

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

**10 DECEMBER 2020**

**DAY 322**



**Gauteng Transcribers**  
**Recording & Transcriptions**

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 10 DECEMBER 2020**

**CHAIRPERSON:** Good morning Mr Seleka, good morning everybody.

**ADV SELEKA SC:** Morning Chairperson.

**CHAIRPERSON:** Are you ready?

**ADV SELEKA SC:** We are ready Chairperson.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Thank you. Chairperson today we have – this morning we have Ms Mothepu – Mosilo Mothepu who  
10 will testifying. I can do the background probably after she has taken an affirmation or an oath. Is that fine Chairperson?

**CHAIRPERSON:** Okay please administer the oath or affirmation.

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

**MS MOTHEPU:** Ms Mosilo Mikalina [?] Mothepu.

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

**MS MOTHEPU:** No I do not.

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

**MS MOTHEPU:** Yes.

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

me God.

**MS MOTHEPU:** So help me God.

**REGISTRAR:** Thank you.

**MS MOTHEPU:** Thank you.

**CHAIRPERSON:** You may be seated Ms Mothepu.

**ADV SELEKA SC:** Thank you Chairperson. Chairperson we will be using Eskom Bundle 14.

**CHAIRPERSON:** Your voice is soft.

**ADV SELEKA SC:** Voice is soft.

10 **CHAIRPERSON:** This morning.

**ADV SELEKA SC:** We will be using...

**CHAIRPERSON:** Please raise it.

**ADV SELEKA SC:** Thank you Chair. We will be using Eskom Bundle 14 and in that bundle ...

**CHAIRPERSON:** Eskom Bundle 14

**ADV SELEKA SC:** 14.

**CHAIRPERSON:** 14?

**ADV SELEKA SC:** 14.

**CHAIRPERSON:** Ja okay.

20 **ADV SELEKA SC:** Exhibit U34 in that bundle Chairperson. U32 – Exhibit U32.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And Chair what the Chairperson will find there are two affidavits of Ms Mothepu. The one affidavit is on page 570 and the second affidavit which is

the focus of her testimony this morning is on page 679.1 – 679.1

**CHAIRPERSON:** Okay. Maybe I should just say that I announce that today I will be hearing evidence relating to McKinsey that is going to happen later today. So we are starting with Eskom related – we are starting with evidence relating to Ms – or the dismissal of Mr Nene and the appointment of Mr Des Van Rooyen as his successor.

**ADV SELEKA SC:** Correct Chair.

- 10 **CHAIRPERSON:** So Ms Mothepu's evidence is relevant for – or relevant to the dismissal of the Mr Nene as Minister of Finance and the appointment of Mr Des Van Rooyen as Minister of Finance.

**ADV SELEKA SC:** Correct Chairperson yes.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** You can take it from there.

**ADV SELEKA SC:** I think the air conditioner is making...

**CHAIRPERSON:** Is making noise.

- 20 **ADV SELEKA SC:** Pulling noise.

**CHAIRPERSON:** They will adjust it.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Ja okay.

**ADV SELEKA SC:** Thank you. Chairperson then just to by way of a background as the Chairperson has indicated that

the – there are two affidavits of Ms Mothepu we will deal with one of them. The others relate to matters that will be traversed in due course on a date that will be arranged with Ms Mothepu. And the second affidavit which is on page 679.1 which is dated 8 December 2020 deals with matters that the Chairperson has alluded to.

Ms Mothepu if you may please go to that page 679.1?

**MS MOTHEPU:** I am there Chairperson.

10 **MS MOTHEPU:** Thanks. The affidavits start on page 679.2 and it runs up to page 679.7.

**MS MOTHEPU:** Correct.

**ADV SELEKA SC:** You see that. There is a signature there on – above your name Mosilo M Mothepu you confirm that to be your signature?

**MS MOTHEPU:** I do confirm Chairperson.

**ADV SELEKA SC:** Ja the affidavit signed on the 8 December 2020 and you confirm this to be your affidavit?

**MS MOTHEPU:** That is correct.

20 **ADV SELEKA SC:** Chair I – could we Chair the same time confirm the first affidavit so we can mark it as an exhibit as well?

**CHAIRPERSON:** That is?

**ADV SELEKA SC:** That will be on page ...

**CHAIRPERSON:** That is the one starting at 570?

**ADV SELEKA SC:** That is correct Chair 0 570 yes.

**CHAIRPERSON:** It would be Exhibit what?

**ADV SELEKA SC:** I beg your pardon Chair?

**CHAIRPERSON:** What exhibit will it be?

**ADV SELEKA SC:** That will be Exhibit U32.1 U32.1

**CHAIRPERSON:** U32.1 of U321?

**ADV SELEKA SC:** U32.1.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Point 1 Chair.

10 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Thank you Chair. It has been a long weekend.

**CHAIRPERSON:** The affidavit of Mosilo Mothepu starting at page 570 is admitted as Exhibit U32.1.

**ADV SELEKA SC:** U32 – thank you Chair. Then the one on page 679.2 to be admitted as Exhibit U32.2.

**CHAIRPERSON:** The affidavit of Mosilo Mothepu starting at page 679.2 is admitted as Exhibit U32.2.

**ADV SELEKA SC:** Thank you Chair.

20 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Ms Mothepu just by way of a background could you tell the Chairperson what is your profession – your qualification and your background in terms of your career?

**MