously you have made R6 million profit.

MS KWINANA: If you have not made any improvements, Chair.

CHAIRPERSON: Yes, if you have not incurred any expenses or ...[intervenes]

MS KWINANA: If you have not incurred any other
10 expenses.

CHAIRPERSON: Then you agree.

MS KWINANA: The answer is yes.

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Alright, one second? Ms Mbanjwa?

MS MBANJWA: Thank you, Chair, I just want to remind
Chair of the difficulty. You will recall, Chair, that this was
the same question that was placed in front of Ms Memela
and then what we had said then, we had said that the
20 determination of the ...[intervenes]

ADV HOFMEYR: Chair, can I – I am so sorry, Ms
Mbanjwa.

CHAIRPERSON: Ja.

ADV HOFMEYR: I really do want to place on record now
that we will argue in due course and that is the only reason

I am interrupting Ms Mbanjwa because I have to interrupt to tell you that if at this point you have interjected in a way that is going to be viewed as coaching this witness, we are going to make that submission in due course. I need to tell you that that is what I am going to do in fairness to you but please proceed if you would like to carry on.

CHAIRPERSON: But as I have been saying also, Ms Mbanjwa, I am very concerned about that and it is not doing ...[intervenes]

10 **MS MBANJWA:** But it is not that ...[intervenes]

CHAIRPERSON: It is not doing justice to Ms Kwinana who I believe can mostly answer questions on her own.

MS MBANJWA: Yes but Chair you are going to listen to my – to what I am going to say and you will see that it has nothing to do with the answer of Ms Kwinana.

CHAIRPERSON: Ja?

MS MBANJWA: Actually, Chair, maybe this way I think I play a joke, I am not making light of this, she is actually Mrs Kwinana. There is somebody who tweeted oh, Mrs
20 Kwinana, no wonder, they are not even married, they are gangsters, so maybe we should emphasise that she is Mrs, she has married for more than 20 years. Thank you, Chair.

But, Chair, what I wanted to say, with your permission, when Ms Memela was giving evidence the last time we requested a specific affidavit. The affidavit of

Jules Aires and Jules Aires was at Swissport. One of the things – and that affidavit we confirmed with Ms Hofmeyr that she is in possession of that affidavit. That affidavit expressly stated and we drew the attention of Ms Hofmeyr to that, it expressly stated that the GPUs that were sold, some of them were broken and they were taken for repairs which means costs were incurred. I was just reminding the Commission that the issue of whether it was 6 million, the profit, is fully set out in that affidavit. Thank you, Chair.

10 **CHAIRPERSON:** Ms Hofmeyr, please move on.

MS KWINANA: Thank you. The issue of Ms Kwinana, Ms or Mrs Kwinana, I have understood that Ms is for both Mrs and Miss but I may be wrong. Ms Hofmeyr, what is your understanding? Ms Hofmeyr?

ADV HOFMEYR: I had certainly understood that to be the case. Sorry, I was writing myself a note so that if Ms – Mrs Kwinana wants me to refer - you see, I have written Mrs because it is my tendency to always use Ms do that it mutually covers both but if it is important to Mrs Kwinana
20 that I refer to her as Mrs Kwinana then I will endeavour to do so.

CHAIRPERSON: Guide us?

MS KWINANA: It really does not matter to me, Chair.

CHAIRPERSON: It does not matter to you?

MS KWINANA: No.

MS MBANJWA: No, I was just putting in a light moment.

CHAIRPERSON: Okay. No, but it is important one, does need to be sensitive to some of these things. Okay, alright.

ADV HOFMEYR: Thank you.

CHAIRPERSON: I wanted to think now whether to say Mrs Hofmeyr or Ms Hofmeyr.

ADV HOFMEYR: No, no, I far prefer Ms, so I am not [inaudible – speaking simultaneously].

10 **CHAIRPERSON:** Alright, ja.

MS KWINANA: Excuse me, Chair. I am even embarrassed to ask for another break, maybe it is this water, Chair.

CHAIRPERSON: Oh, okay, another break. Oh, okay. Okay, let us take another break. Ten minutes?

MS KWINANA: Five minutes.

CHAIRPERSON: Five minutes will do?

MS KWINANA: Yes.

CHAIRPERSON: Okay, five minutes. We adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Let us talk about when we think we can finish, what is your estimate of how much more time you need Ms Hofmeyr?

ADV HOFMEYR: Sorry Chair I would think you know it

does take longer with the interjections.

CHAIRPERSON: Yes.

ADV HOFMEYR: So what I can tell you is without interjections I am looking at about an hour.

CHAIRPERSON: Yes, okay no that is fine.

MS KWINANA: Ms Mbanjwa no interjections please, I must be out of here in an hour.

CHAIRPERSON: Well you see Ms Mbanjwa you are under instruction now by the client, otherwise you will be fired.

10 **MS MBANJWA:** Thank you Chair and can I say something, it has got nothing to do with this, I want to stand when I am saying it. I just want to say Chair I was shocked, that there are many negative comments that come, I do not mind them, but there this comment that worried me and I decided to apologise.

Somebody is saying I disrespected the Deputy Head Judge, I was so embarrassed, and if Chair by my interjections I was taken to have disrespected you I sincerely from my heart apologise, that was never the
20 intention. You are one of the people we as black people look up to, you are a trail leader and I am sure you know of that, so seriously my apologies.

CHAIRPERSON: No, no, no that is fine, thank you. Now I just wanted to also talk Ms Mbanjwa about re-examination so that as Ms Hofmeyr continues you can have an idea of

how much time I have in mind I would give you.

You might when the time comes maybe ask for more and I will hear what you have to say but it might help that you have an idea of what I have in mind so that you can work on the basis that if that's the time I will give you, you try and identify really important issues that you want to re-examine on because if I tell you later you might say had I known before I would have tried to limit but I worked on too many things because I thought I was going to have more
10 time.

Now the time that I would like to give you is not more than an hour, let me tell you why I have that in mind I have looked at how much time lawyers who have appeared for witnesses seem to generally taken re-examination since we started in August 2018. As far as I can recall there are no more than two who have taken about two hours most of the time a lot of lawyers who represent witnesses will say I just want to ask one or two questions and then they take a few minutes some do not even re-examine. I recall for
20 example some time earlier I think last year if I am not mistaken Mr Wim Trengove was representing I think Mr Jonas.

ADV HOFMEYR: Yes, indeed.

CHAIRPERSON: When it was his turn to re-examine he said Chairperson I am not going to re-examine the

examination by the Evidence Leader has covered everything. There are many others Mr Mpofu was representing somebody sometime back. He did not take; I think he did not take more than fifteen minutes in re-examination. Mr Nbesha was here last week or the week before he asked two or three questions in re-examination and said he was covered.

So generally you know lawyers who represent witnesses they have felt covered by the questioning and
10 the evidence that comes out when a Commission Evidence Leader has been asking questions. So I am just saying you know an hour should if one looks at what lawyers generally have taken you know should be fine.

So - but if when you start re-examining you complain you want more let us talk then but I just want to give an idea so that as you, as Ms Hofmeyr continues for the next hour or so you are able to say okay if I do not get given more than an hour this is what I want to cover because this is what I consider to be important.

20 **MS MBANJWA:** Thank you Chair, it would be fair Chair as much I thought with Ms Memela I would need more because the submission was different up till now I think an hour will be sufficient. The only thing which I would ask with your permission Chair is after Ms Hofmeyr has finished can we maybe time the re-examination to be just after lunch so

that I can talk to the witness about a few things. I do not know if that is possible and I know it is a Saturday and there is time constraints on your part so if that is not possible maybe I can just have I do not know the break that Chair can be prepared to give before we embark immediately on re-exam.

CHAIRPERSON: Yes, look let us see how it goes I had hoped that we would be done by 1 o'clock but I do not think we will be done. Let us see when Ms Hofmeyr is
10 done and then take it from there.

MS MBANJWA: Thank you Chair.

CHAIRPERSON: Okay alright, Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair, Ms Kwinana I want to just get your confirmation of certain facts we have traversed them over the last two days but they an important background to where I am going in the questions. So it is just helpful to remember also because we have had this break of three days. You we have seen this morning were involved in the SAAT Board decision to award the
20 components contract to AAR and JM Aviation, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you were also involved in the SAA Board's decision to approve the contract with Swissport that was that resolution we looked at the other day of March 2016, correct?

MS KWINANA: To approve as I said Chair this 2012 that was 2012 and you refused Chair that I should go back to 2012. In 2016 the contract was awarded in 2012 so in 2016 what happened is there was a Board submission to approve the terms and conditions of the 2012 award. So Chair again when the submission comes it does not come with a contract but it come with the terms and conditions and then the same as I was saying at AAR after that the people go and do the contract but that contract the terms
10 and conditions that we approved were relating to the award that was done in 2012.

ADV HOFMEYR: Ms Kwinana I know that you have given evidence about the old 2012 award. I just want to get confirmation that you were part of the Board that decided on the 14th of March and I am reading from the resolution now so that there can be no dispute between us to approve the contract to be entered into with Swissport South Africa for the duration of five years commencing on 1 April 2016 to 31 March 2021. Do you confirm that?

20 **MS KWINANA:** What page is that Chair?

ADV HOFMEYR: It is in Exhibit DD19 page 132.43 let us get that in front of you. Oh apologies it is 19A and it is 132.43.

MS KWINANA: Oh yes, Chair.

ADV HOFMEYR: Super, thank you. Now it was pursuant

of this contract that the sale of the GPU's took place. You would recall that I took you to the contract the other day and I showed you clauses 8.1 and 8.2. Do you accept that?

MS KWINANA: What were these clauses saying, can you remind me?

ADV HOFMEYR: Yes, there the clause 8.2 says that it is a requirement of the contract that we have just looked at that was approved – that Swissport purchased SAAT's
10 GPU's.

MS KWINANA: Oh yes, yes.

ADV HOFMEYR: Right, so what that means Ms Kwinana is that, if you will just give me a moment...[intervene]

CHAIRPERSON: I am sorry Ms Hofmeyr I do not know why my registrar is taking ages.

ADV HOFMEYR: Oh I do apologise and I had moved on Chair I did not realise. What was useful is that Ms Kwinana read it and then gave me the confirmation.

CHAIRPERSON: Yes, yes.

20 **ADV HOFMEYR:** That as the resolution reads that the Board had approved the contract to be awarded for the five years.

CHAIRPERSON: I might not have to look at it.

ADV HOFMEYR: I certainly do not think so.

CHAIRPERSON: No thank you, let us move on.

ADV HOFMEYR: So what that means is that you were involved in two decisions one in your capacity at the SAAT Board and one in your capacity at the SAA Board that generated revenue for JM Aviation and we have looked previously at what that revenue looked like. It is about R75million even if you – let us say R60million if you take the R1.25billion rather than the R1.5billion and it is R6million in the GPU. So those two decisions generated revenue let say in about R60million for JM Aviation. Do
10 you accept that?

MS KWINANA: No, Chair I would not know how much revenue was generated so basically that would be based on the assumption. So I cannot say with certainty that JM Aviation benefitted on that because as I was saying the profit on GPU's there were some issues in respect of the profits on GPU's and the 5% of AAR I do not know what contract they enter into and therefore I would not be in a position to confirm the revenue of JM Aviation. They would be in a better position to confirm their revenue.

20 **ADV HOFMEYR:** Okay let me – we had gone through all of this to lead up to this point because it is understood you accepted 5% of R1.5billion was R75million. I am going to change tact, do you accept that these two decisions meant that SAAT and well it is just SAAT actually SAAT paid JM Aviation money?

MS KWINANA: I do not know if SAAT paid money to JM Aviation.

ADV HOFMEYR: Well you are actually right SAAT paid money to AAR which AAR then paid onto JM Aviation in terms of their joint venture agreement which was part of the way in which they bid. Are you saying that you dispute that JM Aviation generated anything because of the business with SAAT?

MS KWINANA: I am not disputing Chair but I am saying I
10 do not know those are the things that I cannot confirm.

ADV HOFMEYR: I understand it is the figures is that right but you will accept with me that a bidder who gets awarded a contract generates revenue from the contract. Do you accept that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Thank you, right now from June 2016 your company Zano Spark received money from JM Aviation and people linked to JM Aviation like Ms Hendricks who you understood at the time was an
20 employee. Do you accept that?

MS KWINANA: Chair my company received money from JM Aviation from August 2016 Zano Spark received two amounts from Ms Hendricks, Ms Hendricks I do not know, I did not know until this Commission that she is married to Mr Ndzeke even with that Chair if you look at the

procurement process JM Aviation and Swissport had gone through a rigorous process starting from the approval by BFS Team and therefore for these companies to be in the doctrine. I really do not think that I would have influenced from the beginning up to the end of the process and secondly in the Board I am not the only Board member of SAA Technical there were other Board members at SAA Technical and therefore there was no way that I would influence any of these contracts and therefore Chair and
10 another thing when I was still at SAA and SAAT. I did not have a business relationship with both, a business relationship with both happened after I left SAA Technical so I...[intervene]

CHAIRPERSON: Business relationship with?

MS KWINANA: With Mr Ndzeku.

CHAIRPERSON: Oh, okay.

MS KWINANA: Yes, it happened after I left SAA Technical the business relationship and so Chairperson to say that I influenced maybe I may not put it exactly the way you said
20 it but to say that I influenced the process. I think at cross-functional sectional team that is bid evaluation there are about fifteen or sixteen people from different areas of SAA and SAAT, fifteen people and then from there even if I can be so influential and if I had influence to those people they would also come to the Zondo Commission to say I spoke

to them, I spoke to them.

So what I am saying Chair the process that is being followed makes it so difficult to influence the process it is the same with Swissport. We did not award that tender; what we were doing we were regularising the contract. How we regularised the contract from 2012 to 2016 that was on a month to month basis because it was never signed because of the disagreement between Swissport and SAA. So they were on a month to month contract that
10 caused a lot of uncertainty because Swissport is one of the major customers of SAA.

If Swissport goes on strike SAA would not fly and therefore, Chair also that process followed the rigorous process of FSTC and that FSTC is even you cannot even say you will influence them because it depends who gets called at the moment depending on what the tender is and who is playing which role and therefore Chair let me repeat again I do not sit alone in the Board Chair whatever decisions that we do is a Board decision.

20 **ADV HOFMEYR:** Ms Kwinana what was my question?

MS KWINANA: Remind me Chair.

ADV HOFMEYR: The question was do you except that from June of 2016 your company Zano Spark received money from JM Aviation or people linked to JM Aviation?

MS KWINANA: I am saying Chair that money that we

received that is another thing that I should explain Chair again.

CHAIRPERSON: Yes, but let us start with is it yes you accept or what are the proposition that Ms Hofmeyr is putting or do you not accept it then we can talk about the basis for not accepting it or there needs to be a qualification to saying you accept it. If we want to make progress and finish within a reasonable time it will help if as far as possible, crisp questions are answered with crisp answers obviously I accept that sometimes there needs to be some qualification or explanation but it will help progress if you are able to answer yes or no to a question that seeks that.

MS KWINANA: Chair the reason why in this question I am reluctant to answer yes or no is because in previous hearings Advocate Hofmeyr said I accepted – I was involved in a corrupt scheme I accepted bribes and kickbacks, that is what she said and in fact now her question will be and I do not know what will be the follow up question, that is why.

CHAIRPERSON: Yes, but do not worry about the follow up question you will deal with it when it comes. First she just wants to find out do you accept that your company received money from Ms...[intervene]

ADV HOFMEYR: JM Aviation or people linked to JM

Aviation.

CHAIRPERSON: Yes.

MS KWINANA: Maybe she should tell me Chair that I received money for what.

CHAIRPERSON: Well that can come later but if your company did not receive money at all then there might be no need to go into for what but if you say yes it did receive the money.

MS KWINANA: Yes, Chair it did receive the money.

10 **CHAIRPERSON:** Okay, alright take it from there.

ADV HOFMEYR: Thank you, then I would like to pick up just for a moment on something you did say earlier about that distinction that money before you left SAAT came from Ms Hendricks and it was only after you left SAAT that money came from JM Aviation, do you recall drawing that distinction?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes, it is a distinction that I confessed to Mr Ndzeke when he was giving evidence that I could not
20 understand. You did watch his evidence did you not or did you look at his transcript which was it?

MS KWINANA: I did, I looked at the transcript.

ADV HOFMEYR: Right, so do you recall me raising that with him?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes, because you see his evidence before this Commission is that it was him, it was his investments and he was simply asking his wife to make the payments that first 2.5 and the 605, do you recall him giving that evidence?

MS KWINANA: I will not say I recall specifically that.

ADV HOFMEYR: No that is fine let me tell you...[intervene]

MS KWINANA: However.

10 **ADV HOFMEYR:** Yes.

MS KWINANA: However even if the money was coming from Mr Ndzeke the money was not to my benefit the money was for his investment that is why – let me finish. The money was for his benefit not for my benefit yes and secondly there could be like for instance if there was – let me talk about the disclosure and conflict of interest without being asked that but I need to cover it.

20 The money the first money was paid on 1st of July that was the first money. Now assuming that it was Mr Ndzeke or yes assuming the worst case scenario was that it was Mr Ndzeke. Now when would I disclose the interest at SAA there are two specific circumstances where we can disclose the interest.

We have got annual disclosures and if Zano Spark is not there that means I was not part of the Zano Spark

but I do not want to go there but what I do I have got access to CIPC where all my directorships are there. I print that and send it to the company secretary that is the annual disclosure and then the second disclosure is when you see a pack in front of you, you going to the meeting and then you think that your decision will be impaired here.

When those monies including the one that was put by Ms Hendricks when those monies were put there was no time where I would say now let me disclose my interest
10 because the company that I am linked to being Zano Spark is also doing the work with the company that we doing work with like SAA and Zano Spark. So there was no circumstances like that and therefore Chair the monies that we received firstly from Ms Hendricks whom I did not know that she was Mr Ndzeke's wife. We did receive it as a company I agree with that, we also received monies from JM Aviation those monies were for forex trading. So to answer your question yes Zano Spark did receive those monies...[intervene]

20 **ADV HOFMEYR:** Thank you Ms Kwinana.

MS KWINANA: But they were not for bribe and corruption and kickbacks as you said it before.

ADV HOFMEYR: Ms Kwinana at this point I am just getting confirmation that you accept that you received it. I do want to go back because you keep emphasising that you

only learnt that Ms Hendricks was Mr Ndzeke's wife in the evidence before the Commission.

MS KWINANA: Yes.

ADV HOFMEYR: But remember we dealt with that the other day you knew that she was linked to JM Aviation.

MS KWINANA: Yes.

ADV HOFMEYR: That you knew right so when you received the payment on the 1st of July 2016 when you still a director of SAAT and SAA you know that Zano Spark your
10 company is receiving R2.5million from a person linked to JM Aviation, correct?

MS KWINANA: Let me make one slight correction Ms Hendricks I knew that she was a colleague of Mr Ndzeke. I did not know; I do not know if she is linked to JM Aviation.

ADV HOFMEYR: We will go and get the transcript of the other day you referenced particularly that she was employed or I do not know if you used the word employed or a company at JM Aviation.

MS KWINANA: Yes, she was a colleague of Mr Ndzeke
20 which company I do not know.

ADV HOFMEYR: We will go back to the transcript.

MS KWINANA: Another thing Chair Mr Ndzeke is involved as I said before, is involved in many companies. So when he says Ms Hendricks is a colleague then and in fact even if he said, Mr Ndzeke said Miss Hendricks is a colleague

from JM Aviation for the reasons that I have just explained I really would not see anything wrong.

ADV HOFMEYR: You would not okay, you would not see anything proper. So then I was just going back to this change right it comes from Ms Hendricks while you still at the Board of SAAT but then when you leave it comes directly from JM Aviation and I was telling you that in Mr Ndzeku's evidence I queried with him why if it was his investment that change needed to take place.

10 It did not make sense to me and I actually said to him in fairness to him it starts to look like you are trying to hide who the real payer is by interposing somebody else when it is actually him, it is his money and it is money owed to him by JM Aviation and he did not really give much of an answer to explain that.

 I want to put to you what occurred to me when I was looking at that change preparing for your evidence. You see remember right at the beginning on Monday I had asked you about your resignation on the 22nd of August
20 2016. Do you remember discussing your resignation?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes, you see that resignation falls directly between this change you see until you resign on the 22nd of August it his bank account but after the 22 August and you have resigned it is JM Aviation paying into

the bank account. Do you accept that difference?

MS KWINANA: I would not know the internal arrangements that they have this Ms Hendricks and Mr Ndzeke and therefore I will not want to comment as to whether the money came from. From my books yes the two amounts came from Ms Hendricks.

ADV HOFMEYR: Yes before you resigned.

MS KWINANA: Yes.

ADV HOFMEYR: And all of the JM Aviation amounts come
10 after you resigned, correct?

MS KWINANA: Yes but as I said I would not know their internal arrangements.

ADV HOFMEYR: No. I accept that. I accept that but what struck me as quite stark is that Ms Ndzeke says he is investing in forex with you. He says it is his investments. But he uses his wife with the name Hendricks to send you the money – deposit the money in Zano Spark before your resign from SAAT. And he then has no difficulty using JM Aviation after you resigned from SAAT. And that coincidence
20 indicated to me and that is why I put it to you that the concern about why he would use Hendricks before you left might be linked to the fact that no-one would then while you were there be able to link the payment to JM Aviation and that you were free after you left SAAT to get them directly from JM Aviation. Was that what was going on Ms Kwinana?

MS KWINANA: Chair you said we cannot raise questions but I am thinking from the top of my head that if that was the case – if Mr Ndzeke wanted to hide that would he not continue to hide it under Ms Hendricks or had they already divorced when – when now JM Aviation directly pay me. Because really if he wanted to hide it he could also have continued to hide it and use Mr Hendricks that is basically Ms Hendricks basically that is what I am thinking. But now why would he change because now Ms Hendricks is the wife
10 and therefore there is nothing to hide in her being the wife. So what I am saying is if he wanted to hide anything I would think that he could have continued as Ms Hendricks if Ms Hendricks' transactions – in any way?

CHAIRPERSON: Well Ms – well Ms Kwinana you – you said earlier on if I understood you correctly. You raised the point that you only received payment from JM Aviation after you had resigned, is it not?

MS KWINANA: Yes Chair.

CHAIRPERSON: And it seems to me that the point you
20 sought to make was there was nothing wrong for you to receive money from JM Aviation after you had resigned. Is it not – is that not the position? Is that not the point you wanted to make?

MS KWINANA: Chair even – even before I resigned there was nothing wrong. There would be nothing wrong in me

receiving the money from JM Aviation.

CHAIRPERSON: Yes.

MS KWINANA: The reason being that there is nothing in the SAA Policy and also even in government that I do business with there is nothing wrong that says you cannot do business. What it says is that disclose and therefore had I stayed at SAA I would still do business with JM Aviation but disclose.

CHAIRPERSON: But – but then disclose and take part in
10 decisions making – in decision making affecting JM Aviation.

MS KWINANA: No. What needs – needed to happen is if the submission comes and it has JM Aviation ...

CHAIRPERSON: Would not take part in a decision making is it not?

MS KWINANA: This is how it happens Chair. When I see a company that I am doing business with that I need to make a decision I know you will come to keep...

CHAIRPERSON: Do not worry about what she will come to.

MS KWINANA: I – I know you will ...

20 **CHAIRPERSON:** You will deal with it when it comes.

MS KWINANA: CWC and good. But what happens Chair when I see that there is JM Aviation that is going to be here and any other company that I am doing business with I would disclose and say I do business with this company.

CHAIRPERSON: And then proceed to take part in the – in

deciding in a matter involving them or you then recuse yourself – which one do you – would you do?

MS KWINANA: It also depends Chair. In this – in this case – in the case of – can I say make an example of these three companies? In the case of JM Aviation where basically I know that Mr Ndzeke is a director here and Mr Ndzeke is investing his money with Zano Spark the company that I am linked to. Then I would recuse myself. In the case of me approving the audit fees of Nkonki and PwC doing business
10 with them on a contract by contract basis which is normal which I am not getting the money from Nkonki and PwC but I am getting money from PRASA; I am getting money from Transnet; I am getting money from Postnet. Then I would not recuse myself because the decision to award us that tender is not dependent on Nkonki and PwC and it is also not dependent on me. So I do not know Chair if this makes sense. Because in the case of PwC the monies that were received were the monies from PRASA. The monies that we received from PwC – from Nkonki were the monies from
20 Transnet and therefore Chair there was no conflict of interest. And in JM Aviation at the time I was not doing business with JM Aviation. And if I was doing business with JM Aviation I would have disclosed my interest.

CHAIRPERSON: And you would not have been entitled to take part in any decision relating to JM Aviation?

MS KWINANA: Yes Chair.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: But Ms Kwinana the point that you keep emphasising is exactly the one that troubles me because it is precisely because the first two payments as I understand your version did not come directly from JM Aviation. That you did not have to make the disclosure, correct?

MS KWINANA: Not only that but as I was saying again even if the monies were coming from JM Aviation I have stated the
10 two circumstances where you disclose your interests – your conflict of interests.

The first disclosure of the conflict of interest is the annual disclosure. The second disclosure and the annual disclosure we would get – we disclose it towards the end – the year end. That is the first disclosure. The second disclosure is when you have to make any decisions.

CHAIRPERSON: Well Ms Kwinana you may have annual disclosures and whatever disclosures the fact of the matter is if a matter comes before the board of which you are a
20 member that involves certain people or certain entities which gives rise to a conflict of interest you cannot not disclose that there is this conflict of interest and you cannot take part in decision making involving that situation where you have conflict of interest, is it not?

MS KWINANA: That is correct Chair.

CHAIRPERSON: Yes. Ms Hofmeyr.

ADV HOFMEYR: Yes so it does not depend on the circumstances. Are you aware of the provisions of Section 75 of the Companies Act?

MS KWINANA: What does it say?

ADV HOFMEYR: It is about directors and personal financial interests and when they must disclose and when they must recuse themselves. Are you aware of those provisions?

MS KWINANA: Whose personal financial interests?

10 **ADV HOFMEYR:** No I am asking are you aware of the provisions of Section 75 of the Companies Act?

MS KWINANA: Whose personal financial interests? Whose personal financial interests? Because...

CHAIRPERSON: Hang on, hang on, hang on Ms Kwinana. Just listen carefully to the question. Ms Hofmeyr is asking you whether you are aware of Section 75 of The Companies Act and you asked her what does it say. She has now told you what it says. Go back to the question say yes I am aware of no I am not aware?

20 **MS KWINANA:** I am aware.

CHAIRPERSON: Okay.

ADV HOFMEYR: Okay so...

MS KWINANA: But Chair I am aware but I do not want you to say – in fact I want you to put it in your mind Ms Hofmeyr.

CHAIRPERSON: No do not deal with what she has not

raised yet.

MS KWINANA: No I am – no I want Chair I want to correct this. I want to put it in her mind that I did not have a personal interest – I did not have a personal interest in...

CHAIRPERSON: Well she thought - she said the Act relates to personal finances, is that right?

ADV HOFMEYR: Personal financial interests yes.

CHAIRPERSON: Personal finances.

MS KWINANA: Personal financial benefit.

10 **ADV HOFMEYR:** Interest.

MS KWINANA: I did not – personal financial interest okay. I did not have the personal financial interest. What they are doing they are investing in forex trading. I am investing for them. I do not have a personal financial interest. If I have the personal financial interest I will only have the personal financial interest on maturing of when they say on this date I want my money based on the agreement then that is when I am going to have a personal – a financial interest. As I am sitting here I do not have a personal financial interest Chair.

20 **CHAIRPERSON:** No Ms Kwinana. They are doing business with you.

MS KWINANA: Yes Chair.

CHAIRPERSON: That is good for you. You want their business.

MS KWINANA: Yes Chair.

CHAIRPERSON: Actually you would be happy if they gave you more business.

MS KWINANA: Yes Chair.

CHAIRPERSON: You are going to sit – you cannot see it now and make a decision that could disappoint them because they might not give you more business in the future. They might even take away the business that is there. They will not – they do not have to wait until maturity. Right there and then you have an interest in them continuing to give you
10 business while you are faced with this decision that must be taken about them.

MS KWINANA: Yes Chair. But remember that Ms Hendricks...

CHAIRPERSON: So you do have an interest because they are making an investment that may result in you getting money in due course and you want them to keep this business with – relationship with you. Actually you would be happy if they could give you more business. So you have an interest.

20 **MS KWINANA:** Yes.

CHAIRPERSON: Yes.

MS KWINANA: Yes Chair.

CHAIRPERSON: Ms Hofmeyr.

MS KWINANA: But – yes Chair I have – I have an interest when they have put the money in my business. But for SAA

Technical JM Aviation put it money after I left SAA Technical.
Let us go back to Ms Hendricks.

CHAIRPERSON: Yes, no let us not go back because we
have heard...

MS KWINANA: Okay.

CHAIRPERSON: I have heard what you say.

MS KWINANA: Thank you Chair.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: Ms Kwinana I – I absolutely understand but
10 you will correct me if I got it wrong that your version about
why these payments are not suspicious at all that came from
JM Aviation and Ms Hendricks is because you did not benefit
from them, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: We have just clarified with the Chair that
you did benefit in the sense that you benefitted from their
business and I understand that that involves some
remunerative consequence for you, correct?

MS KWINANA: That is fine let us agree. Let us agree that I
20 benefitted.

ADV HOFMEYR: Right.

MS KWINANA: But when did I start to benefit and when was
I supposed to disclose this interest?

ADV HOFMEYR: No Ms Kwinana that is why disclosure is a
little bit of a red herring you see. The way that bribery and

corruption sometimes takes place is it does not have to precede the decision making. That might be too obvious a way to design the scheme. It does not matter at all that it comes later.

If the people who are engaging in the bribes or the corrupt activity devise a very clever scheme that there are going to be benefits given by contracts being awarded but they are going to be quite careful they are going to be sure the money starts to flow only after – well through people that
10 will not make it obvious that there is a connection and then later after you have left.

That does not stop at being part of a corrupt scheme. The timing does not prevent it being part of a corrupt scheme. So your consistent emphasis about the fact that the money only comes in at a point when you had already made decisions or the money only comes in from Ms Hendricks until you leave I put it to you is not an answer if the
20 overwhelming rest of the evidence indicates that there was an arrangement that was reached in order to influence your decision making at SAAT. Do you have a response to that?

MS KWINANA: Where is this overwhelming evidence? Can I have access to this overwhelming evidence Chair?

CHAIRPERSON: She will point it out to you.

ADV HOFMEYR: I am going to take you through it now. So your – your version previously has been you did not benefit.

Now you are accepting some benefit and then you emphasise time. And I say there is a – there is evidence there that suggests that there might have been a scheme. So I want to put all of that evidence to you Ms Kwinana so that you have an opportunity to respond.

The first is that Ms Memela a person who I do not understand you to have regarded in any way suspiciously unlike Ms Sambo who you have been very clear before this commission was a pathological liar in your view.

10 Ms Memela in an unguarded moment in an email communication in 2017 referred to the fact that you amongst others tried to solicit a bribe from AAR. That is a first piece of evidence that suggests that there were bribes going on.

MS KWINANA: Sorry – sorry – can you start again what is this piece of evidence? Ms Sambo?

ADV HOFMEYR: No it is Ms Memela in a whatsapp communication with Ms Sambo referring to the fact that she had knowledge that you were involved at a point in time seeking to solicit a bribe from Cheryl Jackson who is
20 associated with AAR. And I add that she is not a person that you before this commission has indicated should not be trusted or you resisted the conclusion that she is a pathological liar. So I say that is the first piece of evidence. Do you have a response?

MS KWINANA: So your evidence is Ms Memela's whatsapp.

Let me just hear you ...

CHAIRPERSON: Oh you want her to...

MS KWINANA: Correct what is the evidence there. The evidence is Ms Memela's – the evidence is Ms Memela's whatsapp is it what you are saying?

ADV HOFMEYR: Yes but I cannot do it without your answer because the questions are going to follow depending on the answer. So can I have your response to that??

MS KWINANA: Ms Memela's whatsapp cannot be the
10 evidence I dispute that.

ADV HOFMEYR: Right. Then you emphasise that there was a genuine business relationship between yourself and Ms Ndzeke and Ms Hendricks, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Right. That business relationship is not supported by a single document that you can produce to the commission. And I want to couple that with the proposition that legitimate business relationships generate documents.

MS KWINANA: Sorry Chair. Can you be slower I am – I am
20 writing.

ADV HOFMEYR: Sure. Of course.

MS KWINANA: Today I do not want to say I do not – I would have forgotten your question.

ADV HOFMEYR: Of course. So it is the business relationship that you say existed between yourself and Mr

Ndzeku and Ms Hendricks has not generated a single piece of paper – a single document that you can place before this commission. And usual genuine business relationships generate documents. So I put it to you that the fact that you cannot bring to this commission a document you were summons to produce these documents exactly two months ago. The 7 September 2020 and we sit here today on the 7 November 2020 and we have not a single document evidencing what you say is a genuine business relationship.

10 And I say on the probabilities that indicates there is not a genuine business relationship. What is your response to that?

MS KWINANA: Much as I did not submit the documentation Chair because of the server. I would think that your investigators could have gone to [00:19:55] and find out what is there. And secondly I did as I said before submit the documents to Mr Ndzeku – the statements – the annual statements to Mr Ndzeku. So it is not correct to say – of course it is correct to say we did not submit the documents
20 here but the businesses that we are doing does have the documents and Mr Ndzeku has also got the documents.

ADV HOFMEYR: Can I tell you what the problem with that is?

MS KWINANA: Yes.

ADV HOFMEYR: We have established that the servers were

confiscated in April of 2019. On your version you generate annual statements for each of your clients and provide them in January of each year. The confiscation of the server Ms Kwinana is not a reason for you not to be able to produce to this commission your January 2020 investment statements. What is your response to that?

MS KWINANA: Chair I submit the annual statements on an annual basis. I submit the December statements and submit them in January that is exactly what I do.

10 **ADV HOFMEYR:** Yes so where are the January ones from this year? Why did you not respond to a summons – the consequence of failure to respond to it is that you commit a crime and let me just be very clear this point has been made repeatedly in correspondence with your attorney where on each occasion there is an effort to avoid complying with the summons.

The first effort was to take a service point that it had not been properly served. When we produced the return of service we then said we remind you again the law requires
20 you ten days from service of the summons to produce the documents or an affidavit. And since then there has never been this document produced. It is a legal obligation on you Ms Kwinana to do it. We have discovered through the evidence from Tuesday to today that the servers were confiscated in April of 2019 and you have still not produced

the annual statement that you say are created in January of every year. We say that that is overwhelming evidence Ms Kwinana that this is not a legitimate business relationship because the justifications you give keep being pulled apart.

Where is the January 2020 annual investment statement that a summons issued by this commission required you to provide ten days after the 7 September this year?

MS KWINANA: I have got the January statements Chair.

10 **ADV HOFMEYR:** Yes but when you give it to us tomorrow you may have fabricated it. That is the problem. Your evidence previously is that you did not have it and that precisely Ms Kwinana is the difficulty.

MS KWINANA: I said Chair I submit the statements on an annual basis and I said the last statement that I submitted was January 2020.

CHAIRPERSON: The question Ms Kwinana which Ms Hofmeyr has repeated probably more than three times is, you were required by way of a summons to produce it to the
20 commission. Already that was - –he summons was served on you in September. Why did you not submit it if indeed you had it?

MS KWINANA: Chair the statement – the statements I have got the statements.

CHAIRPERSON: Why did you not submit it in compliance

with the summons if it existed?

MS KWINANA: Chair this information was required with a whole lot of other information which basically went missing like – were taken with the server. So maybe...

CHAIRPERSON: Did it exist or did it not exist in September this year and in October this year – we are now in November. Did it exist during these two months?

MS KWINANA: Yes Chair.

CHAIRPERSON: Why did you not then produce it to the
10 commission?

MS KWINANA: The commission Chair requested the whole lot of other information which I do not have.

CHAIRPERSON: Ja but you had this one why did you not produce this one?

MS KWINANA: No Chair I was thinking that I needed to produce the whole bunch of the information that was required.

CHAIRPERSON: No Ms Kwinana that cannot be – that cannot be. That cannot be true. That cannot be true. If you
20 get a legal document – a summons saying produce five documents to the commission – bring five documents and you know that you do not have three – they do not exist but you have got two you tell me that you would not come to the commission and say, I have only got these two. You would withhold these two because you do not have the other – the

three. Cannot be true.

MS KWINANA: That is an omission on my part Chair.

CHAIRPERSON: Sorry.

MS KWINANA: That is an omission on my part.

CHAIRPERSON: Ja but it is something so obvious Ms Kwinana it cannot be true. What you – what anybody would do is to say commission I will give you what I have. These – this is what I have. Anything else that you wanted from me I do not have. That is what any – everybody would do. It cannot be an omission. You are being asked to pro – to
10 bring – to produce five documents. You do not have three – they do not exist anymore you have got two. You cannot sit back and say I am not going to give the commission even these two that I have. It would not make sense would it?

MS KWINANA: Now that you say that Chair sorry.

ADV HOFMEYR: Ja the problem is on Tuesday your version was that you do not have the January 2020 statements because they were taken by the server. So Ms Kwinana we are going to argue in due course that you are a dishonest
20 witness. You are a witness who turns the facts each time they become difficult for you.

Ms Kwinana the next bit of evidence is that your explanation for the way in which you were conducting this business to try and get a response to the fact that you have produced no documents under the summons relies on a

remarkable confidentiality policy that you say exists in a business which if I understand it correctly means you could never email your clients. And I want to put it to you that in 2020 to be conducting an investment business involving forex trading and having a confidentiality policy in place that never allows you to email a client is nothing short of preposterous. What is your response to that?

MS KWINANA: Our policies – our policy Chair.

CHAIRPERSON: Ms Hofmeyr.

10 **ADV HOFMEYR**: Chair if I could just take a moment. Oh yes. One of the last things we did on Tuesday was we were looking at not only the 4.3 million that you got from JM Aviation and Ms Hendricks but also that extra 800 and a bit thousand and you gave us an explanation that it came from Janipath a supplier to SAAT because of some quite complicated I have to say. It took me a while to follow it at the time but I think I have got it now.

The version is Janipath paid that amount into Zano Spark because you had engaged Mr Kolisi, is that correct?

20 **MS KWINANA**: Yes Chair.

ADV HOFMEYR: Yes. And who was Mr Kolisi?

MS KWINANA: Was the lawyer.

ADV HOFMEYR: A lawyer. How did you know him?

MS KWINANA: I know him from SAA.

ADV HOFMEYR: Yes. Because Mr Kolisi was one of the

people that SAA contracted to run Dr Dahwa's disciplinary process, is he not?

MS KWINANA: I – I do not know which contract did run Dr Dahwa because I am sure that was not included as part of the board.

ADV HOFMEYR: Yes. It was not included in part of the board. But you attended a meeting with Mr Kolisi in advance of Dr Dahwa's disciplinary hearing to discuss the hearing. Do you dispute that?

10 **MS KWINANA:** I dispute that.

ADV HOFMEYR: Okay let us get the email. Get the email. Could we please hand up as – I have to get track on my exhibits. Let me hand them in first Chair. There are two documents so if I can ask maybe Andrew would you mind helping me we will give to Ms Kwinana. Andrew will give to Ms Kwinana. I just need to make sure that we give it the correct exhibit number. There are two documents Chair. The first is an email dated Friday, 4 March 2016. You might see that.

20 And then the second document is a confirmation of acceptance of the meeting that is being referred to in the first email. So if it could be entered as Exhibit DD 33(b).24, the email of 4 March 2016?

MS KWINANA: Sorry, DD?

ADV HOFMEYR: 34(sic)(b).24.

CHAIRPERSON: That is the one or the one from Mr Peter.

ADV HOFMEYR: Lester Peter. Yes, correct.

CHAIRPERSON: The email ...[intervenes]

MS KWINANA: Chair, I do not have ...[intervenes]

CHAIRPERSON: ...dated 4 March 2016 ...[intervenes]

MS KWINANA: Sorry.

CHAIRPERSON: ...from Mr Lester Peter to Carol Tjinkeke(?) will be admitted as Exhibit DD33(b).24.

EMAIL FROM MR LESTER PETER IS ADMITTED AND

10 **MARKED AS EXHIBIT DD33(B).24**

ADV HOFMEYR: Thank you. I just want to clarify for Ms Kwinana. I think she was just momentarily confused. So it is not in the bundle.

MS KWINANA: Oh.

ADV HOFMEYR: It is because I have just handed it up. So the first one is DD33(b).24. And then Chair, if we can make the second document which is DD33(b).25? And that is the acceptance of a meeting invitation dated 4 March 2016.

20 **CHAIRPERSON:** Then the document reporting to come from Ms Yakhe Kwinana at yakhe@kwinana.co.za dated 4 March 2016 at 14:20 to Carol Tjinkeke with the subject: Accepted consultation with external lawyers on ...[indistinct] DC is admitted as Exhibit DD33(b).25.

DOCUMENT/EMAIL FROM MS YAKHE KWINANA DATED 4 MARCH 2016 IS ADMITTED AND HANDED UP AS

EXHIBIT DD33(B).25

ADV HOFMEYR: So Ms Kwinana, what your ...[intervenes]

MS MBANJWA: Chair. My apologies Chair. My hand was up. I just wanted to point out two omissions. The first one, I have not been given as the legal representative the documents.

CHAIRPERSON: Oh. O, I am ...[indistinct]

ADV HOFMEYR: Chair, can I just explain why Ms Mbanjwa ...[indistinct] ...[intervenes] [Parties intervening each other –

10 unclear]

MS MBANJWA: [Indistinct]

ADV HOFMEYR: ...we have only two people in this room.

MS MBANJWA: Yes ...[intervenes]

ADV HOFMEYR: So have forgotten to do the third. There you go.

MS MBANJWA: Yes. And then the other difficulty I have Chair. I do not know what your ruling will be. Generally, before the witness is asked on these documents, we are supposed that and confront on them.

20 So if maybe we can be afforded an opportunity to take a look? I do not know what... when are we supposed to get a break Chair, so that these documents that Ms Hofmeyr is admitting into evidence ...[indistinct] [distortion present].

It will not be long. We can take a look at them and then the witness can be ...[indistinct] [distortion present]

CHAIRPERSON: Yes. Obviously, this arose because there was a denial.

ADV HOFMEYR: Exactly.

CHAIRPERSON: Ms Hofmeyr, what do you say to that request?

ADV HOFMEYR: Chair, the challenge... I am just going to put it on the table is. We will argue in due course that the weight that should be given to Ms Kwinana's answer after she has adjourned to consult with her lawyer about the
10 answer, might be of less value.

It is not an answer that gives without that consultation. I simply place that on record. I make no submission about whether that should take place or not. If Ms Kwinana would feel more comfortable discussing this with her lawyer, that should take place.

CHAIRPERSON: Ms Mbanjwa, what do you say?

MS MBANJWA: Chair, can I say something with all due respect? I must object to this expectation that Ms Hofmeyr has. It is the expectation that this witness is not entitled to
20 proper consultation.

I do not understand the rules of the Commission to be like that because every time we are reading, either a point or we are explaining the right the witness has, it is as if we are doing the wrong thing.

And we, really, are happy with the way the Chair has

treated us today and even Ms Hofmeyr. We do not want to add any *altercation as we normally do* [distortion present – speaker not clear]

CHAIRPERSON: Well, you see. As far as possible while the witness is being questioned, it is preferable that he or she should be able to just answer questions.

It is different if there were consultations before because, obviously, there would have been consultations before the witness took the witness stand.

10 But what Ms Hofmeyr is saying about what she will argue. It may be it is something that she wants to argue.

Do you insist on consulting with the witness or are you happy to see whether the witness has any difficulty in answering?

MS MBANJWA: To be blunt Chair.

CHAIRPERSON: Ja?

MS MBANJWA: Personally, I do really do not care what Ms Hofmeyr will argue because even before this witness came here, before she had a chance to examine the witness,
20 she argued that she is a corrupt person.

I think we have already traversed that. So I think it would be ...[indistinct] of me as a legal representative at this late stage worry about what Ms Hofmeyr ...[indistinct].

With all due respect, she can go and argue whatever she wants to argue. As long as we get the opportunity to look at

the documents.

CHAIRPERSON: Yes.

MS MBANJWA: [Indistinct] [distortion present] that option
Chair.

CHAIRPERSON: Okay. Let us take five minutes break for
you to consult then. And then we will resume.

MS MBANJWA: Thank you, Chair.

CHAIRPERSON: Okay we adjourn.

INQUIRY ADJOURNS FOR A SHORT BREAK:

10 **INQUIRY RESUMES:**

CHAIRPERSON: Okay let us proceed.

ADV HOFMEYR: Ms Kwinana, before I handed you these
documents, you had said that you were not aware that
Mr Kolisi was involved in the disciplinary process for
Dr Dahwa. Do you now accept that you did know that?

MS KWINANA: [microphone on mute]

ADV HOFMEYR: Oh, you need to put on your...

MS KWINANA: Chair, I note that I was CC'd in this email. I
still do not remember me having attended the meeting. I,
20 however, may have attended the meeting because I was the
person who lodge a complaint. However, considering that I
do not remember where is this meeting, I would appreciate if
I would have the minutes of the meeting.

ADV HOFMEYR: We do not have those minutes. We only
have your invitation. Absolutely. You accept that you got

the invitation and Mr Kolisi is also copies on it, correct?

MS KWINANA: It may... I may not necessarily have received the invitation Chair. In many emails that you have here, most of them, would be received by Lana, my PA.

So it could happen that, also this one, is the one when she looked at my diary and accepted it.

That is why I was saying, I can only confirm. I am not saying, I was not there but I am saying I do not remember and therefore, I would be assisted by the minutes.

10 **CHAIRPERSON**: Did you say to her that she could do that, she had the authority to do that? That if there was an invitation for you, she should look at your diary and if it was open, she could go ahead and accept without you having told her that – instructed her to accept?

MS KWINANA: Most of the times she would do that Chair.

CHAIRPERSON: And that is how the two of you operated?

MS KWINANA: That is how we operated.

CHAIRPERSON: H'm. Okay.

20 **ADV HOFMEYR**: So do you persist in your version that you did not know that Mr Kolisi was running the disciplinary for Dr Dahwa?

MS KWINANA: No, Chair.

ADV HOFMEYR: No. And the fact that you accepted a meeting invitation to go and consult with them the week before Dr Dahwa's disciplinary process took place, you still

maintain you had knowledge that Mr Kolisi was involved in that process?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: H'm. Well ...[intervenes]

CHAIRPERSON: I am sorry Ms Hofmeyr. Would your PA, if she accepted an invitation in terms of the arrangement that you say you had with her, would not she take the earliest opportunity thereafter to tell you about such an invitation and the fact that she had accepted it on your behalf?

10 **MS KWINANA**: She does that Chair.

CHAIRPERSON: She would do that?

MS KWINANA: Yes.

CHAIRPERSON: Okay.

ADV HOFMEYR: You fairly said Ms Kwinana that you were the person that lodged the complaint against Dr Dahwa.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And are you aware that a disciplinary process was run?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR**: Yes. And did you follow up on that process?

MS KWINANA: No.

ADV HOFMEYR: No. Because you were very... Let me put it to you for your comment. When I read that 9th of October 2015 email that you sent. You asked for the

chair's intervention because you took the issues very seriously, did you not?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: H'm. And notwithstanding that, are you saying, you never at any point followed up about the process and what was happening with it?

MS KWINANA: No, Chair.

ADV HOFMEYR: No.

MS KWINANA: I do not. In fact, it is the same thing as the
10 contracts. We do not follow up what happened after we have approved. Yes. And therefore, also, when the disciplinary process takes place, you do not follow up what is the outcome of the disciplinary process because the outcome of the disciplinary process, how it went, depends on the line manager of that person.

ADV HOFMEYR: And ...[intervenes]

CHAIRPERSON: But when you... You lodged the complaint. You are, therefore, the complainant, I would have expect you to have an interest because – in finding out what
20 is going on with that process because you would be feeling – you would have been feeling very strongly that this person should be disciplined.

If one looks at that email that Ms Hofmeyr refers to, you were feeling very strongly about what you considered to be unacceptable conduct on Dr Dahwa's part.

MS KWINANA: No, Chair. After I lodged a complaint and left it with the people who are supposed to attend to it, I really do not see, even in my office for instance.

I really would not see a need for me to follow up as to what happened. Even though, our office was much smaller but still, it is because I do trust the process.

And therefore, how the disciplinary process goes, I really – including the CCMA disciplinary process. So I... how they go, I really do not follow up.

10 **ADV HOFMEYR:** Except Ms Kwinana, if that is so. Why would the Head of Procurement at the time, Lester Peter, be inviting you to a meeting the week before Dr Dahwa's disciplinary was scheduled to start to say the following:

“As discussed, the legal representatives of SAA have agreed to meet the witnesses on the 7th of March 2016.

Kindly schedule an appointment inviting all copied hereto for ten a.m.

20 The consultations will be held at the venue where the inquiry would have been held on Monday/Tuesday.”

If you had no involvement, why would you be invited to this meeting?

MS KWINANA: This email Chair is addressed to Carol and I am only CC'd here in this meeting. And I have said, maybe

the reason why I would be invited – I do not know why I was invited but I am saying Chair, maybe the reason why I would be invited is because I am the one who lodged the complaint.

CHAIRPERSON: Yes, it seems logical to me. Actually, it seems strange not to expect that the complainant would be expected to consult with the lawyers who would conduct the... who would represent SAA.

So the approach you take which suggests that you had no interest, seems strange to me for a complainant.
10 Because I would expect that the complainant would be one of the people that the SAA lawyers would want to consult with and take a statement from.

And that in all probability the complainant might be called to give evidence at the disciplinary inquiry.

ADV HOFMEYR: Yes, Chair I would have an interest. And maybe that is the reason why I was copied here but however, Chair. You know much as I would be very angry as I was angry in the letter, for me I know that is basically not personal.

20 I have stated my case and then the people should deal with... the people who were supposed to deal with it, should deal with it. And with me, it just ends there.

So basically, after two weeks and three weeks, I would not be as angry as I was and want to find out what really happened. No, that is not me Chair.

CHAIRPERSON: Well, on Monday or Tuesday or whichever day you gave evidence about this, you said you were indifferent to Dr Dahwa and I think Ms Hofmeyr and certainly I said the – your email where you were complaining about him did not seem to reflect an indifferent attitude towards him.

It seemed to reflect a strong negative feeling towards him. You now say you were angry. Can I accept that you accept that you were angry as a result of what you believed
10 he had done?

MS KWINANA: Let me put it in context Chair. On Monday or Tuesday, I said there will be differences between a senior and his or her junior and visa versa. And those differences, it does not mean that they cannot be there. They are bound to be there. They are acceptable.

I would think that they are acceptable in any organisation. There is no way that two people will not have differences but that does not mean that when I raise my voice or when I am angry at that point in time, I will always
20 be angry. I will be angry after two hours.

So maybe the indifference or I was putting the indifference in that context but I remember very well that I said there are bound to be differences between two people.

CHAIRPERSON: Well, the suggestion was that, as you wrote that email, you must have had very strong negative

feelings towards Dr Dahwa. That was the point. Not two hours later, not three days later. And as I understood your evidence, you were saying: No, that is not the position. I was indifferent. That was how I understood your evidence.

MS KWINANA: Chair, I would not say I was indifferent. Of course, I was angry. And as I said, it is normal. You cannot love ...[intervenes]

CHAIRPERSON: No, no. I do not want you to go back. You said the point quite a few times. But I think what, now
10 you say, seems to me to be inconsistent with what you said either on Tuesday or Monday.

Because on Monday, you maintained that that email did not reflect that you had strong negative feelings towards Dr Dahwa.

And I had to go back to the email and read it to you or at least certain portions of it because I could not believe that you would say that you were indifferent to him when you wrote that email. But let us move on. Okay Ms Hofmeyr.

ADV HOFMEYR: Thank you, Chair. Ms Kwinana, there has
20 been evidence, which I want to come to in a moment Chair, because I neglected something – to do something late in Ms Myeni's evidence yesterday but I do just need to ensure that we enter it into the record.

But what I would just want to understand from you Ms Kwinana is. Were you at any time during Dr Dahwa's

disciplinary processes alerted to the fact that the Head of Employee Relations at SAA at the time had serious misgivings about how that process was being conducted? Did that ever filter up to you?

MS KWINANA: No, Chair.

ADV HOFMEYR: No. Thank you. Chair, my error was, yesterday... I referenced this in Ms Myeni's evidence and I am not going to take Ms Kwinana to it because Ms Myeni is not evidence that she could have been aware of.

10 She was actually anticipated to conclude her evidence before Ms Myeni. So please, just rest assured, we are not going to go there.

But I, overnight when I was preparing, I realised I forgot then to ask you to enter that affidavit into the record. So I wonder if we could just do that now for housekeeping purposes?

CHAIRPERSON: Ja, let us do it.

ADV HOFMEYR: Thank you. Or if you will... It is not even probably necessary for you to have it in front of you. It is
20 literally... Well, you might want to see the date, et cetera. Should I hand it up?

CHAIRPERSON: Ja.

ADV HOFMEYR: It is BD34(b). It is actually Chair an affidavit prepared in response to your request after Dr Dahwa's evidence.

CHAIRPERSON: Yes.

ADV HOFMEYR: Remember, you raised the issue?

CHAIRPERSON: Yes.

ADV HOFMEYR: Well, how did – what happened with the disciplinary process?

CHAIRPERSON: Yes.

ADV HOFMEYR: Can you give me a full account?

CHAIRPERSON: Yes.

ADV HOFMEYR: And so this was prepared by the

10 ...[intervenes]

CHAIRPERSON: The head of ...[intervenes]

ADV HOFMEYR: ...the Head of Employee Relations pursuant to that request.

CHAIRPERSON: Yes.

ADV HOFMEYR: So I just want to be sure that the record is complete.

CHAIRPERSON: Okay.

ADV HOFMEYR: Oh, page 1719, which is under Tab 32.

MS KWINANA: Chair, should I also go there?

20 **ADV HOFMEYR:** Ms Kwinana, we literally just doing this for record purposes. I am not intending to take you to it.

MS KWINANA: [No audible reply]

ADV HOFMEYR: 1719 under Tab 32.

CHAIRPERSON: [No audible reply]

ADV HOFMEYR: So Chair, this is an affidavit prepared by

Mr Louwrens Daniel Erasmus and it is... Sorry, it is just sometimes difficult to find the end of it, because he actually cuts and pastes emails in the ...[intervenes]

CHAIRPERSON: Ja, that is what is confusing. I am trying to see the end of the affidavit.

ADV HOFMEYR: I know, I know. H'm. Apology. Oh, there it is. Sorry, Chair. It is at page 1793 and it is an affidavit deposed to on the 17th of February 2020.

CHAIRPERSON: Okay have you established where it ends?

10 **ADV HOFMEYR:** Yes, 1753.

CHAIRPERSON: 1753. Okay alright. Yes.

ADV HOFMEYR: And if this could be entered as Exhibit BD34(b).32?

CHAIRPERSON: 34(b) point...?

ADV HOFMEYR: 32. Three, two.

CHAIRPERSON: Three, two. The affidavit of Mr Louwrens Daniel Erasmus appearing at – starting at page 1719 of Bundle BD34(b) is admitted as Exhibit BD34(b).32.

AFFIDAVIT OF MR LOUWRENS DANIEL ERASMUS IS

20 **ADMITTED AND MARKED AS EXHIBIT BD34(b).32**

ADV HOFMEYR: Thank you. Ms Kwinana, whatever we in due course make of the question, whether you were aware that Mr Kolisi was a service provider to SAA at the time. He – the evidence of Dr Dahwa previously is that he did run the disciplinary process So as a matter of fact, he was a service

provider to SAA at the time. And he was somebody with whom you were also transacting through your business, is that not right?

MS KWINANA: Mr Kolisi was my client or is my client. And I am transacting with him. And it falls back Chair to the processes. I never signed a single contract that involved Mr Kolisi. There was not a single contract that was brought before me for Mr Kolisi. And therefore, they would ...[intervenes]

10 **CHAIRPERSON**: But board members do not sign contract, is it not?

MS KWINANA: Chair?

CHAIRPERSON: Board members do not sign contract, do they?

MS KWINANA: Even the approval Chair.

CHAIRPERSON: H'm?

MS KWINANA: I never approved a single contract pertaining to Mr Kolisi. It is also the same as Ms Nobaxa(?) company. I never signed a single contract of Ms Nobaxa.

20 **CHAIRPERSON**: [Indistinct]

MS KWINANA: Yes. And in fact, if, for instance, in my business - which I would think that it would be unfair if the Commission would say I must not enter into business relationships with people, in this case the example of SAA.

I must not enter into a business relationship with the

people I know. Because that would mean that I would not be entering into a business at all because as an auditor Chair, I audit a whole lot of companies when I was in audit.

CHAIRPERSON: Ja.

MS KWINANA: I audited ...[intervenes]

CHAIRPERSON: Ja, okay Ms Kwinana. I think we may be veering off – you may be veering off from Ms Hofmeyr's question. Ms Hofmeyr, is that still in line with your question?

ADV HOFMEYR: No. What I was asking was, whether
10 Ms Kwinana accepted that at the time, she established a business relationship with Mr Kolisi? He was a service provider to SAA.

CHAIRPERSON: Yes.

ADV HOFMEYR: That was just all I wanted to get her response to.

CHAIRPERSON: Yes. So do not worry about what you think she may ask later. Just respond to that question.

MS KWINANA: Chair, these are the questions that do not only need a yes or no but I need to explain. I will say
20 ...[intervenes]

CHAIRPERSON: But start by saying: Yes, I did or...

MS KWINANA: Thank you, Chair.

CHAIRPERSON: Or no I did not.

MS KWINANA: I knew and I am saying Chair, I was – I never saw a single approval for Mr Kolisi on my desk.

CHAIRPERSON: Ja.

MS KWINANA: And therefore, there would be no conflict. And I am saying Chair, if I am not required to do business with the people I know, then that is a problem. I have a problem with that.

CHAIRPERSON: Yes, wait for her to indicate if she says there is a problem with the fact that you were in a business relationship with Mr Kolisi. And then you can deal with that when it arises.

10 **MS KWINANA:** Thank you, Chair.

ADV HOFMEYR: Chair, we are at the lunch break time. We did take two breaks earlier but we have not taken a full break.

CHAIRPERSON: Yes.

ADV HOFMEYR: And this is taking much longer than I anticipated.

CHAIRPERSON: Yes. No, no, no.

ADV HOFMEYR: So I am anxious about being able to navigate how we take things forward.

20 **CHAIRPERSON:** Yes. What is your... Well, things are not moving as fast as we all want. What is your estimate of how much more time you need, given the hazards of this ...[intervenes]

ADV HOFMEYR: About 45-minutes.

CHAIRPERSON: It is taking longer than you may estimate.

ADV HOFMEYR: H'm. 45-minutes.

CHAIRPERSON: Yes.

ADV HOFMEYR: 30, maybe. It is just, if we could get the answers without the anticipation of the next, it might go quicker.

CHAIRPERSON: Yes, not make them stop ...[intervenes]

ADV HOFMEYR: But, of course, any explanation that we want to give, must be given.

CHAIRPERSON: Ja. Yes. There are two or maybe three
10 possibilities. One, we could continue until you are finished and then take a break then, so that when we come back it is re-examination.

And another one is, that we could take a break now and then come back and you continue. And within in that, we must think about maybe a shorter break than an hour.

ADV HOFMEYR: H'm, h'm.

CHAIRPERSON: What do you say?

ADV HOFMEYR: Chair, I fail to take advantage of the previous two breaks. So I would quite – I would benefit
20 greatly from a comfort break now. So for me, it would be better if we could break now. Yes.

CHAIRPERSON: Okay. Ms Mbanjwa, what do you say?

MS MBANJWA: To be honest Chair, I agree with either. That was the reason I was raising my hand.

CHAIRPERSON: Oh, I did not see your hand, ja.

MS MBANJWA: Ja-no. Yes, I was just raising it now. What I wanted to ask Chair is, because you had said you would give me an hour to re-examine. I was only thinking that maybe I do not re-examine and we do not ...[indistinct] [distortion present -speaker unclear] I just give written submission of the points which I want you to take note of.

CHAIRPERSON: Okay.

MS MBANJWA: So if you are comfortable with that.

CHAIRPERSON: Okay. No, I am comfortable.

10 **MS MBANJWA:** Yes.

CHAIRPERSON: I will be comfortable. In which case, that would help.

ADV HOFMEYR: It would indeed.

CHAIRPERSON: That would help quite a lot. But because you would like to take a break now, I think let us take a break now. But maybe – is it fine if we make it 30-minutes or 45-minutes?

ADV HOFMEYR: Absolutely, absolutely. From my side, certainly.

20 **CHAIRPERSON:** What, 30, 40, 45-minutes?

MS MBANJWA: [microphone on mute]

CHAIRPERSON: Yes. What you say 30 or 45-minutes?

ADV HOFMEYR: 30 would be adequate Chair.

CHAIRPERSON: 30 ...[intervenes]

ADV HOFMEYR: Absolutely.

CHAIRPERSON: Yes. Okay alright. Let us make it 40 because I have to travel.

ADV HOFMEYR: That is what I was worried about.

CHAIRPERSON: [laughing]

ADV HOFMEYR: When I said 30, I thought that would be far too short. So...

CHAIRPERSON: [laughing] Okay alright. Let us make it 40 and that will mean we go up to, I think, ten to.

ADV HOFMEYR: Indeed.

10 **CHAIRPERSON:** Ja.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: We will resume at ten to. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I do not know what happened to the registrar but let us get going.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** Chair, we were – I was about to move onto a new topic, actually, and just before I do that, Ms Kwinana, I did not catch perfectly, you said earlier you had a red file when I was asking you about FICA and then you read out to me the provision from FICA. I did not catch it exactly, would you mind doing so again, that you said showed that you were not actually an accountable

institution under FICA.

MS KWINANA: Chair, I will read it as follows:

“Entities that are regulated by Financial Sector Conduct Authority, FSCA previously known as Financial Services Board, insurance companies, hedge funds managers, retirement fund managers, credit ratings companies, capital market companies and forex brokers.

ADV HOFMEYR: Sorry, so we are at cross-purposes, you
10 are not reading from the FICA Act, are you?

MS KWINANA: What does FICA Act say?

ADV HOFMEYR: It says something different, what are you
reading from?

MS KWINANA: I am reading my notes which says entities
that are regulated by Financial Sector Conduct Authority,
Act.

ADV HOFMEYR: Yes.

MS KWINANA: If I am not reading from FICA, can you
read the entities that are regulated by Financial Sector
20 Conduct Authority Act according to what you have.

ADV HOFMEYR: No, you see, Ms Kwinana, what is
important is what you understand, right? I understand you
say to say that you had taken the view in your Zanospark
business that you do not need to comply with FICA, is that
right?

MS KWINANA: I do not need to have a licence.

ADV HOFMEYR: No, no, it is a different matter. We were talking earlier about FICA. Remember, I drew the distinction. I said to you I know that you take the attitude that under the legislation regulated by what is now the FSCA and what used to be the FSB, the Financial Services Board, you do not have to have a licence. I put that on one side, I said FICA is a different Act.

MS KWINANA: Okay, let me read, I have got FICA Act
10 ...[intervenes]

ADV HOFMEYR: Well, just hang on a moment before you read I would like to just put my question again. You see, I was troubled by your evidence this morning because on Tuesday you told us that you were FICA compliant and that you did ensure that your clients provided you with the classic know your client, KYC documents. That is why I was surprised this morning when you said no, no, you do not have to be FICA compliant, you are just adopting a sort of best business practice and then you took me to a
20 provision of the wrong Act. So can you tell me now why you say you are not required to be – why you are not governed by FICA on your understanding?

MS KWINANA: Let me read now. I have got some notes on FICA Act.

CHAIRPERSON: Before you read, just answer the

question. Do you say you do not have to comply with FICA in your business or do you say ...[intervenes]

MS KWINANA: I do not – I do not have to have a licence, Chair.

CHAIRPERSON: Ja but as far as FICA is concerned, do you know or do you not know whether you must ...[intervenes]

MS KWINANA: We are not in terms of FICA ...[intervenes]

CHAIRPERSON: Wait until I finished, Ms Kwinana. With
10 regard to FICA do you know whether you are supposed to
comply with FICA or do you not know?

MS KWINANA: Let me answer it as follows, Chair. In front of me I have got a list of accountable institutions in ...[intervenes]

CHAIRPERSON: Yes, before you go there, I just want your understanding, before you can tell me what informs your understanding. I just want your understanding. Is your understanding that you are supposed to comply with FICA in your business or is your understanding that you
20 are not supposed to?

MS KWINANA: It depends, Chair, what compliance means. To me, when you say, am I supposed to comply with FICA or say know your client, know your client would be to have the idea of my client, I would have to have – in fact I have said this before, I would have to have an idea

of my client and ...[intervenes]

CHAIRPERSON: Okay, okay, from what you say, it seems to me that you are not in a position to say you know what FICA requires and whether its requirements apply to your business. You have an idea of what you think you are supposed to do or what you prefer to do but whether that is what is required by FICA or not, you do not know, is that right.

MS KWINANA: I know a little bit, Chair.

10 **CHAIRPERSON:** You know a little bit.

MS KWINANA: Let me tell you what I know.

CHAIRPERSON: Yes. Ms Hofmeyr, maybe you can take it from there?

ADV HOFMEYR: Yes. You have not been conducting your business in a way that is compliant with FICA, have you?

MS KWINANA: That is not correct, Chair.

ADV HOFMEYR: So can I just understand your answer? You have been conducting your business in a way that is compliant with FICA.

20 **MS KWINANA:** Yes.

ADV HOFMEYR: Is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: You are sure about that?

MS KWINANA: Yes.

ADV HOFMEYR: Yes, did you receive at any point legal

advice about what FICA requires of you?

MS KWINANA: I do not need any legal advice in respect of that.

ADV HOFMEYR: You do not need it?

MS KWINANA: Yes.

CHAIRPERSON: Okay, so ...[intervenes]

ADV HOFMEYR: You did not get it.

CHAIRPERSON: So in other words, you did not seek or receive legal advice about what FICA requires, is that
10 right? Is that right?

MS KWINANA: Chair, I have been writing exams, FSCA exams, I do not know how many times.

CHAIRPERSON: Yes but, Ms Kwinana, just listen to the question and answer the question. Ms Hofmeyr asked you whether you received a legal advice about what FICA requires and you said you do not need it. Now that is not an answer. The question is whether you received it or not and the answer will either, I did not receive it or I did receive it.

20 **MS KWINANA:** I did not receive it, Chair.

CHAIRPERSON: Sorry?

MS KWINANA: I did not receive the legal advice, Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: And I understand the reason you gave is because you do not require it, is that right?

MS KWINANA: Sorry?

ADV HOFMEYR: You did not see the need for legal advice.

MS KWINANA: Yes.

ADV HOFMEYR: Yes because you yourself have been able to determine ...[intervenes]

MS KWINANA: Yes.

ADV HOFMEYR: ...what the requirements of FICA are, correct?

10 **MS KWINANA:** Yes.

ADV HOFMEYR: Yes. And again you said so you do conduct your business in a way that is FICA-compliant?

MS KWINANA: Yes.

ADV HOFMEYR: Correct. Excellent. So if that is so, why have you not taken efforts to keep your records for five years as required by FICA, all the records of your clients?

MS KWINANA: Chair, the issue of the server was beyond my control.

20 **ADV HOFMEYR:** No, it was not, Ms Kwinana, because your evidence on Tuesday was it was a server that was initially contracted for Kwinana and Associates. You then said Kwinana and Associates went under. Remember, Kwinana and Associates is your former company, correct?

MS KWINANA: H'm.

ADV HOFMEYR: Say yes please just for the record?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So it went under, there was a huge liability, Zanospark took over the server, Zanospark was working on credit for a while, you said, and then you said Zanospark did not have the money to make good the Kwinana and Associates' debt and that is why it was confiscated. Do I have your evidence correct?

MS KWINANA: Yes.

ADV HOFMEYR: Yes, you see, the problem with that is if
10 Zanospark is required to be FICA-compliant one of the obligations under FICA is that all records of the business need to be maintained for five years and so you were legally obliged as Zanospark to ensure that you paid that debt and you kept that information but you elected not to. That is not in compliance with FICA. Do you have a response to that?

MS KWINANA: Which information that is required from FICA that when FICA comes and audit us I will not have? Let me tell you, let me tell you, the ID document, I will
20 have that. The proof of residence, I will have that and, therefore, it will not be difficult for me to reconstruct that information despite the fact that I do not have a server.

ADV HOFMEYR: But why would you have it if all of your documents are on the server that you could not provide to the Commission but there is some documents that you will

have?

MS KWINANA: I said, Chair, it will not be a problem to reconstruct them. Also, Chair, if you want me to reconstruct ...[intervenes]

CHAIRPERSON: But if the legislation says keep the records, you say you do not mind not keeping them because if and when they will be required you will reconstruct them, is that compliance with the legislation?

MS KWINANA: I do not know in terms of compliance but
10 let us also again look at practicability thereof. The server was confiscated, that is one practicability. Even if I wanted to keep them, I would not be in a position to keep them but I will be able to reconstruct them. What happens, for instance, if the house or the office burns down and you did not have an offsite backup, then that would also be another reason why the information may not be kept and therefore, there are reasons and, in fact, even when FSCA would do the audit, that would depend, they would treat the case on a case by case basis, so to say and therefore,
20 Chair, I said that I do not have the documents because my server was confiscated, there was no way that I would be in a position to have those documents. However, I would be in a position to reconstruct them.

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: No, Ms Kwinana, the point – you keep

saying you were not in a position to have the documents. The reason that the servers were confiscated was for non-payment of a large debt. Zanospark was using the server, Zanospark made an election not to pay that debt to retain the documents that the law required Zanospark to maintain. Do you have a response to that?

MS KWINANA: Not to make an election, Chair, but inability to pay and service that debt.

ADV HOFMEYR: Why could you not take some of the
10 millions that are being invested in your company?

MS KWINANA: Those millions are not mine, Chair, they are for the investors.

ADV HOFMEYR: Yes. Well, Ms Kwinana, we have dealt with that aspect previously. Let us go to the Slipknot agreement, Ms Kwinana. You will remember the Slipknot agreement? That is the one entered into with Ms Memela. Sorry, I realise you have lots of Slipknot agreements, I only have one that I focused on and that is the Slipknot agreement that you entered into with Ms Memela, do you
20 recall that?

MS KWINANA: Show me, Chair, where is it?

ADV HOFMEYR: Okay, so that you will need DD25A4 and it is page 370.

MS KWINANA: Sorry, DD?

ADV HOFMEYR: DD25A.

MS KWINANA: This is DD25A.

ADV HOFMEYR: Page 370. And please feel free just to remind us of it. It is not a long document, it is 372 to 374.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Do you recall this agreement?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Now this is an agreement which Ms Memela testified had been drafted by Ms Mbanjwa, your lawyer today. Do you confirm that?

10 **MS KWINANA:** I cannot confirm, Chair, she is here, she can confirm if she drafted this or not.

ADV HOFMEYR: No, she is not the witness. So the question is, do you recall that Ms Mbanjwa was the drafter of this agreement?

MS KWINANA: No, I do not recall.

ADV HOFMEYR: You do not. And do you remember when – you see, at transfer it indicates that the transfer of the property – sorry, this is at page 371, clause 3. Under 3 there, Transfer, it says:

20 “The transfer of the property shall be effected by the following conveyancer.”

That is a reference to Ms Mbanjwa’s firm, is that correct?.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Thank you but you do not recall who drafted this, is that right?

MS KWINANA: No, Chair.

ADV HOFMEYR: Do you recall its conclusion – you see, what was interesting is it seems as though it was concluded and signed, if you go to page 373, on the 21 April 2015. Do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Can you confirm that that is your signature for seller on that page?

MS KWINANA: Yes, Chair.

10 **ADV HOFMEYR:** And then if you go over the page to 374 it was signed on the 21 April 2015 and Ms Memela has confirmed that that is her signature as purchaser. Do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Now it was witnessed by what appears to be the same signatures, so that is why I asked Ms Memela about how this had come to be signed and she indicated that you signed together in each other's presence. Do you confirm that?

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

ADV HOFMEYR: Yes and she said that that took place at Ms Mbanjwa's offices. Does that help refresh your memory?

MS KWINANA: Again?

ADV HOFMEYR: She said that that took place at Ms

Mbanjwa's offices. Does that help refresh your memory?

MS KWINANA: No, Chair, I do not know.

ADV HOFMEYR: You do not know. So you do recall that you were together?

MS KWINANA: Yes.

ADV HOFMEYR: But you just do not remember where you were?

MS KWINANA: I do not know where were we.

ADV HOFMEYR: Okay, understood. Alright. Now this is
10 quite an important agreement insofar as Ms Memela's
explanation for the R2.5 million that was used in part to
purchase her Bedfordview property. So can you just maybe
tell me what happened between the two of you in relation
to this agreement? Why did she enter into it? What were
your discussions about it?

MS KWINANA: This property, Chair, is a farm in East
London and we had been trying to rezoned and it has been
taking long for us to be rezoned, it is 8.5 hectares. We
have been trying to rezone it since many years, I think
20 maybe since 2007 or so. Yes. And the Buffalo City
Municipality has not put the services in that area, it is not
far from the airport. So the Buffalo City has been
promising to put in services and therefore it has been in
the process of rezoning for a long time and then
...[intervenes]

CHAIRPERSON: That would have been to rezone it and make it what?

MS KWINANA: Residential.

CHAIRPERSON: Presently what is it?

MS KWINANA: It is a farm.

CHAIRPERSON: Oh, okay, alright.

MS KWINANA: It is agricultural.

CHAIRPERSON: Agricultural, okay.

MS KWINANA: Yes. So we decided that we need to sell
10 it and in fact we did go to the Buffalo City to try to get
them to sell it, to buy it. So when I was talking about this
with Ms Memela, she saw a huge opportunity and then we –
I told her that we are selling it to – we are negotiating with
Buffalo City but Buffalo City is not coming to the party and
then she expressed an interest in it and it is for this reason
that we said okay, if you want to buy it then you can buy it
although I do not know when the zoning will be finalised,
when the proclamation is going to happen and therefore, it
is for this reason that we decided that she wanted let me
20 give it a try. In fact it is a farm that I really wanted to get
rid of it. We only got the eviction notice about a month ago
today. So it shows how we have been struggling with this
farm but in the end we did get the eviction – final eviction
notice will be awarded on the 25 November this month.

So basically this farm has been having a lot of

challenged now recently. The reason why we have got the eviction is because the illegal occupants did occupy this farm. So basically that is why we wanted it to be rezoned as soon as possible so that we can do something about or sell it as soon as possible.

ADV HOFMEYR: Why did Ms Memela want to buy an agricultural farm in East London that was inhabited by unlawful occupiers?

MS KWINANA: No, at the time it was not inhabited by
10 unlawful occupiers, that is number one. Number two, she was looking at it when it is subsequently proclaimed.

ADV HOFMEYR: Right, you mean rezoned?

MS KWINANA: Rezoned up to the proclamation.

ADV HOFMEYR: Yes.

MS KWINANA: Yes.

ADV HOFMEYR: So she was keen on it, anticipating its proclamation, right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes and her evidence previously was
20 that – well, she was presented with evidence that said she did not have available to her 2.8 million despite that being the purchase price. Why did you arrive at this purchase price? Did she share with you that she did not have 2.8 million available?

MS KWINANA: No, she did not say she does not have the

2.8 million available. However, I did indicate to her the challenges that I have and I said I do not have the exact timeframe as to when is the rezoning going to be finalised in view of the fact that the services are not yet even there and therefore, it may take some time to be – to happen.

ADV HOFMEYR: Yes but what then happens off the back of what you have described is you conclude an agreement that on its face says that she is liable to pay you a full 2.8 million and makes no reference to this proclamation being
10 a condition of the agreement. Why was that not put in the agreement?

MS KWINANA: We both know that, Chair, that is dependent – that was dependent not necessarily on the proclamation because the other thing that she could do, when she has money, she could just get it transferred to her even before the proclamation happens.

ADV HOFMEYR: So that is just some independent understanding the both of you that was not recorded in this agreement, is that right?

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

ADV HOFMEYR: Why did you not seek to protect each of your rights under the agreement because speaking for myself, reading this, you could have tomorrow demanded 2.8 million from her and she – you could have forced her and she would not have been able to resist because there

is no condition attached to the proclamation.

MS KWINANA: No, Chair, we did not even see a need for that because she knew exactly what I was selling and that is why basically I would also not be in a position to enforce some conditions.

ADV HOFMEYR: So would it be fair to describe it as a fairly loose arrangement?

MS KWINANA: It is not that fairly loose, Chair, this agreement, we were happy with it.

10 **ADV HOFMEYR:** You were happy with it?

MS KWINANA: Yes.

ADV HOFMEYR: It does not record, can I put to you, what you have described your actual agreement to be.

MS KWINANA: Sorry?

ADV HOFMEYR: It does not record in its terms what your actual agreement, as you have described it to me, to be. Do you accept that?

MS KWINANA: That is fine, Chair, but me and her were happy with it.

20 **ADV HOFMEYR:** Did you communicate your requirements to the lawyer who drafted this agreement?

MS KWINANA: No.

ADV HOFMEYR: No. Who drafted it?

MS KWINANA: I do not even know.

ADV HOFMEYR: You do not know?

MS KWINANA: H'm. Maybe – I do not know but maybe Mhlambi [indistinct –dropping voice] I do not know.

ADV HOFMEYR: Well, do you have any reason to dispute Ms Memela's evidence that Ms Mbanjwa drafted it?

MS KWINANA: I did not dispute it, I said I do not know.

ADV HOFMEYR: No, no, indeed, I am just checking if there is any reason you would have for disputing Ms Memela's recollection that Ms Mbanjwa drafted it.

MS KWINANA: No, Chair.

10 **ADV HOFMEYR:** Okay, so in Ms Memela's evidence recently I put to her various features of this agreement that I said based on the evidence that we have seen and its terms indicates that this is not actually a genuine agreement, that this was not an agreement that was entered into between you and her on the 21 April 2015 at the offices of Ms Mbanjwa and I would just like to tell you what those features were and then I am going to ask for your input on a few others.

20 You see, Ms Memela is married in-community-of-property. Ms Kwinana, what marital regime applies to your marriage?

MS KWINANA: I would rather not disclose that, Chair.

ADV HOFMEYR: H'm Are you aware that people married in-community-of-property require the written consent of their spouse to enter into any transaction of this nature?

MS KWINANA: No, I am not aware of that, Chair, there was really no need for me to go and check that.

ADV HOFMEYR: There was not. So if you are married in-community-of-property with your husband, have you ever purchased property with him?

MS KWINANA: Sorry, what is your question?

ADV HOFMEYR: Have you ever purchased property with your husband?

MS KWINANA: Yes, I did. And I also – I did purchase a
10 property with my husband, I also did purchase a property alone.

ADV HOFMEYR: No, I am interested in the one with your husband. Did both of you consent to the agreement?

MS KWINANA: What does that mean? To say we agree?

ADV HOFMEYR: In writing you say you agree, yes, because it affects your joint estate if you are married in-community-of-property.

MS KWINANA: Sometimes I would purchase a property with my husband and then he gives me the authority to
20 sign and therefore I would sign ...[intervenes]

ADV HOFMEYR: Yes. No, that is fine, as long as there is a written recordal of his consent to give you authority to sign. So have you always had that from him?

MS KWINANA: No, sometimes I sign without the authority.

ADV HOFMEYR: When you are buying a property with him?

MS KWINANA: Oh yes, it does happen.

ADV HOFMEYR: It does. So when you were putting this agreement together did no one, the lawyer, we have now established you cannot dispute that it was Ms Mbanjwa. Did Ms Mbanjwa ever enquire as to Ms Memela's property regime because it is a requirement that if she was married in-community-of-property that she do so with her

10 ...[intervenes]

CHAIRPERSON: You mean marital – you said property regime, I think.

ADV HOFMEYR: I am sorry.

CHAIRPERSON: Marital regime.

ADV HOFMEYR: Marital regime, indeed. Did – was any enquiry made of Ms Memela about her marital regime?

MS KWINANA: By whom?

ADV HOFMEYR: By the lawyer Ms Mbanjwa who drafted this agreement. Do you recall that?

20 **MS KWINANA:** No, I would not know. Ms Mbanjwa can answer for herself.

ADV HOFMEYR: She is not on the stand today so that I why I am asking the questions.

MS KWINANA: So no, I would not know.

ADV HOFMEYR: You would not know.

MS KWINANA: I would not know, Chair.

ADV HOFMEYR: But as the seller in a genuine agreement do you accept that if your purchaser is somebody who requires someone else's consent for that agreement you would want to be sure that that consent was obtained?

MS KWINANA: You know, that is very difficult for me to answer this because in my case where I am sitting here, I sign just about everything and my husband signs just about everything as long as we have agreed that I will sign and
10 he is going to sign and he does not have to write that anywhere that he is giving me that authority.

ADV HOFMEYR: Yes, I understand that but I am talking about a situation not where you are the purchasers. Here you are the seller through Slipknot, your company, correct?

MS KWINANA: It works out the same, Chair.

ADV HOFMEYR: No, no, let me explain to you why I say to you it is different. You are selling this through a company, right, Slipknot, correct?

MS KWINANA: Yes.

20 **ADV HOFMEYR:** You have got a purchaser on the other end of the transaction who is buying it herself not through a company. That was known to you, correct?

MS KWINANA: Yes, yes.

ADV HOFMEYR: Right. Now in order for you to be sure you have got somebody on the line for this agreement on

the other side would it not concern you to establish whether she does not need the consent of her spouse to enter into this agreement with you?

MS KWINANA: No, Chair.

ADV HOFMEYR: No.

MS KWINANA: It does not concern me at all.

ADV HOFMEYR: Ja. And if you subsequently discover that the law requires her to have the consent of her husband and she did not, would that concern you?

10 **MS KWINANA:** No, I do not know about that.

ADV HOFMEYR: You do not because then ...[intervenes]

MS KWINANA: Really, it really does not concern me as long as we do the purchase agreement and it happens and it goes through whether the person has got authority to sign and he can sign with the consent of the husband, how are they married, that is not for me. I always use the conveyancers to do that. So if they have done the checks that they need to do, I am happy with it.

CHAIRPERSON: Well ...[intervenes]

20 **MS KWINANA:** So if you are asking me from here, sitting here, that has it ever occurred to me that I confirm if the husband does agree with that, really I never did that.

CHAIRPERSON: Well, it is one thing to say you never did that but I am more worried about something else that you seem to say, that you would not be concerned to find out

whether the person has authority. Did I understand you correctly? I understood you to be saying in effect you do not care whether the person to whom you are selling the property or with whom you are entering into a contract has authority to enter into that contract, did I understand you correctly?

MS KWINANA: My assumption, Chair, when ...[intervenes]

CHAIRPERSON: No, no, no, let us start with is my understanding of your evidence correct?

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

CHAIRPERSON: Okay, what did you say?

MS KWINANA: I am saying, Chair, if a person comes and says I want to buy your property, I am buying your property, I don't even – it never occurred to me that a person would come and say I want to buy this property, only to find out that the person does not have authority.

CHAIRPERSON: Yes.

20 **MS KWINANA:** And in fact, I don't even remember a person asking me if I have authority to sign as a buyer or as a seller.

CHAIRPERSON: Yes, but that is where I am concerned, because you seem to be conveying the message that, to you, it's not something you bother about, whether the person who's buying your property has authority or not to enter into that contract, am I misunderstanding what your

attitude is?

MS KWINANA: You are misunderstanding me Chair.

CHAIRPERSON: Okay.

MS KWINANA: Again...[intervenes].

CHAIRPERSON: Don't go on to explain because you have explained. Let me ask another question. If you are selling property to somebody would it be one of your issues that you would want to satisfy yourself about that the person does have authority to enter into that sale agreement?

10 **MS KWINANA:** Not for me Chairperson, as an individual. When I buy or sell in property there are people involved in doing that. There is an Estate Agent, there is a Conveyancer and, in fact, the process, the registration process up to the deeds office would have to make sure that the person has got authority to sign and therefore, for me, in my position, that would not concern me because I know that – especially in that area we'll be able to make sure that, that happens.

CHAIRPERSON: Well it's one thing to say, I would be
20 concerned whether or not a person has authority but I'd leave it to somebody else, the Conveyancer to check whether that is done and if the Conveyancer were to go ahead without checking I'd be upset with the Conveyancer. So, is that your position?

MS KWINANA: Yes, that is it Chair.

CHAIRPERSON: So, authority is something you'd be concerned about, but you would leave it to the Conveyancer to check whether that's in place?

MS KWINANA: Yes Chair.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: And in this case we've confirmed that the Conveyancer was your lawyer, today, Ms Mbanjwa, correct?

MS KWINANA: You've confirmed that.

10 **ADV HOFMEYR:** No actually, that part, the Conveyancer is in the...[intervenes].

MS KWINANA: Oh yes, our conveyancing is done by her.

ADV HOFMEYR: Yes, so you were, as a consequence, satisfied to trust Ms Mbanjwa with doing all of these checks, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes, so, that was the first feature that I put to Ms Memela and I wanted to have your side of the story because you're the other contacting party. The
20 second feature is that...[intervenes].

CHAIRPERSON: Maybe before you go to the second feature, Ms Hofmeyr, Ms Kwinana I would be concerned if you would go to the extent of signing the agreement without knowing whether the person has authority because if you sign the contract – once you have signed the

contract, today, maybe, I mean this agreement that you signed didn't even have the time within which the purchase price had to be paid, if I remember correctly. If you have signed this agreement and somebody who had heard about you selling property comes up tomorrow who wants to buy it, you wouldn't be able to sell it to that person even if that person said, I've got cash I don't have to apply for a bond I've got cash right now, I like your property, I want to buy it, you wouldn't be able to sell it to that person because

10 you now, have signed an agreement with the person that you have signed with and you don't know if they've got authority. Later on, if it turns out that the person doesn't have authority you may have lost a good opportunity to sell the property. So, you don't want that to happen when you're selling property, you want to make sure that if you conclude a sale agreement with a person, at least things such as those, are taken care of because you don't want a month, two months down the line, three months down the line to find that there's a problem because this person

20 doesn't have authority, doesn't have authority from the husband or wife and in the meantime you have lost buyers who didn't have any problem who could have bought the property and the cash would have been in your bank account. So, it makes sense to me, that by the time you sign you should want to, have satisfied yourself because

you don't want this type of situation that we're talking about, to happen, can you see that reasoning?

MS KWINANA: Yes, thank you Chair.

CHAIRPERSON: Yes, okay, alright, Ms Hofmeyr?

ADV HOFMEYR: Thank you. There were also issues about whether Ms Memela would have had access to, actually, the R2.8million required because the previous month her bond had been declined for half of that and then there was another features which is that the FICA
10 document that Ms Mbanjwa obtained from recording Ms Memela's information was only done on the records of that document the following year. Were you involved in Ms Memela providing the FICA documentation to Ms Mbanjwa at all?

MS KWINANA: No, I wouldn't know that Chair.

ADV HOFMEYR: It wasn't something that you dealt with when you met together to conclude the agreement at all?

MS KWINANA: No Chair.

ADV HOFMEYR: No, okay and then there's another
20 feature of this agreement that I was interested in, and that is – oh sorry before I go there, there are other agreements that Slipknot has entered into to sell property, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes, does it sell property quite

regularly?

MS KWINANA: No, Chair.

ADV HOFMEYR: No, so, how many times?

MS KWINANA: Maybe once – one property per year.

ADV HOFMEYR: One per year, okay, now there was one other Slipknot property transaction that we had records of and that is contained in your Bundle. If you go to that at page – it's DD33A at page 89, DD33A at page 89.

CHAIRPERSON: I've got the Bundle it says on the spine
10 Bundle DD33 without the A.

ADV HOFMEYR: Oh, that's – does it have page 89 in it Chair? – Oh Apologies, I might be adding in – I am sorry, I get confused between Ms Myeni's Bundles which are 34, no, no there's only a 33, that's correct, apologies everyone. So, it's just 33 and we need to pick up page 89.

CHAIRPERSON: Okay no, I think it's got a page 89 – ja.

ADV HOFMEYR: And Chair, jus to check that's a document headed, "Sale Agreement" alright and as I understand it, Ms Mbanjwa was also the Conveyancer on
20 this agreement, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes, now this is a 2018 sale agreement and what I just want to highlight to you is, certainly to me, the quite stark differences between this agreement, this sale agreement and the one that we've been looking at, the

one with Ms Memela. Can I ask, did this agreement go through, in the sense did the property transaction take place, nothing fell apart on this agreement?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: It went through?

MS KWINANA: Yes.

ADV HOFMEYR: Thank you, because you see, previously you said, no the issue of Ms Memela not having ready cash of R2.8million was alright because in due course she might
10 be able to apply for a bond and get one, is that right?

ADV HOFMEYR:

MS KWINANA:

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes, you see, usually when that's the case, when the purchases obligations under the agreement, permit her to get a bond that will generally be catered for in a suspense of condition relating to bond finance right because otherwise you've got no protection. The purchaser is on the line tomorrow for the R2.8million
20 unless she's allowed to take some time to get a bond. So, I want to show you, in your other Slipknot agreement prepared by Ms Mbanjwa, what that would look like and you can go to page 92 for that. You see at page 92, clause 3 it says,

“Suspensive conditions, this offer is subject to the

following, that the purchaser obtains mortgage bond finance from a recognised bank or financial institution in the amount of R11 500 000”

It says R200 but I don't see a two in the numbers but anyway let's call it R11.5million and then it always stipulates a time for the very reason that the Chair has indicated to you. You're bound to this person, they are your purchaser, and you must know how long you're bound to them for because you might get another purchaser
10 tomorrow who can better the deal, right. So, that's why, that they can get financing and that there's a time limit is a key protection for the seller, do you accept that?

MS KWINANA: Chair, these are two different properties and as I said, this property did not have...[intervenes].

CHAIRPERSON: Hang on, Ms Kwinana, the question is whether you accept that this way of doing things when you sell a property give the seller protection. In other words if the person must still go and raise a bond, you say, put that as a suspensive condition, give the time within which they
20 must obtain the bond because once they fail to obtain the bond within that time, you are then free to look for somebody else or to sell the property to somebody else, as opposed to a situation where, you simply say, this is the purchase price and you put no suspensive condition, you put no deadline by when the price must be paid, it doesn't

protect you because somebody else could be wanting to buy the property, maybe even, for a higher price and you are waiting for this person, I don't know for how long, to pay because in the agreement you didn't even say, the purchase price must be paid within a month or within three months, you didn't even say that, you just left everything open. Do you agree that this way of doing this is – or provides protection to the seller?

MS KWINANA: Yes, Chair, this way of doing things is providing protection to the seller, however, that property in East London, I have stated the challenges that it had since 2007 and therefore, Chair, for me to have an agreement of sale on that property was even better than not having an agreement of sale at all. As I have been saying I was trying to sell it to Buffalo City and so on and so on and all these challenges that I have stated here and therefore, that property would not have the stringent suspensive conditions as the same as this one. This one, basically, was ready to go, it was occupied, it had a tenant, so everything was fine with regards to this and therefore we just cannot compare this property with the other one...[intervenues].

CHAIRPERSON: Would you not lose out, Ms Kwinana, would you not lose out on the basis of the agreement that you had with Ms Memela if somebody else, a few days or a

few weeks after you signed the agreement said, I actually want to buy the property, I'm ready with cash?

MS KWINANA: If somebody else would come would come Chair, I would go to Ms Memela and ask her nicely that, let us get out of that agreement as he did with – as she did with me when she decided that she wants out of that. She came to me and said, this is not working and therefore I need to buy, let's get out of that. So, basically, that's exactly what I would do because she also did that.

10 **CHAIRPERSON:** Ms Hofmeyr?

ADV HOFMEYR: But, Ms Kwinana, what you've described, I have to put to you, is the loosest arrangement possible it doesn't make sense to me that you took the time to write anything down then because what's written down is meaningless, she could have chatted to you because she wanted to get out, you could have chatted to her because you wanted to get out, why sign the agreement then, it was worth nothing. If it was actually, that you could just chat to each other and get out of it at any point.

20 **MS KWINANA:** You are correct, Chair, by saying, it was worth nothing because that agreement fell through anyway and therefore there was never a transaction that took place then.

ADV HOFMEYR: Yes.

MS KWINANA: So, maybe, you are correct by saying it

was the loosest agreement because also, when she cancelled the agreement there were no penalties because I wouldn't know what would be the penalties for – in view of the challenges that I stated.

ADV HOFMEYR: I'm going to put to you, in due course, that it is clear that there was no need for this to be entered into recorded in writing in April of 2015. The need arose when Ms Memela faced difficult questions from this Commission about her receipt of R2.5million and this whole
10 story had to be constructed to try and justify it. Let me put the – I'm going to come to that in a moment but in fairness, I just feel I must tell you where we're going. What is a *Domicilium* address, Ms – what's your understanding Ms Kwinana of a *Domicilium* address?

MS KWINANA: I don't know Chair.

ADV HOFMEYR: Because you have to fill it in when you conclude agreements, have you previously been asked by lawyers to give them *Domicilium* addresses?

MS KWINANA: Maybe Chair, they would ask it differently,
20 but I don't know what the *Domicilium* address is.

ADV HOFMEYR: Okay, maybe – have you had them ask you for an address at which you can receive any documents related to the agreement?

MS KWINANA: Yes.

ADV HOFMEYR: Yes, okay so you recall that, sorry, I'm

using the legal term and I actually shouldn't have it's also Latin, so we should never deal with that but it's...[intervenes].

CHAIRPERSON: But I think – I would think that Ms Kwinana would understand. My own understanding of Chartered Accountants is that they have businesses, they advise businesses they help businesses enter into business transactions, contracts and so and so. So, I would expect that Ms Kwinana, being a Chartered
10 Accountant, would know what you're talking about if you talk about a *Domicilium* address. So, I'm – ja okay.

MS KWINANA: Excuse me Chair.

CHAIRPERSON: Ja.

MS KWINANA: In fact when we were going to start this morning, I wanted to plead with you Chair, that whenever you wanted to talk or comment about my incompetence you do not mention my profession, the reason being that if the State Capture Commission has to be the graveyard of my profession, of me, as a professional let it – don't allow it to
20 be the graveyard of the whole profession and therefore Chair, I would appreciate it when you prove my incompetence, you prove my incompetence for me only as Yakhe Kwinana, not my competence as a Chartered Accountant or my competence as a SAICA member, because the effect that it has out there, you may not know,

Chair, the influence that you have in that chair. You've got a very big influence in the – maybe, I would comfortably say, in the whole world but if you, when you want to show me that I am incompetent, you say Mrs Kwinana as a Chartered Accountant, out there you are killing the profession of Chartered Accountant and therefore, Chair, I plead with you that, if there is something I do not know, I will not know that because I am a Chartered Accountant I will not know that because of my stupidity as an individual.

10 I have got full confidence in South African Institute of Chartered Accountants and if I am sitting here as a disaster to the profession, please separate me from the profession to save the profession, thank you Chair.

CHAIRPERSON: No, Ms Kwinana, well I'm happy that if you felt that way you have expressed that but the fact of the matter is that we all get judged by what we are expected to know, okay. There are certain things that you and everyone else expects a lawyer to know but doesn't expect somebody who's not a lawyer to know. There are
20 certain things that you and other people expect a Judge to know but not somebody who is not a Judge. So, when you give evidence and you said you're a Chartered Accountant, in fact you might find that the reason why you may – you were appointed to the Board of SAA might be that it was because you are a Chartered Accountant, they needed the

skills and knowledge of somebody who's a Chartered Accountant and maybe if you were not a Chartered Accountant they would not have appointed you. They appointed you because they wanted the knowledge and experience and skills that come with somebody who is a Chartered Accountant and when you deliberate on matters as a Board there are certain matters where they would say, Ms Kwinana you will have to guide us here because you are a Chartered Accountant. There are matters where, if
10 the Board deliberates upon, they will look for a lawyer among the Board members and say, so and so you'll have to guide us here because you are a lawyer so – but, therefore, they look at your performance as a Board member among other things, against the background of the skills and knowledge that is expected of you by virtue of your profession. You understand, if you serve in a Board and you are a, let's say a school Principal, they might expect certain things from you and knowledge and experience but they might not have the same expectation,
20 they might not expect you to guide them on law they might not expect you to guide them on matters that a Chartered Accountant knows about, you understand that, so that's the context. I was saying to Ms Hofmeyr, I'm under the impression that Chartered Accountant's guide is necessary and so on, that's my understanding but you might say, no,

o, that's not what I've been doing and therefore, maybe if others do that, I've not been doing that, so maybe I don't have that experience that others might have but I'm simply saying, I'm informed by my understanding of part of what Chartered Accountants do, what I understand them to do, so that's how it come in, you understand now?

MS KWINANA: Thank you Chair.

CHAIRPERSON: Ja, okay, alright.

ADV HOFMEYR: You said that you had been asked, when
10 you've entered into these transactions previously, to provide an address at which you will receive notices under the agreement, is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes, you see that's quite an important thing, and I wonder if this has been explained to you, you can tell me if it has because notices under an agreement are sometimes very important, like a breach notice, right, you let the other party know that they've done something that's in breach and unless they remedy it, then you're able
20 to get out of the contract. So, do you accept that, being able to receive the notices under an agreement, is an important thing?

MS KWINANA: I really never thought that it's an important thing, thank you for bringing that to my attention.

ADV HOFMEYR: So, you wouldn't, until this moment,

have been concerned to ensure if there's an agreement you really want to be in and the other party thinks you're in breach of it, you wouldn't want to have been alerted to that fact or – do you accept you would want to know if the other party contended you were in breach so that you could adjust your conduct and then stay in the agreement?

MS KWINANA: Yes, Chair, but that would not be in the form of an address, I would think that, in this case the email would work.

10 **CHAIRPERSON:** Just repeat that?

ADV HOFMEYR: Ms Kwinana said she thought, in this case, I think with a bit of a wry smile, that an email would be sufficient, but you see, Ms Kwinana...[intervenes].

CHAIRPERSON: On a lighter note, Ms Kwinana, you don't think that driving to where the person is, to deliver it actually would be okay. [laughter].

ADV HOFMEYR: Sorry, but that is, actually the point because email is not adequate, often, for notices under an agreement. That's why, specific addresses are given for
20 delivery of the notice, actually your point highlights how important a *Domicilium* or an address at which you'll receive notices in because it's what creates the obligations between the parties but, Ms Kwinana, I understand you to say that the significance of it, has not previously been drawn to your attention, is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So, when you concluded this Slipknot agreement with Ms Memela, you had to provide a *Domicilium* address okay, you'll see that at page 374, have you got it there?

MS KWINANA: In DD33?

ADV HOFMEYR: In DD – oh sorry no, we're back in DD25 where you had the Slipknot agreement a moment ago, DD25A.

10 **MS KWINANA:** On page 375?

ADV HOFMEYR: 374 is where the *Domicilium* address is.

CHAIRPERSON: It actually starts at 370.

ADV HOFMEYR: Yes, correct Chair and then I'm going to the last page where the *Domicilium* address is. So I understand your evidence to be, albeit that you might not have known it was called a *Domicilium* address, you do have experience of being asked to provide an address at which you'll receive notices under an agreement, correct?

MS KWINANA: Yes.

20 **ADV HOFMEYR:** Yes, so this address for the seller would have been provided by you, correct?

MS KWINANA: Yes.

ADV HOFMEYR: And you gave the address of 92 President Park, Midrand, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: Yes, that was not an address from which Slipknot, or you were operating though, in April 2015, was it?

MS KWINANA: I would have to check when I - when did we vacate 94 President Park.

ADV HOFMEYR: Ja I can tell you when it was it was in 2013. Does that help you with your memory?

MS KWINANA: I am – I am really not sure Chair.

ADV HOFMEYR: Well we have obtained an affidavit from the
10 person to whom you sold 92 President Park and he took
occupation in 2013. Do you dispute that, do you want me to
take to his affidavit?

MS KWINANA: I may not dispute it but it would be good if
you can take me there Chair.

ADV HOFMEYR: Sure. Right. I am running out of space
Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: I just have to find the correct.

CHAIRPERSON: That is alright.

20 **ADV HOFMEYR:** File. Okay it is back in your file which is
DD33 and you will find it under Tab 18 it is page 201. This is
an affidavit Chair that the commission obtained from a Mr
Mark David Bates – apologies Chair I see you are not there
yet. It is an affidavit from Mr Mark David Bates. He is a
member of a particular family trust and what he details here

is that that family trust purchased the property at 92 Presidents Park, Midrand, Gauteng. He indicates that it was purchased in – this is at paragraph 4 Ms Kwinana on page 201. He says it was purchased on auction on the 27 November 2012 for an amount of 6.160 million and he says that the previous owner was Slip Knot Investments that is your company. And then he says on transfer in 2013 they vacated the property and we have moved onto the said property. That is where I get that from. Does that jog your
10 memory?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So Ms Kwinana that is the – I suspect...

CHAIRPERSON: It jogs your memory and you agree that you vacated the property in 2013?

MS KWINANA: Yes Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you Chair for the follow up question. That Ms Kwinana is the final feature that I am going to put to you suggests that this agreement is not a genuine one.
20 Because the domicillium address that is given is not an address at which you would ever have been able to receive notices under this agreement. You had sold it two years – three years previously. Somebody else was in the property. Do you have a response to that?

MS KWINANA: I think Chair it was because of my not

knowing what I – what is this word domi?

ADV HOFMEYR: Domicillium.

MS KWINANA: Domicillium yes Chair.

CHAIRPERSON: No Ms Kwinana. You knew that you were giving your address in the agreement is it not?

MS KWINANA: Yes Chair.

CHAIRPERSON: You knew if this agreement was signed in 2015 this was no longer your address so therefore you could not have given this address 92 President Park Midrand.

10 Because you cannot tell me you did not know what – where you lived because you certainly were not living at 92 President Park anymore.

MS KWINANA: I am sure Chair that was maybe an omission on my part because that address has been my address for the better part of my profession.

CHAIRPERSON: No Ms Kwinana but it cannot be. You cannot in 2015 when you are required to put the address where you live give an address where you lived two or three years before. Because you know where you live. In 2015
20 you know where you live. So it cannot be.

MS KWINANA: That is why I am saying Chair maybe it was an omission on my part for not knowing what the meant.

CHAIRPERSON: No Ms Kwinana. Please – you cannot two years later – two and a half years later think that you live where you lived two years before and you left. It cannot be.

Right now you know where you live is it not?

MS KWINANA: Yes Chair.

CHAIRPERSON: And if you are asked go to give the address of where you live you would give the address of where you live?

MS KWINANA: Maybe Chair if they said – if they said in that instead of saying domicillium maybe if they said where do you live?

ADV HOFMEYR: No Ms Kwinana with – with all due respect
10 the great challenge I put it to you with your answer is that there is no world in which if this agreement was genuine and in 2015 you are asked for the address at which you are going to receive notices you give an address that you vacated two years previously.

I want to put it to you that this error is the type of error that creeps in when people fabricate agreements and documents. Because you have to keep so many balls in the air – you have to keep so many things because you have to go back in time, you have to recreate facts that did not
20 happen and these are the little indicators of the error.

It is akin to the error in the agreement between Mr Ndzeku and allegedly Ms Hlohlela that was allegedly concluded at the end of 2015 because it refers to a clause and a dispute resolution mechanism that did not exist at the time.

This is the equivalent in your agreement I put it to you because you just do not make this error when it is happening as a fact. You make this error when you are sitting four years later. The commission is investigating matters. It is pursuing corruption and then you make an error like this. What is your response to that?

MS KWINANA: Chair your – your – your conclusion on this matter is very much incorrect. This transaction did not go through firstly and secondly why would I fabricate the
10 address if I knew how important it is as I now know how important it is? In fact even my postal address I still use the postal address that I was using when I was – I was at 92 President Park.

CHAIRPERSON: But that is because you have not changed the postal address Ms Kwinana. You have changed the residential address. That is the difference.

MS KWINANA: Chair I no longer use that postal address but in fact I do not have a postal address now.

CHAIRPERSON: Oh.

20 **MS KWINANA:** But now – but now if they say postal address I say PO Box 3949 halfway house.

CHAIRPERSON: Let us leave out the postal address Ms Kwinana. Here is what has happened. On your version you signed this agreement in 2015 April 21 with Ms Memela where you were supposed to give your address. You gave

the address where you live two or so years before and not where you live in April 2015. Ms Hofmeyr says to you, Ms Kwinana there is no way of explaining this kind of error because if you sign a document today and you are required to put in your address there is no way you can forget where you live today. Okay?

MS KWINANA: Yes Chair.

CHAIRPERSON: But if you do this agreement today but wanting to put it as an agreement that was done five years
10 ago that is when you might make the mistake and think that five years ago you were living in this address and it turns out you made a mistake.

So if you signed this agreement in 2019 but wanted it to reflect that it had been signed in 2015 you might have thought in 2015 you were still living in – at 92 President Park and that is why you put it. But you cannot make that mistake if you are signing the agreement today about where you live today. You will answer that and then I will go to Ms Mbanjwa. But I want you to answer that first.

20 What do you say to that? That is what Ms Hofmeyr is putting to you that the only – the only explanation that can be advanced for this is that at the time you signed this agreement it was not on the date that is given there and it was – it must have been much later and you had to try and remember where you lived and you got it wrong.

MS KWINANA: Chair in 2013 I lived where I live now. The only thing that changed is the office.

ADV HOFMEYR: Yes. Can – sorry can I just come in there?

CHAIRPERSON: Ja.

ADV HOFMEYR: I know Ms Mbanjwa wants to speak but it is just important. You needed to give the address of Slip Knot right, the business.

MS KWINANA: Yes Chair.

ADV HOFMEYR: Where you were operating from. So in
10 respect of all the Chairs questions albeit that the Chair was
emphasising where you live it is where you would conducting
your business.

CHAIRPERSON: Ja.

ADV HOFMEYR: Because you – as we have it we have gone
back to google photographs I assure you. You were
operating as Kwinana and Associates at 22 President Park
for a long period but that changed in 2013, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes. So the point still remains. I is just
20 that it's the business address.

CHAIRPERSON: Ja.

ADV HOFMEYR: Yes thank you. Apologies Chair.

CHAIRPERSON: One second. Ms Mbanjwa.

ADV MBANJWA: Thank you Chair it has been answered.

CHAIRPERSON: It has been answered.

ADV MBANJWA: I just wanted to point out that it was ...

CHAIRPERSON: The business ja. Okay. The principle is the same. It is just that it is the business but the principle is the same. You understand the principle?

MS KWINANA: Yes Chair.

CHAIRPERSON: Yes. Are you able to offer any explanation as to how if this agreement was signed in 2015 you could have given an address for the business where the business was not operating from?

10 **MS KWINANA:** As I said Chair I am sure it was omission or ignorance or not knowing what domicillium means.

CHAIRPERSON: Hm. Ms Hofmeyr.

ADV HOFMEYR: Thank you. I would like to then move to what I hope will be the last major topic and then there will just be a few little points. This is about your role in SAA and the auditors that were appointed. You anticipated earlier that you thought that I would likely go there and so I am going there. Ms Kwinana you were involved in the decision taken back in 2011 to go out on tender for the
20 auditors for SAA, do you remember that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And that was a tender for auditors to be appointed for the financial year 2011/2012, do you recall that?

MS KWINANA: No. I have seen the – the hearings of the

auditors and I am almost sure that there is no way that – for such a big entity. In fact even if it is a small entity there is no way that we would appoint an auditor for one year. The reason being that you see SAA on its own is complicated.

Even if you audit for five years there are still new things that you are learning and therefore that is why most of the time auditors are appointed for a period a minimum period of three years.

10 So I was surprised to find out that the contract basically is saying one year. It also boils back to what I have been saying about the contract that board would decide Chair and then the contract is drawn elsewhere.

And in fact the reason why I remember very well that it was not one year is because we deliberated a lot on transfer of skill and how the auditors should share the work going forward.

And in fact we did say in that meeting of the deliberations with the auditors – we did say that first year
20 the job should be shared on 50/50 basis and then second year on a sliding scale until in the end Nkonki gets 100%. That is basically what we said and therefore the one year how did the auditors get the contract of one year it is just not possible especially it is not possible with most of the companies.

We know that the auditors do get annual renewal subject to their performance. Annual renewal at the Annual General Meeting but for SAA to issue out a tender of one year was a big mistake but I do not think that is what the board decided because it is not practical.

Can you imagine the auditors auditing SAA for one year and then the following year and then there needs to be another tender process which takes about six months and then the other new auditors come and learn the
10 business. The previous auditors have not even learnt the business so I think that was a big mistake.

ADV HOFMEYR: You said two things. You said it was a big mistake and you said it did not happen. Which is it? It could have happened and you could now review it and say it was a big mistake or you – I also understood you to say it did not happen. What is your evidence?

MS KWINANA: I will not say it did not happen for the reason that I did not see the contracts. So if you have the contract that says one year then that means it did happen.
20 But definitely that contract did not reflect the discussions of the board.

ADV HOFMEYR: I see. So your – you say the board – the contract differed then from what the board had concluded, is that right?

MS KWINANA: I think so.

ADV HOFMEYR: Okay. You were on the audit committee at that time 2011, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And you became the chair I just want to check this. When was that, that was sort of December 2012, is that right? I have it here. Let me just look at my notes. Well can you help me when did you become the chair? Oh it was November 2012 correct?

MS KWINANA: I do not know Chair if the Company
10 Secretary says so it is fine.

ADV HOFMEYR: Hm those are our records.

MS KWINANA: That is fine.

ADV HOFMEYR: Okay. So you are a member in 2011 and you become Chair let us say in November 2012, do you accept that?

MS KWINANA: That is fine Chair.

ADV HOFMEYR: Okay. You see Ms Kwinana the challenge is that as a member of the audit committee you recommended to the board that SAA go out on tender for
20 one year.

MS KWINANA: No.

ADV HOFMEYR: Ja. Let me take you to the minutes. You will find them in DD19[a].

MS KWINANA: What page?

ADV HOFMEYR: We are going to – the minute starts –

sorry let me give the – at page 54 – 54.

MS KWINANA: 54?

ADV HOFMEYR: Yes. Now this is a – these are minutes of the meeting of the Board of Directors of South African Airways held on the 17 February 2011. And it is attended – who is present there is listed and I see your name there. Do you confirm that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes. So this indicates you were present
10 at the meeting and if you go over to page 55.

MS KWINANA: Let me read the [00:20:29]point here.

ADV HOFMEYR: Sorry I will tell you where you are. You are just under Ms Nkosi Thomas. The 1, 2, 3, 4, 5, 6, 7, 8, 9th person. Do you see that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And then if you go over the page to page 55 you go down to Clause 10. – well paragraph 10.2 which says, Audit Committee. Do you have that?

MS KWINANA: Yes Chair.

20 **ADV HOFMEYR:** It says a report and recommendation and then at 10.2.1.1 there is a bold Open Tender Process for the appointment of external auditors for the 2011/2012 financial year.

“The board of directors reviewed the proposal to commence with an open tender

process to appoint external auditors for the 2011/2012 financial year as recommended by the Audit Committee and tabled at the meeting.”

How in the face of this Ms Kwinana can you say that it was not in fact the recommendation of your – the committee on which you served that the very thing that happened happened?

MS KWINANA: I think this was a very big, big, big mistake
10 Chair.

CHAIRPERSON: What was a big mistake?

MS KWINANA: A mistake that the board reviewed proposal to commence with an open tender process to appoint external auditors for 2011/2012 financial year recommended by the Audit Committee and tabled at the meeting.

CHAIRPERSON: What was a mistake? Is it – are you saying that...

MS KWINANA: To recommend – to recommend for one
20 year. To recommend for one year. Maybe Chair...

CHAIRPERSON: But you – you...

MS KWINANA: Do you have the minutes?

CHAIRPERSON: You accept – okay Ms Hofmeyr’s question as I see seeks to establish from you whether you accept that it is the Audit and Risk Committee that made that

recommendation. Do you accept that now?

MS KWINANA: May – do you have the Audit Committee minutes where this was discussed?

ADV HOFMEYR: Ms Kwinana no we do not have every single recording of every single meeting which when I show you the record of the minutes you try to rely on to give more than is recorded here. Ms Kwinana how in the face of what is recorded here can you not just resolutely accept the committee of which you were a member recommended
10 that the tender go out for only one year.

MS KWINANA: Definitely Chair there is just no way that we can recommend one year. In this meeting Mr Zakhele Sithole was the chairperson of the Audit and Mr Zakhele Sithole was operating an audit firm and also there is just no way that we can recommend one year – never Chair.

CHAIRPERSON: But did you...

MS KWINANA: The audit – never Chair.

CHAIRPERSON: But would you not have seen these minutes at some stage during that time because then if you
20 saw the minutes you should have said this is not correct, this committee did not make such a recommendation or could not have made such a recommendation? The minutes must reflect something different.

ADV HOFMEYR: But Chair...

MS KWINANA: That is why – that is why Chair I need

these minutes of this audit committee where we recommended one year. Because I am sure that we cannot recommend one year with audit.

ADV HOFMEYR: But Ms Kwinana – no – I mean even before we get to minutes you were present at this meeting. If you present at the meeting as a non-executive you say that was not the recommendation. There is some error has happened.

CHAIRPERSON: Yes.

10 **ADV HOFMEYR:** You do not even do that. These are – these are signed minutes of the Board of SAA. In the face of that Ms Kwinana it is difficult to – I am putting to you it is difficult to understand the basis on which you resist that the recommendation came from the committee and that the board of which you were a member approved the recommendation.

MS KWINANA: The reason Chair why I am resisting is because I am sure that there is no way that we can recommend – for such an entity as big and complicated as
20 South African Airways and then we approve the audit for one year definitely Chair.

CHAIRPERSON: Ms Mbanjwa.

ADV MBANJWA: Thank you Chair. Chair unfortunately this is again an [00:25:10]. The way I understand this is a commission of inquiry and I believe what the commission

wants is to be assisted with it.

I know that Ms Hofmeyr is cross-examining and we are not objecting to that because we are in agreement with the Chair that although that is going beyond the normal but the truth must be established and there is no time. But where we are objecting is when a witness says yes I admit that this is what is written here but this is so improbable given the circumstances and what I know of where I was lacking. Can I have supporting documents?

10 And then Ms Hofmeyr now gives this huge outcry because in a way it is intimidating to the witness Chair and it forces the witness not to look for supporting documents. I think in any situation when you present evidence you are allowed to get supporting documents.

CHAIRPERSON: Well you see the difficulty Ms Mbanjwa is that the commission cannot be going and looking for every piece of document.

20 As I understand the position the legal team made sure that you and Ms Kwinana were notified what documents would be used during her evidence. And you were given whatever information you would need in order to access the information. So which suggests to me that if Ms Kwinana had taken the trouble to read the documents she would have come across these minutes and she would have picked up that there was something that she thought

they incorrectly reflected and would have mentioned much earlier to say, those minutes are wrong I want to try and get more documents. Yes what do you say?

ADV MBANJWA: Thank you Chair I am going to say two last things. It does not matter what Chair. If you recall Chair here there is even a letter which I wrote and I used the word irritated and it is because from the very beginning once we were given the date of Ms Kwinana's appearance here we requested the evidence by – or to be pointed out
10 and there was such a tremendous delay the letter was – was ready and I got frustrated because we were actually given these documents.

I think on a [00:27:50] and we are coming here on a Monday. The whole weekend we worked on it. And then the second thing Chair which I want to say. If a witness says this is the other extra [00:28:08] my understanding that that evidence is supposed to be admissible. And I am saying that because that is exactly what Ms Hofmeyr has just done here before we went for lunch.

20 She had a thing and we did not object to the – to the admission of that thing because we understand that the commission is dealing with a huge volume of information. All we asked was just for time to say let us get five minutes to read the document.

So we are trying to cooperate with the commission

to the best of our ability. And we are happy in the manner the Chair is treating us. But we have to take a strong exception to the fact that every time the witness says, maybe if I can get this document that is immediately interpreted by the evidence leader as being evasive or refusal. What evidence leader could correctly say is to say yes there are concerns but not to shout at the witness. Thank you Chair.

CHAIRPERSON: Ms Hofmeyr. Just for the record Chair
10 the request to be provided with the bundle for Ms Kwinana's evidence came in a letter dated the 16 October 2020 from Ms Mbanjwa's firm and the last paragraph it is unnumbered there read as follows:

“In conclusion please advise us as to when we can expect the witness bundle including the documents specifically requested in our letter incorrectly date”

Sorry that is the later one. Let me just get here. Sorry so this is the 23 October letter. It says:

20 Remember I told you there was a whole request list of requested documents and then that was provided in addition to the bundle. What happens after the request is made is this following appears.
That happens after the request is made is this following appears.

“In conclusion please advise us as to when we can expect the witness bundle including the documents specific in our letter incorrectly dated 16 September 2020. Please note that we need an answer on or before the 28th of October 2020.”

So this was written on the 23rd and they required an answer about the witness bundle by the 28th of October 2020.

On the 28th of October 2020 is when Ms Kwinana
10 through Ms Mbanjwa was provided with the witness bundle.
So it was in compliance with the very date that had been set
in the letter of the 23rd of October 2020

CHAIRPERSON: H'm.

ADV HOFMEYR: So I just wanted to place that on record.
Insofar as per documents are concerned. The challenge is
simply that in the face of signed minutes of a meeting at
which Ms Kwinana was present and in respect of which there
was a recommendation from the committee on which she sat.

It is... I am putting to you Ms Kwinana that it is difficult
20 to understand how going to look for the minutes of the
underlining Audit and Risk Committee meeting would help.

Because as the Chair was ventilating earlier. If you
have had any concern about what is recorded here, that is
likely to have been reflected in the minutes.

How do you think getting those minutes will assist us

Ms Kwinana?

CHAIRPERSON: Maybe before you respond Ms Kwinana. Let me also say. It just seems quite improbable that the recommendation forum, the Audit and Risk Committee, would have been recommending a longer period than one year.

And when the minute said one year, not a single one of the members of the board who would have been what the recommendation of the committee said. Recommended maybe three years.

10 That not a single one of them, including you, did not pick up to say: No, but the recommendation did not say one year. So these minutes do not reflect the true position as to what the recommendation said.

So you can comment on what Ms Hofmeyr said but comment on what I have also said.

MS KWINANA: Thank you, Chair. I would say Chair, these minutes do not reflect the discussions of the day in respect of that one-year audit.

20 In fact, Chair and the procurement process would take a minimum of six-months. And then now, after six-months we appointed – and then we appoint the auditors for one year.

That would mean that even before they finish that year, we would have to start another process. So that is why Chair, I am almost sure that there is no way that we could as a big entity and complicated and complex like SAA, would

appoint auditors for one year.

ADV HOFMEYR: How long in your understanding were they appointed for?

MS KWINANA: For five years Chair.

ADV HOFMEYR: For five years?

MS KWINANA: Yes.

ADV HOFMEYR: So your understanding, despite what is being recorded in the minutes of the meeting, is that in 2011 a decision was taken to appoint them for five years. Is that
10 correct?

MS KWINANA: That is correct Chair. And in fact, the reason as I said Chair. In fact, the reason why I am saying five years with confidence is the discussion that we went through where basically we were saying, first year 50%. 50/50. Second year, 60/40 and so on and so on. That period would be five years.

And then we even said, then if that is – it happens like that, then when the tender comes again, now we would be in a position to tender alone without being incurred with PWC
20 because the skills would have been transferred over these five years.

ADV HOFMEYR: So your understanding is that there was a decision to appoint PWC and Nkonki for five years. Is that right?

MS KWINANA: That is correct Chair.

ADV HOFMEYR: Then why did you try and take it away from PWC before the five years was up?

MS KWINANA: We did not try to take it away Chair from PWC but this is what happened. First year, 50/50. Second year, 40/30... 40/60. And then third year, that would be 70/30.

And then I think in the third or fourth year, when now PWC percentage was reducing, PWC got uncomfortable with that and they said for the percentage and the risk we are
10 having, the risk is higher than the reward.

Something like that. And then... So that was not – we did not want to remove PWC but PWC said, if that is the case, then we are going. So basically, we did not remove them.

ADV HOFMEYR: Ms Kwinana, do you not remember being very vocal about the fact that Nkonki should get it all on its own before the five years was up?

MS KWINANA: That recommendation Chair, I think we even wrote that recommendation but I am subject to correction.
20 We wrote to the Auditor General because the Auditor General has got the first right of refusal in terms of auditing the SOC's.

So the reason why we wrote – why... You may say we were pushing but PWC said they are withdrawing. So now, if PWC say they are withdrawing before the end of the five

years, which means, therefore that it might as well be hundred percent. That was the reason.

ADV HOFMEYR: No, Ms Kwinana that is now how the chronology actually played out. You see, PWC was not satisfied with going less than 50/50 at a point. But the board actually resolved to give this exclusively to Nkonki before the five years was up. It did so. It went to the Auditor General about that. And you remember what the Auditor General said in response?

10 **MS KWINANA:** No, Chair. What did they say?

ADV HOFMEYR: They said that you cannot do so without ensuring that you are going through a proper supply chain management process. Does that refresh your memory?

MS KWINANA: The supply chain management process Chair was entered into when we appointed them in 2011 and our understanding was that, that is going to be five years and the percentage would be on a reducing scale. And therefore, if PWC does not want that, therefore, the other company can continue. That was basically what our thinking
20 were.

ADV HOFMEYR: Well, Ms Kwinana again, I just have to put it to you. What the minutes of the meetings and the resolution show is that over time – in the five years, on your version, they were jointly appointed for five years.

But somewhere in the middle, the board decides to just

take it away from PWC and give it to Nkonki. They go to the Auditor General. The Auditor General says: You cannot do that. You have to go through a supply chain management process because you are procuring services and you cannot just give it to a party.

And the board minutes reflect the following – I will take you there in a moment – it was observed that the request by the Auditor General, that is the request to go on a supply chain management process, was “strange and outside the
10 scope of the Public Audit Act”.

MS KWINANA: Where are the minutes Chair?

ADV HOFMEYR: Let me show you. It is in the bundle that I think that you have in front of you. DD19. Now, it is going to be one of the difficult ones to find because there are lots of sub-numbers but if we could look for 132.16.3.1.

MS MBANJWA: [microphone on mute]

ADV HOFMEYR: Thank you, Ms Mbanjwa.

MS MBANJWA: [microphone on mute]

ADV HOFMEYR: 132.16.3.1. And Chair, can I just say?
20 The only reason I have not that this get scrapped is because I cannot change the numbering now because the record is going to previously have averted.

CHAIRPERSON: Oh, yes.

ADV HOFMEYR: So I just do apologise.

CHAIRPERSON: No, that is fine. That is fine. I want to be

the first one to find it because I have a suspicion I am the oldest of all of you in this room.

ADV HOFMEYR: [laughing]

CHAIRPERSON: And it is good to find it first. [laughing]

ADV HOFMEYR: [laughing]

CHAIRPERSON: Yes, okay.

ADV HOFMEYR: Okay. So these are the minutes of the special meeting of the SAA Stock Limited Board of Directors held on the 28th of September... Oh, sorry Ms Mbanjwa.

10 **MS MBANJWA:** [microphone on mute]

ADV HOFMEYR: Point 3 point 1. Sorry. Please let me know when you have it.

MS MBANJWA: [microphone on mute]

ADV HOFMEYR: Yes, that is where they start. Do you have that, Ms Mbanjwa? It is the minutes ...[intervenes]

MS MBANJWA: [microphone on mute]

ADV HOFMEYR: Right of the ...[intervenes]

MS MBANJWA: [microphone on mute]

ADV HOFMEYR: This ...[intervenes]

20 **MS MBANJWA:** [microphone on mute]

ADV HOFMEYR: This was a very significant meeting. You recall, it is the one I started with on Monday. It is the one where the LSG Sky Chefs' contract is taking away and given to Air Chefs. It is the one where the CEO's delegation of authority is cut from a hundred million to fifty million.

And then the other thing that happened at this happened is in relation to auditors. And you will find that at internal page 15 of 17 which is the bundle page, DD19(a), page 132.16.3.15.

MS KWINANA: Page 15 of 17?

ADV HOFMEYR: Correct, internal page, ja.

MS KWINANA: H'm.

ADV HOFMEYR: And you see against paragraph 13 there the appointment of auditors.

10 “It was reported that the board had approved the appointment of Nkonki as the sole auditor for the SAA Group.”

That happened previously but this is where we land in September. The Auditor General had written to SAA, requesting proof that there was compliance with the supply chain management policy before – that AG was willing to consent to the appointment of Nkonki Inc. And then this was recorded:

20 “It was reserved that the request by the Auditor General was strange and outside the scope of the Public Audit Act.’

So this is the basis Ms Kwinana on which I say to you. Even if, notwithstanding what the minutes of the 2011 meeting record, your version is that there was an appointment for five years.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: The difficulty that this presents is, that at a point within that five year period, the Board of SAA decided to take it away from one of the joint audit partners, give it to Nkonki and it was the Auditor General that would not approve that, unless there was proof that there had been compliance with supply chain management.

So how on even your own recollection of what was decided, could this have been an appropriate thing to do?

10 **MS KWINANA**: I have tried to explain and give the background to this Chair. And in fact, I do not know, maybe if I had explained it in Xhosa, it would be better. But as I said Chair, the auditors, according to the board, were appointed for five years on a sliding scale.

And therefore, when PWC refused to take a smaller percentage, then they decided that they are withdrawing. And then now, when they are withdrawing, then the board, as it is stated here, approved the appointment of Nkonki only because PWC wanted out of the deal.

20 And when the Auditor General says they wanted proof of compliance with supply chain management policy. The Auditor General did not know what was decided in previous years and therefore – and I also do not think that it would be difficult for SAA to be given the assurance that there was compliance.

But assuming that they would have been given the five years that the board discussed in the meeting. So we really did think that the Auditor General's request was in fact strange because our understanding has been that the auditors were appointed on a sliding scale anyway.

So in one way or another, maybe in the five years, it would end up being 20/80. And maybe if there is an extension, as it happens with other contracts, it would end up being 10/90.

10 So Chair, I do not have any other response, except that I have explained what was the discussion in respect of this.

ADV HOFMEYR: Ms Kwinana, during the period that PWC and Nkonki were jointly auditing SAA, you entered into a joint business relationship with PWC. Correct?

MS KWINANA: Not only with PWC. As I have been saying, in all the meetings of SAA. There is not a single person at SAA who did not know that I operated and audit. And therefore, as I have been saying...

20 You know, Ms Hofmeyr maybe you were never involved in tendering the way I have been involved in tendering. In tendering, in the government tender and in its tender, there will be a whole lot of tenders.

And then if it is tendering for audit and maybe accounting or making sure that there is clean audit, you do the reconciliations. This, this, this and that. You enter into

joint partnerships

In fact, maybe your... In fact, definitely, your investigating team, when they were reviewing our bank statements as Kwinana & Associates, they would have seen that we receive money from almost all the audit firms.

We have received money from PWC, from Deloitte, from... It is only Ernest & Young that we never worked with. From SMG, from Wane, from Manase, from basically all the audit firms.

10 And in fact, how we do things. We enter into different forms of arrangements. We enter into consortium arrangements where the two parties come together and form a consortium.

Sometimes we enter into joint venture agreements where, basically, we would register the joint ventures. Sometimes we enter into a sub-contracting arrangement where, basically, one company, as it has happened with PRASA, with Kwinana & Associates and PWC.

So basically, it depends on the form of an arrangement.
20 Sometimes, you enter into a supplier development arrangement.

As my understanding is that you lift as you rise. So basically, that is what we do Chair as the auditors. And therefore, when you asked that I entered into a business arrangement with PWC.

Kwinana & Associates has entered into business arrangements with almost all the audit firms. If you go to Ngubane and ask ...[intervenes]

CHAIRPERSON: Yes, do not repeat that Ms Kwinana.

MS KWINANA: Thank you, Chair.

CHAIRPERSON: Ja, you have mentioned the various names. Ms Hofmeyr.

ADV HOFMEYR: The point of the question is to establish that the very joint audit partner who was auditing SAA, you
10 were in joint business relationship with. It is not relevant that you were in others.

The one that we focus on now, is the one in respect of which you were year-on-year making decisions to reappoint them and determining their fees.

So I just want to explain why. The fact that you might have had other relationships with other audit firms, is not the focus for us.

Because as a board member in SAA with decision making power, generally, and in terms of the Companies Act
20 we looked at previously, you should not be making any decisions in respect of which you have a personal financial interest. Do you accept that?

MS KWINANA: No, Chair. In respect of the auditors, I definitely do not agree with that. The reason being that Chair. The personal interest that Ms Hofmeyr is talking

about.

Of course, Kwinana & Associates did receive a benefit but not from PWC. Remember that we were appointed by PRASA not PWC.

So whenever these consortiums happened Chair, the client would want to deal with one company and the other companies, like for instance, Transnet.

Transnet was dealing with ten companies but now there would be one company that does like the invoicing. And
10 therefore, the benefit Chair...

In fact, I really do not know how to explain this. The benefit, the money, the monies that PWC paid to Kwinana & Associates and the monies that were going to get paid to Kwinana & Associates, were not the monies that PWC gave to me. They were ...[intervenes]

CHAIRPERSON: Hang on, hang on ...[intervenes]

MS KWINANA: They were just appointment.

CHAIRPERSON: Hang on, hang on Ms Kwinana. I hope I am wrong in thinking what you – what I think you are saying.
20 You are not saying, are you, that there was nothing wrong with you sitting, whether it is at the Board of SAA or the Audit and Risk Committee and participating in decisions to give work, SAA work to Nkonki and PricewaterhouseCoopers in circumstances where your company was going to be getting - Kwinana & Associates was going to be getting a

benefit, a financial benefit coming from the work that Nkonki or PricewaterhouseCoopers or both were going to be doing for SAA. That is not what you are saying?

MS KWINANA: No, Chair.

CHAIRPERSON: What are you saying?

MS KWINANA: That is not what I am saying. Am I saying Chair ...[intervenes]

CHAIRPERSON: Or let me go back to Ms Hofmeyr's question. Ms Hofmeyr, do you want to repeat your question
10 so that I can understand what the answer is.

ADV HOFMEYR: Indeed, indeed.

CHAIRPERSON: Ja.

ADV HOFMEYR: The issue is that you are in a decision making role within SAA. You are deciding year-on-year to reappoint, or not, PWC and Nkonki.

You deciding what fees they will earn. And in the same – at the same time that you are doing that, you are in a joint business relationship with them and you are deriving revenue from that business relationship.

20 That creates a situation, I want to put to you, in which you should not be making those decisions. The Companies Act requires you to declare the interest and requires you to recuse yourself from that decision making.

CHAIRPERSON: Yes, now I think I understand. So yes, the money that would have paid to Kwinana & Associates might

not necessarily be for work done by PricewaterhouseCoopers or Nkonki at SAA but I think the point being made is.

These are your business associates from which you derive some benefit, even if that benefit is not connected with work at SAA but you are...

There is too close a relationship with them to be sitting and making and participating in decisions whether they should get contracts or not. That is the point. Are you saying there is nothing wrong with that?

10 **MS KWINANA**: I still think Chair there is nothing wrong with that. And in fact, if anyone thinks there is nothing wrong with that. In my example, when I was answering by email. I said Chair, for the auditors that would be very difficult.

That would mean that any chartered accountant, not even a chartered accountant that is in audit. A chartered accountant that is a CFO there, cannot make a decision on any firm.

20 The reason Chair why I am saying that is because a chartered accountant will have served articles in one of the audit firms. And when you have served articles in one of the audit firms and then now ...[intervenes]

CHAIRPERSON: Well, do not make that example Ms Kwinana because the mere fact that he or she have served articles at some stage or another, is not a here not there. It happens with lawyers, you know.

The fact that you served articles with law firm A 20-years ago, does not mean that you cannot act against them. But if you served articles and left yesterday or last months and now you have to sit and make a decision in a structure where they are involved, that might be different.

But if you are talking about a certain, a long period that might not mean anything. So but here, as I understand the position. It was a business association that Kwinana & Associates had which was ongoing. Ms Hofmeyr, am I right?

10 **ADV HOFMEYR:** Indeed.

CHAIRPERSON: Yes.

ADV HOFMEYR: It is about the two happening at the same time.

CHAIRPERSON: Yes.

ADV HOFMEYR: That is what creates the conflict. It is that at the very same time that you are making the decisions ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** ...you derive benefits from your association with them. And that is what creates the conflict. It does not mean you cannot be appointed.

CHAIRPERSON: H'm.

ADV HOFMEYR: It does not mean you cannot serve and give your skills and your expertise to SAA. It means on that decision in respect of which you have a relationship in which

you derive personal benefit, as defined, you just recuse yourself. You say: I cannot participate in this decision.

CHAIRPERSON: H'm.

MS KWINANA: Chair, I still do not see it like that. The reason why I do not see it like that is. As I said, I work with all the audit firms. For me, all the audit firms are the same. Even, for instance, if ...[intervenes]

CHAIRPERSON: But you did not have a current ongoing business relationship with all of them at a particular time?

10 **ADV HOFMEYR**: Yes.

MS KWINANA: You may have had in the past with that one or that one but at the time you make a – you have to participate in decision making that could benefit this business associates of yours, you have that business association, relationship from which you continue to get financial benefit.

How can you take part in that decision making? I am not talking about some previous or past business relationship. I am talking about current business relationships from which
20 you get financial benefit.

MS KWINANA: Chair, in that case, that would mean that everybody who is operating an audit firm cannot sit in the board. Why I am saying that is because I did not have the business relationship at that point in time with say Deloitte. However, at some stage I would have a business

relationship with Deloitte because we used to [inaudible – speaking simultaneously]

CHAIRPERSON: Ja, but we are talking about a relationship that is current at the time you are supposed to make a decision. Do not make examples that do not apply. We are talking about a situation where you participate or a decision has to be taken and you must decide whether you recuse yourself or you are going to participate where an affected party who could benefit from the decision from the
10 way you vote is a current business associate of yours and from that business that relationship you continue to have financial benefits. We are not talking about something that has happened and ended. We are not talking about something that could happen in the future, we are talking about something that is ongoing at the time you have to decide whether to recuse yourself or to take part in the decision that could benefit or not benefit that party.

MS KWINANA: Let me make my final answer, Chair. I did not get a financial benefit from Nkonki and PwC. I got the
20 financial benefit or my company got the financial benefit from PRASA, Transnet and Post Office.

ADV HOFMEYR: Ms Kwinana, I should just follow up on that. Is it really your evidence before this Commission that your association with PwC was not part of the reason why you got the PRASA work, you jointly bid for it?

MS KWINANA: We have been – Chair, we have been bidding with PwC and other companies ...[intervenes]

CHAIRPERSON: Well just the question is not whether you had been bidding with them, the question is whether you are saying that you were not benefiting from that relationship.

MS KWINANA: Chair, even if we did not bid with PwC we decided to bid with another company but the fact of the matter is that the benefit did not come from PwC, the benefit came from PRASA and in fact when you bid you do not know if you are going to get the tender or not and therefore I would not take – in fact, Chair, my conflict of interest, I did not have any conflict of interest at all according to my understanding and, in fact, as you are asking this question, I still do not see any conflict of interest because we would lose that tender to the PRASA tender and we would get another tender or we would go with Deloitte and PwC or KPMG with another one. So, Chair, I really do not see any conflict in this one.

20 **ADV HOFMEYR:** Ms Kwinana, it is clear, you see absolutely no conflict. I am going to leave there point.

MS KWINANA: No [inaudible – speaking simultaneously]

ADV HOFMEYR: Do you know that Mr Mothibe the lead PwC auditor who in your evidence earlier this week you said you had a high respect for believed that it was a

conflict of interest for you and that you should have recused yourself from those meeting and decision-making.

MS KWINANA: That is his own opinion.

ADV HOFMEYR: It is, indeed.

MS KWINANA: It is his own opinion.

CHAIRPERSON: You see, Ms Kwinana, we might all at one stage or another not see a certain matter in a certain way but when there has been the benefit of discussion and questions being asked we might then begin to see that
10 matter in a different light.

MS KWINANA: Yes, Chair.

CHAIRPERSON: And say you know what, that is not how I saw it at the time but now that you are raising these issues I can see, I can see, you know, it was wrong, I should have seen it that way but at that time I did not see it that way, I am terribly sorry because I really did not see it that way.

Now if one is dealing with that situation, one can lay blame – maybe not lay blame, for the fact that a person did not see a certain in a certain way at a certain time but
20 one can – one might well be able to forgive the person to say once this was raised he or she saw it and she realised that no, I have made a mistake, you know?

But where even when there is discussions, there are questions, issues are raised, somebody still does not see it, it becomes even a bigger problem because if

between these two people the one who sees the problem that he or she did not see before in regard to a certain matter, the one who sees the problem, you can – if he or she says look, I am now enlightened, I can see this – I will make sure I do not do it, you can work with that person because that person has seen the light. But if the person persists and say I do not see it - I mean, the other one you can say that person can be considered to be a board member of another board because at least he or she

10 realised that no, that was wrong and now that kind of mistake will not happen again but with a person who still does not see it, it is too risky to appoint that person in the future to a board or such a position because this person will continue not to see that this kind of situation is problematic and therefore will cause more problems.

So I just want – I am making these examples to say to you I am quite concerned about the fact that your position still stands that you do not see any problem with that situation. Ms Hofmeyr?

20 **ADV HOFMEYR:** Thank you. The total amount that Kwinana and Associates billed PwC for on that PRASA matter was in the order of 6.1 million. Do you confirm that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And in respect of that 6.1 million you

were only able to enter into that relationship with PwC according to its policy if that amount did not constitute more than 5 or 10% of Kwinana and Associates' revenue. Were you aware of that at the time?

MS KWINANA: I remember that, Chair, in partnership they will come with their policies.

ADV HOFMEYR: Yes.

MS KWINANA: We will also be having our own policies and therefore, that does not mean that in a partnership you
10 have to take all the policies of the other partner that is coming, you need to sit down and discuss and see which policies are applicable, not applicable, which policies are acceptable for both parties.

CHAIRPERSON: One second, I have run out of water here. Ms Kwinana, do you still have water there?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Oh, okay, alright, I have asked for somebody to give me water. Okay.

ADV HOFMEYR: Would you like to take a moment, Chair,
20 or are you ...[intervenes]

CHAIRPERSON: No, no, no ...[intervenes]

MS KWINANA: Can I have a five minutes break, Chair?

CHAIRPERSON: No, no, we ...[intervenes]

MS MBANJWA: I do not know if – is Ms Hofmeyr – are you still – I just want an indication, Chair.

CHAIRPERSON: Oh.

MS MBANJWA: I thought that we would be asked in 45 minutes so I want to know now are we going on ...[intervenes]

CHAIRPERSON: How far we are from finishing.

MS MBANJWA: Please.

ADV HOFMEYR: I am on my last topic, it has just taken a bit longer and with all due respect to you, Ms Kwinana, I understand that you are wanting to give explanations but I cannot anticipate how long they are going to be, so
10 apologies for that. It is this one and then it is two questions, so I think about twenty more minutes, fifteen even, possibly.

CHAIRPERSON: Okay, is that fine, Ms Mbanjwa?

MS MBANJWA: Yes, Chair. Let me just say, Chair, it is not that [indistinct – far from mic] I just wanted to be granted the bathroom.

CHAIRPERSON: Oh, okay.

MS KWINANA: If we are going on.

20 **CHAIRPERSON:** Maybe – I think Ms Kwinana wants to...

MS KWINANA: Five minutes break please, Chair.

CHAIRPERSON: Ja, okay, alright.

MS MBANJWA: Sorry about that.

CHAIRPERSON: Let us take – let us make it ten.

ADV HOFMEYR: Yes, indeed, Chair, because it is a bit of

a way to go.

CHAIRPERSON: Ja, ja,.

ADV HOFMEYR: I am going to take advantage.

CHAIRPERSON: So we will resume at ten past four.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue on the last mile.

10 **ADV HOFMEYR:** Indeed. Thank you, Chair. Ms Kwinana, just before the break we had established that PwC had a policy in terms of which it could not enter into a joint business relationship with a partner unless it was less than 10% of turnover and I understood your answer to that to be well, that might have been PwC's policy but we had our own policy, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Do you accept that insofar as PwC choosing to partner with you that you would not have been
20 able to partner with them if their own policy did not allow it?

MS KWINANA: I do not know, Chair.

ADV HOFMEYR: Okay, so if their policy says they cannot enter into the relationship with your firm if what your firm is going to derive from it is more than 10% of turnover then

they cannot enter into the relationship with you. Do you accept that?

MS KWINANA: I do not know, Chair, that would depend on the circumstances. And another thing, Chair, in respect of these partnerships and consortiums that I have explained, it is not only the big brother's decision, also the small sister's decision is taken into account. So when you say PwC would not have partnered with us, this becomes a mutual relationship where PwC wants to tender with us and
10 we also want to tender with them. So basically it is for that reason that we meet each other halfway because we need each other, much as PwC would be our big brother but in the end we meet halfway and therefore, if you say if their policy was saying then we would not be able to – they will not be able to tender with us. They would be able to tender with us if they want regardless of their policy.

We would also tender with them if we want regardless of our own internal policy. So basically if they say 10% of the revenue and we say – like, for instance, in
20 our policy which basically I would be able to challenge the policy that would say if the fees will be more than 10% of your revenue you cannot tender because that will impair your independence.

Now what about the companies that have got a zero turnover? Does it mean that PwC will never enter into a

business relationship with them? If our policy is saying 5% and then now does it mean that we cannot uplift a company that is fairly new that does not have a revenue at all? So it is for that reason that we meet each other halfway because we need each other.

ADV HOFMEYR: You see, Ms Kwinana, that may happen in certain relationships with different parties. PwC's evidence before this Commission, corroborated by their policy with which – that they provided to the Commission
10 said they could not have entered into this PRASA joint business relationship with you if the revenue to be derived from it was anything more than 10% of Kwinana and Associates' revenues. So can we just work with those facts because those are the facts that they have presented to the Commission. Okay, there might be other situations where arrangements are made but PwC said that they will not and they actually for that reason communicated with Kwinana and Associates before you entered into the relationship to ask precisely how much of Kwinana and
20 Associates' revenue this was going to comprise. Are you aware of that communication?

MS KWINANA: Let me give you a background information ...[intervenes]

ADV HOFMEYR: Well, could we just start ...[intervenes]

CHAIRPERSON: Just hang on, the question is are you

aware of that communication?

MS KWINANA: I am aware of the communication, Chair.

CHAIRPERSON: Okay, alright.

MS KWINANA: But I want to explain, Chair.

CHAIRPERSON: Well ...[intervenes]

MS KWINANA: The verification of fixed assets of PRASA was done by Combined Systems. Combine Systems is a subsidiary or was a subsidiary of PwC. So now I definitely was not aware of the Combined Systems policy.

10 **CHAIRPERSON:** Okay, Ms Hofmeyr?

ADV HOFMEYR: Okay, so the communication that PwC sent to Kwinana and Associates you will find in DD19 at page 132.

MS KWINANA: Page 132?

ADV HOFMEYR: Yes.

CHAIRPERSON: That is 19A?

ADV HOFMEYR: 19A at page – we are starting at page 132 because it is an email chain again so we have to start at the end. Thank you.

20 **MS KWINANA:** So it is 132 what?

ADV HOFMEYR: Just 132. For once we just have none point, point, point number.

CHAIRPERSON: Okay.

ADV HOFMEYR: Do you have that, Ms Kwinana?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Yes, I have got it too.

ADV HOFMEYR: Thank you, so this is a question sent - do you see from just above midway down from Nicky Wayne of PwC to various people and it says – oh sorry, this is internal to PwC, the one at the bottom, right? It says:

“Hi Koos...”

Has asked the following:

“Please can you help with a reply to him:”

10 It says:

“Hi Nicky, please confirm the following with your contact at Kwinana. As per the DD submitted, Yakhe Kwinana has no other shareholdings or directorships. However, as per the CIPC info she is a director at South African Airways or SAA Technical, a PwC order client. Please see if she is still a director there. Please determine if the JVR...”

20 That stands for joint business relationship on the evidence of Mr Mothibe.

“...with PwC will be material for Kwinana. (If the fees for Kwinana for the current JVR relationship or engagement with PwC exceeds 10% of their annual turnover the relationship will be deemed material for them.”

Okay. Now that is then sent by Nishan Pershad - you are now at the top of the page, on the 9 December 2015 to Lumka Goniwe. That is your daughter who works at Zanospark with you, is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: It is entitled:

“Department of Education Internal Audit Kwinana JVR query.”

And it says:

10 “Good morning, I trust all is well. As discussed, please find the queries from our risk management section.”

So that is the query you saw previously and it is been forwarded to your daughter. And then what your daughter responds with – and now you have go back to page 131, in an email halfway down here, Ms Kwinana, dated the 9 December 2015 to Mr Persad is:

“Good morning, Nishan, we have calculated our fees to be in the region of 6.1 million excluding VAT.

20 I confirm that Kwinana and Associates’ turnover is more than 50 million.”

And then they go on to deal with ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, you said 6.1 million.

ADV HOFMEYR: Ja, I said 6 – I apologise.

CHAIRPERSON: Yes.

ADV HOFMEYR: They ended up receiving 6.1. I made the error, I apologise.

CHAIRPERSON: Oh, okay.

ADV HOFMEYR: So this is your daughter just calculating an estimate, as I understand it.

“We have calculated our fees to be in the region of 4.1 million excluding VAT. I confirm that Kwinana and Associates’ turnover is more than 50 million.”

10 And then she deals with BEE certificates and confirms that you are a non-executive director of SAA. Were you involved in assisting your daughter with this email response at the time?

MS KWINANA: No, Chair.

ADV HOFMEYR: No because we went to go and check the tax returns of Kwinana and Associates which puts the turnover at a much lower figure than that. Are you aware of that?

MS KWINANA: I am not aware, Chair.

20 **ADV HOFMEYR:** You see, it puts - the Kwinana and Associates tax returns said that the turnover was 10.5 million for the year ending February 2015. So when your daughter sent this email and was alerted to the fact that the PwC requirement was that it must not be more than 10%, she stated here that the turnover is something that is

very different to the turnover that appears in Kwinana and Associates' tax returns. Why would she have made – and it is an error of considerable magnitude because it is five times. She says the turnover is five times more than what appears in the tax returns. How could she have made such a glaring error?

MS KWINANA: I do not know, Chair.

ADV HOFMEYR: You see, because of that false representation of the turnover it fell within the policy and
10 so the arrangement could continue. If she had gone back and given the tax return information that Kwinana and Associates represented to SARS, then you would not have been able to enter into the relationship. Do you accept that because 4.1 of 10 is much more than 10%. Do you accept that?

MS KWINANA: No, Chair, I do not accept it. As I have stated the reason, it depends on a relationship that you want. There is a compromise in any relationship and, therefore, if they wanted to tender with us, as I said, even
20 if we had zero turnover and in fact ...[intervenes]

CHAIRPERSON: Yes but I think Ms Hofmeyr is asking this question, on the basis of the correspondence from them to say they had a policy that went this way. If you fell outside of - the turnover of Kwinana and Associates fell outside of that bracket that they were talking about then in terms of

that policy Kwinana would not be able to enter into an arrangement with them. Whether in terms of some discussions that could follow that they might not enforce that, I do not know, but in terms of that policy, do you not accept that Kwinana would not have qualified to continue with them?

MS KWINANA: Chair, these relationships, it is not a matter of qualification or qualifying or not ...[intervenes]

CHAIRPERSON: Just raise your voice please?

10 **MS KWINANA:** Sorry, Chair. This relationship, it is not a matter of qualifying or not, the 10% threshold may be in fact their guideline but I do not want to say if there was no overstatement of revenue or understatement of revenue, we would not have entered into this relationship.

CHAIRPERSON: Okay.

ADV HOFMEYR: No, I accept that, Ms Kwinana. Do you accept that that your daughter misrepresented to PwC by five times the relevant annual turnover for that year?

MS KWINANA: I cannot confirm that, Chair.

20 **ADV HOFMEYR:** You cannot.

MS KWINANA: Yes.

ADV HOFMEYR: So if I show you the tax return will you be able to?

MS KWINANA: I will still not be able to confirm it.

ADV HOFMEYR: So you cannot confirm. If I show you

the tax return it shows 10 million and I have shown you an email in which your daughter communicated 50 million. You will not confirm that she misrepresented the position five times to PwC?

MS KWINANA: I will not confirm, Chair.

CHAIRPERSON: Why would not be able to say that? You would have all the facts in front of you.

MS KWINANA: I would have, Chair, to conduct my own independent audit and then come back to the Commission
10 and confirm but, as I am sitting here, I am not going to confirm that, Chair.

ADV HOFMEYR: No, but ...

CHAIRPERSON: But the information reflected in the tax document would it not be the correct information?

MS KWINANA: I would have to conduct my own investigation, Chair.

CHAIRPERSON: That might not be necessarily the correct information, the one in the tax document.

MS KWINANA: Chair, I may have to conduct my own
20 investigation.

CHAIRPERSON: Yes, but I am asking, the tax information that you have put into the - you have given to SARS, would it not be the correct information?

MS KWINANA: I would have to recheck it, Chair, because also, even with SARS, for instance, you may put some

incorrect information, you may have omitted something and therefore that is why I am saying I am not going to confirm, Chair.

CHAIRPERSON: Let us leave out the five times.

ADV HOFMEYR: Sure.

CHAIRPERSON: Would you not concede that what your daughter – the information she gave was not correct in terms of the turnover of Kwinana and Associates and that time?

10 **MS KWINANA:** Chair, before I say the information that she submitted is correct or incorrect, I would have to be given an opportunity to go and audit. I do not want to say it is correct or incorrect, I am saying I need to go and audit before I can answer this question.

CHAIRPERSON: So to the extent that she said 50 million, that does not sound to you like that cannot be true?

MS KWINANA: Chair, I need an opportunity to go and do my own verification.

CHAIRPERSON: Ms Hofmeyr?

20 **ADV HOFMEYR:** So you did not make sure when the tax return was submitted at the time that the requisite checking had been done?

MS KWINANA: Chair, I am going to go and do my own verification.

ADV HOFMEYR: Ms Kwinana, that was not my question.

My question was, at the time that Kwinana and Associates told the South African revenue Service that its annual turnover for that year was R10 567 581, did you not check that before you submitted the tax return?

MS KWINANA: Chair, I do not submit the tax returns for myself, I do not do the tax returns for myself. I do check the tax returns, however, I am saying I need to go and audit and confirm if the figure that is stated here is correct or the figure that is stated in the tax return is correct.

10 **ADV HOFMEYR:** Why did you not check before today?

CHAIRPERSON: Would those documents not have something that says I certify that the above information is correct? And is it not signed by her?

ADV HOFMEYR: This one is not, it is an electronic filing.

CHAIRPERSON: Yes.

ADV HOFMEYR: So – oh we have – this is something we have encountered before, we have to go and check, who was the Kwinana and Associates representative for SARS purposes?

20 **MS KWINANA:** I would have to go check and phone them and find out who was the representative at the time.

ADV HOFMEYR: Could it have been you?

MS KWINANA: I could have been me, I do not know.

ADV HOFMEYR: Indeed because that is the person who declares, Chair. But let us leave the point. I see that Ms

Kwinana is not in a position to confirm for us today that her daughter made a misrepresentation in that email. How would your daughter have come to that 50 million figure?

MS KWINANA: I do not know, Chair, that is one of the things that I would have to audit.

ADV HOFMEYR: I am sure that is something that ...[intervenes]

CHAIRPERSON: Sorry, Ms Mbanjwa has got...

ADV HOFMEYR: Oh, sorry.

10 **CHAIRPERSON:** Ms Mbanjwa?

MS MBANJWA: Chairperson, all the same, I am a bit puzzled with this line of questioning insofar as the daughter is supposed to have misrepresented the facts, Chair. I just want to get confirmation that Ms Hofmeyr is still working within the mandate of the Commission.

CHAIRPERSON: Ja, surely she is. Yes, go ahead, Ms Hofmeyr?

ADV HOFMEYR: Thank you.

MS MBANJWA: Thank you, Chair.

20 **ADV HOFMEYR:** And just in terms of your earning out of Kwinana and Associates for the period during which you did the joint business work, do you have any idea of how much you personally derived from Kwinana and Associates over that year? That is December 2014 to December 2015.

MS KWINANA: No, Chair, I do not have an idea.

ADV HOFMEYR: We provided in your bundle all of your personal bank account records for this period because it was important for us to establish not only that Kwinana and Associates had derived benefit from this relationship but also to give some quantification of the monies that came from Kwinana and Associates to you and we calculated that at about 1.5 million for that period. Does that sound about right to you?

10 **MS KWINANA:** I also cannot confirm, Chair, I need to check.

ADV HOFMEYR: Certainly. Well, if at any point you want to dispute that, you do have the records, you can do the painstaking calculation that we did and certainly, Chair, I would invite Ms Kwinana to give us a further submission if she thinks our calculation is wrong.

MS KWINANA: Where is that – where is your calculation?

ADV HOFMEYR: It is in your bundle and it is just a series of bank statements from December 2014 to December 2015.

20 **MS KWINANA:** Oh, so it is in the bank statements?

ADV HOFMEYR: Yes. Okay. Alright, now Nkonki – I am so close to the end I am getting excited. Now Nkonki you also had a joint because relationship with, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And there, as I have it, between

September of 2015 and July of 2016 there was work that you did together at Transnet and Eskom and Kwinana and Associates was paid about 850 000. Does accord with your recollection?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right. But there was also a particular payment that Nkonki made to Kwinana and Associates in August of 2015. Now I just want to pause there for a moment. Remember we looked at the 28 September 2015
10 board minutes a moment ago? Remember I said that was an important day because a lot was happening on that day in the board. You were deciding to cancel the LSG Sky Chefs award, you were cutting the CEO's delegation of authority and we saw you were deciding to give the whole audit work, all of the audit work to Nkonki. Do you recall looking at those minutes a moment ago?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Okay, so that is 28 September 2015 and a month before that there is a payment that is made to
20 Kwinana and Associates in a round figure of R300 000. Do you have any knowledge about that payment?

MS KWINANA: Yes, Chair and in fact that payment from Nkonki was going together with other payments from the other audit firm. What happened, there was a fundraising event where you would buy cables, depending on the

money that you want to buy the tables depending on the proximity of the person or the key person in the fundraising event. So that money from Nkonki was not the only money that we received, we also received monies from other audit firms. You may have seen the whole lot of other monies that was the fundraising event. So basically the audit firms were buying the tables for the fundraising event.

ADV HOFMEYR: What was the fundraising event?

MS KWINANA: The fundraising event was for the Jacob
10 Zuma Foundation who was the President at the time.

ADV HOFMEYR: So you were doing fundraising as Kwinana and Associates for the Jacob Zuma Foundation?

MS KWINANA: No, Chair.

ADV HOFMEYR: No, sorry.

MS KWINANA: The foundation was doing the fundraising. I was ...[intervenes]

CHAIRPERSON: You were donating?

MS KWINANA: No, Chair. Kwinana and Associates also donated ...[intervenes]

20 **CHAIRPERSON:** Ja, that is ...[intervenes]

MS KWINANA: And the black audit firms also donated. So Jacob Zuma Foundation was doing the fundraising event and the auditors were buying the tables but now because we – like we do not have a consolidated bank account and therefore it was decided by the Black Firms

Forum – we called ourselves Black Firms Forum or ABA SA’s Practitioners Forum, so it was decided that the money will be deposited – the monies will be deposited to me and I would pay the money to Jacob Zuma Foundation for the tables that were have purchased, so that was the reason for the money.

ADV HOFMEYR: Thank you. I appreciate that explanation. It is different to the explanation that Ms Masasa was able to get from the then CEO of Nkonki. She
10 – but it is not – in fairness to you, Ms Kwinana, it is not vastly different from yours. What troubled us about the explanation we got from Nkonki is that they said it was a subscription fee that Nkonki was paying for the benefit of APS.

MS KWINANA: Yes, Chair, there was also a subscription fee. There was a subscription fee where all the firms were put in together and then in addition to the subscription fee there was also now the actual money for the tables.

ADV HOFMEYR: Okay, I understand that because we then
20 investigated this whole APF and the fund and we uncovered that there was no such fund at the time. Were you just using that term loosely?

MS KWINANA: Me?

ADV HOFMEYR: Yes when you said now that it was the APF because we then went to ABA SA’s Practitioners Fund

and we found that they were deregistered before this payment was made. So was this some other arrangement that arose out of it?

MS KWINANA: I said the Black Firms Forum which used to be APF before.

ADV HOFMEYR: Yes.

MS KWINANA: Yes. So in fact also the Black Firms Forum is not a registered name, so to say, you will not go to the CIPC and check the Black Firms Forum. That is how
10 we call ourselves as the advocacy group of the black firms.

ADV HOFMEYR: I understand. I understand, thank you for that. Right, then I would like to just go to two final small matters before concluding aspects, Ms Kwinana, and these parts are going to be relevant to evidence that we traversed with Ms Myeni. I understand from Ms Mbanjwa that you may not have followed that closely but it is actually related to matters that you were asked about in your Regulation 10.6 directive.

The first one relates to the allegation, I will put it
20 broadly, that Ms Myeni used to prepare false whistle blower reports and you were asked in your 10.6 directive to tell the Chairperson and the Commission your knowledge about that and let us take you to what you said, if we can? That is in your affidavit before the Commission in response to the 10.6 directive. So you need to go to DD33 and it is

page 5 of DD33. Now we asked in the 10.6 directive, the Chairperson asked for you to address the allegations that Ms Duduzile Myeni – I am at the bottom of page 5 prepared false whistle blower reports against employees and management of SAA whom she wished to remove and your response to that in your affidavit is:

“I have no way of knowing whether the whistle blower reports allegedly prepared by Ms Myeni are false or not.”

10 Is that your evidence that you – you do not know whether the reports allegedly prepared by her are false or not?

MS KWINANA: That is correct, Chair.

ADV HOFMEYR: You see, Ms ...[intervenes]

CHAIRPERSON: There is the question of knowing whether the reports she prepared were false or not. There is the question whether you have knowledge that she prepared certain reports. Which one of the two do you know, which one do you not know?

MS KWINANA: I do not know any one of them, Chair.

20 **CHAIRPERSON:** Okay.

ADV HOFMEYR: You see, Ms Nhantsi – do you know Ms Phumeza Nhantsi?

CHAIRPERSON: Yes, Chair.

ADV HOFMEYR: Did you follow her evidence before the Commission?

CHAIRPERSON: Yes, Chair.

ADV HOFMEYR: Okay, she said – and I am just going to quote now from her affidavit. Chair, it is one paragraph, I do not think we need to go there but for records it is DD2 page 22, paragraph 71. If you want to go there, Ms Kwinana, we will. But let me read it in, it is just her account. She said - oh, apologies, DD2 at page 22 paragraph 71. You see we asked Ms Nansi the same question and in her affidavit she said:

10 “Ms Yakhe Kwinana will be the right person to address this as she was the one who informed us about Ms Myeni also going to the internet cafe, disguises as another person and sending damning whistleblower reports about anyone she wanted out of the way.

After the whistle blowing reports she would pressurise Siyakula Vilakadi, the internal Chief Audit & Risk to investigate those implicated in the report or instruct him to appoint one of the firms,
20 for example EY or ENS to investigate whoever was mentioned in the report.

After all the investigations she would push for those people to be suspended and dismissed.”

Now that is Ms Nansi’s account of something you told her. Do you confirm that you told her that?

MS KWINANA: No Chair.

ADV HOFMEYR: You don't? So is she just making this up?

MS KWINANA: She is making it up Chair.

ADV HOFMEYR: Do you remember saying the same thing at an interview with OUTA about eight days after you resigned from SAA?

MS KWINANA: I remember having an interview Chair and I don't remember saying that Ms Myeni did prepare false
10 whistleblower reports.

ADV HOFMEYR: What do you remember saying to them on this topic?

MS KWINANA: I would have to get the – I would have to get the transcription Chair.

ADV HOFMEYR: Okay but as you sit here now can you just help me with your memory, what do you remember having said on this topic?

MS KWINANA: I remember chair about the whistleblower reports and basically that is all I remember that we used to
20 receive a lot of whistleblower reports from the Hotline or from Ms Myeni herself and she would basically get the Whistleblower reports from the people, other people would refer to give her the information, basically.

ADV HOFMEYR: So they – it was their information and then they would give the Whistleblower reports to her, is

that what your understanding was?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Okay that would tend to indicate that there was nothing false, that explanation says there is a genuine whistleblower, they have got their facts but for some reason they want to get them to Ms Myeni rather than put them through the anonymous system that was created, correct?

MS KWINANA: Yes Chair.

10 **ADV HOFMEYR:** Okay so in that scenario there wouldn't be any reason to suspect them being false, do you accept that?

MS KWINANA: Yes Chair, that's why Chair I am saying I have no knowledge if the Whistleblower reports were true or false.

ADV HOFMEYR: And is that what you recall having conveyed to OUTA at that meeting?

MS KWINANA: Yes Chair.

20 **ADV HOFMEYR:** Yes, now that meeting as I understand it was you had requested to meet with OUTA is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And then they subsequently, there was a second meeting that was a follow up meeting, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Why did you request to meet with OUTA?

MS KWINANA: The reason why I wanted to meet them, to meet with OUTA is because they wanted to make an application for me, or also myself to be declared a delinquent director so the reason why I went to them, in fact I was advised by one of my lawyer friends to say I need to go to them so that I can clear the things that they may have against me, and in fact I managed to clear the whole lot of wrong information that they had against me, so it was a good thing that I did go and clear it with them, and
10 in fact I told them that the reason why I am going to them is not because I will be declared a delinquent director, the reason why I am going there is that of course I would have to protect myself legally, but the reason why I am going to OUTA is because I will not have money to incur the legal costs to get to the end result, which end result I know that I am not going to be declared a delinquent director. That was the reason why I went there.

ADV HOFMEYR: I understand. Now Ms Kwinana we previously had evidence admitted on affidavit in Ms Nansi's
20 case when she gave evidence from OUTA and OUTA confirmed that you had met with them and everything you have said now is consistent, that you called for the first meeting, that there was a follow up meeting, but they had long recordings from the meeting and they had – but the they had a summary, their own summary of it, in which

their summary records that you told them something very different to what you have testified about today. They said at that meeting you told them that Ms Myeni used to put in false whistleblower reports, does not jog your memory.

MS KWINANA: I am sure they misunderstood me Chair, maybe I wanted to say something but now because I said it in English the it lost the meaning because I speak Xhosa fluently.

10 **ADV HOFMEYR:** Right, so as you sit here today you can confidently say you did not convey to them that Ms Myeni would put false information, incorrect information in Whistleblower reports that she prepared, correct?

MS KWINANA: Correct.

ADV HOFMEYR: Right, you see I am sometimes able to anticipate what – based on what you have told us and our investigations are likely to be the approach you take in the evidence. On this one I thought you might say something like that, so what we did is we went and got the recordings
20 from OUTA and we had them transcribed, so I would like to hand up those transcriptions. We didn't have them previously, and I have to tell you I am going to ask you about two aspects of OUTA, that OUTA interview, and I can tell you Chair we have managed in the time available to transcribe one but not the other, we do have the recording

of the other but all I can show Ms Kwinana today is the transcription of the one dealing with whistleblowers.

So if I can hand that in and copy certainly also to Ms Mbanjwa, and to apologise for that error earlier. Thank you. Have I given you the wrong one, sorry, there you go. Chair if I can request that we enter this as Exhibit DD33A, not there's no A, I have made that error, DD33.26.

CHAIRPERSON: Did you say 53?

ADV HOFMEYR: No 33.

10 **CHAIRPERSON:** 33?

ADV HOFMEYR: Yes thank goodness we are not file 53.

CHAIRPERSON: 33

ADV HOFMEYR: Yes point 26.

CHAIRPERSON: 26. The transcript of a meeting with Ms Yakhe Kwinana at OUTA offices, Johannesburg, 30 August 2016 will be admitted as EXHIBIT DD33.26.

ADV HOFMEYR: So there's – it is a very lengthy recording, what we did was we extracted that part that dealt with the Whistleblower discussion and if you turn to
20 page 3 of 10 you will see that that is where it is – sorry internal page 3 of 10, do you have that Ms Kwinana?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Okay so this is the section of the Whistleblower discussion and Ivan starts speaking and then Ms Kwinana and then there's another person

identified as Rethabile and what happens is this is where the topic of the whistleblower discussion is being introduced and there's an issue that occurs where people are talking about them feeling a bit scared actually and if you go over the page to page 4 of 10 you will see there Ivan says, in the 4th line,

“I have death threats, I have received death threats.”

And then Ms Kwinana you say the following:

10 “One of the reasons why I am scared is that I do not know the powers that be beyond, but the other reason is that it is difficult to bring a proof like for instance Dudu has got her hit list of people that she wants to remove and bring her own people. We've got that and how she operates. How she operates, she will go to internet cafe and write whatever information that she knows are correct and incorrect information and then she will email it to SAA Whistleblower from the internet cafe.”

20 And then Ivan says:

“Which information?”

And you say:

“Like for instance – like for instance she will write, okay let me make an example, she will go to internet cafe whatever she knows about me, she will

the correct information together with the incorrect information and now okay if I am an SAA employee she will send that to Whistleblower that is how she operates, she will send that to Whistleblower and after sending it to Whistleblower.”

Ms Kwinana that I put to you is very different to what you said just now is what you conveyed to OUTA, do you accept that it is very different?

MS KWINANA: It is very different Chair.

10 **ADV HOFMEYR:** Do you have any reason to dispute this transcript?

MS KWINANA: Chair this transcript I see that it is edited.

ADV HOFMEYR: Yes.

MS KWINANA: And so – and I did, I was not taking the minutes myself and therefore I will definitely not be able to confirm with certainty if this is what was discussed, but what I am saying is I will not be in a position as I said before, I will not be in a position to know if the whistleblower is true or false.

20 **ADV HOFMEYR:** No but that is not what ...[intervenes] – sorry Chair.

CHAIRPERSON: Ja, let’s start here, you have accepted that what you have said about what you know with regard to Ms Myeni’s connection with whistleblowers reports is different from what is said here, which one is true, is it

what you said earlier on here or is it what is reflected here, which one is true?

MS KWINANA: This is what I said earlier on here Chair.

CHAIRPERSON: That is what is true?

MS KWINANA: Yes Chair.

CHAIRPERSON: Are you saying that you never said what is reflected here when you met with OUTA?

MS KWINANA: I may have said it Chair not wanting to convey the message as it is. As I was saying maybe if I
10 was interviewed by OUTA in Xhosa I would be in a position to articulate myself and reflect what I have just said in this Commission today.

CHAIRPERSON: No Ms Kwinana please, I have listened to you speaking English on Monday, Tuesday and today, you speak English very well, I understand what you are saying, I don't have a problem, I think Ms Hofmeyr understands you. We understand you and when we speak to you, you understand us, it cannot be a question of language. It can't be.

20 **MS KWINANA:** Chair it could be a question of language, also in this Commission. Ms Hofmeyr has been asking, including you Chair, many times if I heard Ms Hofmeyr, if I understood what she was trying to say. You will be explaining Chair a whole lot of times.

CHAIRPERSON: Yes but I don't think it is because of the

language, it has not been because of the language, your command of English is very good, your understanding of English when somebody else is speaking English is very good.

MS KWINANA: Chair between this recording, OUTA recording, and what I have just said in this Commission I stand by what I have said in this Commission.

ADV HOFMEYR: But then – sorry.

CHAIRPERSON: Ja, no it's fine.

10 **ADV HOFMEYR:** Then I would like to put it to you that you went to OUTA with an intention to try and avoid being one of the defendants in the delinquent director application that they were considering bringing and then said something false to them about Ms Myeni to try and put yourself in a good light to avoid that, what is your response?

MS KWINANA: I don't think the reason for me to be excluded in the application is because of the whistleblowers, it is because of the clarification of the
20 incorrect things that they heard about me, like for instance one of them was BNP Capital where they were thinking that I knew who the directors of BNP Capital because the director of BNP Capital is a co-director in another company with my cousin's brother.

CHAIRPERSON: Ja, Ms ...[intervenes]

MS KWINANA: So basically those are the things that they had misinformation about. I don't think they are reason for them to exclude me is because of my lack of English.

ADV HOFMEYR: No, no, no Ms Kwinana that is not what I was saying at all. I am not actually asking you about their reason, you could never know their reason, I am asking about what you went there to achieve, because what has been revealed now is that there's a transcript of a meeting that you had with OUTA, eight days after you left SAA, in
10 which you on two occasions make it very clear that what Ms Myeni was including in these whistleblower reports was "incorrect information", you say in your evidence today that is false, that you did not say that, and that you have not ever I understand your evidence to be had that knowledge that she was doing things and putting false information in Whistleblower reports, but if that is the truth then I put it to you, you – your motivation for then making up what is false, a lie, served your interests because it puts you as an adversary to her, painted her in a worse light so that you
20 could escape being one of the defendants in the delinquent director application.

If that is not it Ms Kwinana how else do you explain if this is accurate the lie that lies here. You were then lying that she used incorrect information in the Whistleblower reports.

MS KWINANA: Let me respond Chair for the last time. I am saying this document you have just confirmed that it is edited, that is number one, and number two you have asked me that between what I have said here and what is in this document which statement do I stand for, I am saying Chair for the last time I am standing by the information that I have said in this Commission.

CHAIRPERSON: If it were to be found that you did actually say what is reflected here would you agree that
10 then if what you have told us is true, namely that you don't know whether Ms Myeni was involved in preparing false reports will you not accept that then you were untruthful when you spoke to OUTA if it were to be found that you did say this?

MS KWINANA: Chair you know without firstly I wasn't even informed that I am recorded and secondly here I am speaking under oath, there was no oath here Chair, and therefore when you say between what I am saying here today and what is stated here I am saying Chair I stand by
20 what we have heard here before.

CHAIRPERSON: Yes, but that does not answer my question. The fact that you may not have been speaking under oath at OUTA offices cannot change whether what you said is true or not is it? Even if – in other words something doesn't become true only because you are under

oath. When you are not under oath you can tell something that – you can be untruthful or you can be truthful. Now my question to you was if it were to be found that you did say this at OUTA as reflected here, but now you are saying that is not true, what is true that you do not know anything about Ms Myeni making false whistleblower reports, would you accept that you were therefore untruthful when you said this to OUTA, if it is found that you did say this?

10 **MS KWINANA:** Chair this OUTA report, this report, as I said it is edited, that is number one, number two Chair this report I was never informed that I am being recorded, and thirdly Chair I was never informed that this report will be used against me in any forum and therefore Chair I do not recognise this report.

CHAIRPERSON: I have asked you the same question two times, and each time you have not answered the question. I am going to ask it for the third time and the last time, and see whether you are going to give me an answer. The
20 question is if it were to be found that you did say what is reflected in this report and now given the evidence that you have now given here would you accept that therefore it would mean that you were untruthful in what you said to OUTA about Ms Myeni?

MS KWINANA: Chair I beg not to answer that question.

CHAIRPERSON: You don't have a right not to answer the question Ms Kwinana, but we are going to move ahead, this does not do you any good Ms Kwinana, it does not do you any good. Continue Ms Hofmeyr.

ADV HOFMEYR: Thank you, Chair I really don't want to take more time, if we had time I would suggest that we play the recording but I am not going to suggest we do that now, we have been here the whole day. What I want to propose is that we give Ms Kwinana the recording and she
10 listens to it, she gets her own transcriber and if there is any part of this transcript that she says is inaccurate she could let us know.

CHAIRPERSON: Yes, she can do a supplementary – an affidavit.

ADV HOFMEYR: Indeed because when transcribers say edited at the top it means they have gone through and they have changed scarred which appeared with two r's into scared, they are editing it for ensuring that there are no typographical errors, they are not editing to change the
20 task which is to have an accurate reflection of the document, but I can see Ms Kwinana is not comfortable relying on this, so we will make the recording available to her and she can let us now in a supplementary affidavit if she disputes the transcript that has become EXHIBIT ED33.26.

The last aspect of your interview there Ms Kwinana is what you had said about Talente Myeni, Dudu Myeni, Duduzilo Myeni's son, in his involvement in BNP, do you remember what you told OUTA what is Mr Myeni's involvement in BNP?

MS KWINANA: No Chair I don't remember.

ADV HOFMEYR: Okay, because your affidavit before the Commission – let me just deal with that, give me a moment – it is at page 6 of Exhibit DD33, you were asked again
10 about the allegations that Ms Myeni's son, Mr Talente Myeni, was in a relationship with Mr Masotsha Mgadi, Mr Masotsha Mgadi was the person who was involved in BNP, did you know that, that Mr Mgadi was involved in BNP?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Okay, so the question was what do you know about the allegations that Talente Myeni had a relationship with Mr Masotsha Mgadi and your answer there on affidavit was I have no knowledge of the alleged relationship between Mr Myeni and Mr Mgadi. So did you
20 not tell OUTA anything about that relationship?

MS KWINANA: I don't remember Chair.

ADV HOFMEYR: Okay so you could have.

MS KWINANA: I don't know, I really do not know, I don't know what is it that I would have told OUTA because I really do not know.

ADV HOFMEYR: Do you remember telling them that you had seen Mr Talente Myeni and Mr Masotsha Mgadi together at SAA?

MS KWINANA: Definitely no.

ADV HOFMEYR: Do you remember telling them that they are likely – that they are associates, business partners?

MS KWINANA: No, I don't know that.

ADV HOFMEYR: Do you remember telling them that you had seen them in Sandton together?

10 **MS KWINANA:** No.

ADV HOFMEYR: Okay, that is what appears in the recording of the meeting with OUTA. We did not get it transcribed, there was insufficient time, we got the recording, we will provide it to Ms Kwinana and she can tell us why today she confirms under oath that she did not say those things whereas the recording indicates that she did.

Chair I would then like to just go to the concluding aspects if I may, unless there is something further.

CHAIRPERSON: Ja.

20 **ADV HOFMEYR:** Ms Kwinana we will make likely – we will likely make submissions in due course through the Chairperson that seek to summarise the effect and content of your evidence over the last three days, and this is the opportunity where I indicate to you what the submissions are likely to be and you have an opportunity to respond.

CHAIRPERSON: Maybe before you do that Ms Hofmeyr, I am sorry, maybe I should just deal with this one thing which continues to be a matter of concern to me, with regard to Ms Kwinana's evidence. That is about that agreement Ms Kwinana between Slipknot and Ms Memela and the fact that you gave a wrong address there. I heard you say something like maybe the reason why you put a wrong address was that you did not understand *domicilium*, is that correct?

10 **MS KWINANA:** Yes Chair, plus the fact that we have been there for many years and therefore basically that is what would come to my mind.

CHAIRPERSON: You don't mean that between 2013 and 2015 whenever you were required to write your business address you would have written 92 President Park, that is not what you mean, is it what you mean? If we go and check all documents between the time when you vacated 92 President Park and 21 April 2015 are we going to find that whenever you were required to put in your business
20 address or Slipknots address this is the address you put all the time?

MS KWINANA: Maybe Chair.

CHAIRPERSON: Maybe?

MS KWINANA: Yes.

CHAIRPERSON: You think you may have done that?

MS KWINANA: I may have done that.

CHAIRPERSON: H'm, but in that case it wouldn't have been about *domicilium* would it have been?

MS KWINANA: It would be the business address.

CHAIRPERSON: H'm?

MS KWINANA: It would be the business address Chair.

CHAIRPERSON: It would have been the business?

MS KWINANA: It would be the business address.

CHAIRPERSON: Yes, but your business would not have
10 been operating from that address for quite some time isn't it?

MS KWINANA: Yes Chair but as I said I have been there for a long time, hence I haven't even forgotten the business address as it is now including its postal address.

CHAIRPERSON: So you think you would have forgotten the most recent address or the current address where Slipknot was operating from, and you remember that old address? That can't be.

MS KWINANA: It is possible Chair because in 2015 I
20 think our – the offices of Kwinana & Associates the offices of Kwinana & Associates were in Lynnwood and Slipknot Investments the address that we had been using for Slipknot Investments is the old address.

CHAIRPERSON: Well when Mr Ndzeke was giving evidence and he had initially I think said that the

agreement between himself and Ms Memela's mother had been entered into in 2015, when certain things were pointed out to him by Ms Hofmeyr he conceded that that agreement could not have been concluded in 2015, as I recall.

ADV HOFMEYR: Indeed.

CHAIRPERSON: He conceded that it was concluded in 2019. Are you going to concede that this agreement could not have been concluded in 2015 Ms Kwinana?

10 **MS KWINANA:** The agreement Chair was ...[intervenes]

CHAIRPERSON: This one?

MS KWINANA: It was concluded in 2015 Chair.

CHAIRPERSON: Okay. Ms Hofmeyr?

ADV HOFMEYR: Thank you. Ms Kwinana so I am going to put the propositions to you to give you an opportunity to respond. We will likely make submissions in due course that while you served at the Board of SAA particularly during the period late 2014, 2015 you created a climate of fear and intimidation in SAA against those who opposed you. Do you dispute that?

20

MS KWINANA: I dispute that Chair.

ADV HOFMEYR: You accused those who stood in the way of the unlawful 30% set aside policy of insubordination and treason, do you dispute that?

MS KWINANA: Sorry what is your question Chair?

ADV HOFMEYR: You accused those who did not – sorry you accused those who stood in the way of the unlawful 30% set aside policy of insubordination and treason.

MS KWINANA: That is not correct Chair.

ADV HOFMEYR: You unfairly favoured AAR and JM Aviation in the components tender, do you dispute that?

MS KWINANA: I dispute it Chair.

ADV HOFMEYR: You awarded a tender to them worth more than R1billion when they should have been
10 disqualified in that tender, do you accept that?

MS KWINANA: I dispute it Chair.

ADV HOFMEYR: You got payments for favouring them in this way to the tune of R4.3million, do you dispute that?

MS KWINANA: I dispute it Chair.

ADV HOFMEYR: You received – sorry you have made up a story that is clearly false involving confidentiality policies and hand delivered statements in order to try and legitimise the benefits that you received for favouring AAR and JM Aviation in this way, do you dispute that?

20 **MS KWINANA:** I dispute it Chair.

ADV HOFMEYR: And you helped Ms Memela to hide the fact that she also got a benefit from this because of the way in which she assisted JM Aviation, do you dispute that?

MS KWINANA: I dispute it Chair.

ADV HOFMEYR: We will also argue in due course that you have been a dishonest witness Ms Kwinana, do you have a response to that?

MS KWINANA: I also dispute that Chair.

ADV HOFMEYR: And finally that as an accountant, an auditor, you benefitted personally from payments that the joint auditors of SAA made through business relationships with you, your company, while they were auditing SAA and while you were making decisions to keep appointing them
10 without going through a tender process, do you dispute that?

MS KWINANA: I dispute that Chair.

ADV HOFMEYR: Thank you Chair, those are our final questions.

CHAIRPERSON: Thank you very much. Ms Mbanjwa I am grateful for you that you came up with the proposal that you came up with in terms of no re-examination but you will be submitting something, I think it is helpful particularly because we have finished much later than we thought we
20 would, but Ms Kwinana thank you very much for coming to give evidence and thank you for your cooperation both you and Ms Mbanjwa in terms of assisting the Commission to sit even on a Saturday to try and finish its work because there is not much time left.

Thank you very much to Ms Hofmeyr and her team

for all the hard work and making yourselves available even on a Saturday, thank you very much.

We are going to adjourn, on next week I will be hearing evidence relating to Denel, that is just for the information of the public.

MS MBANJWA: Apologies Chair, I just wanted the timelines about those submissions on re-evaluation, is it in order if we submit them on or before the end of November?

CHAIRPERSON: Ja, that would be fine.

10 **MS MBANJWA:** Thank you.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 9 NOVEMBER 2020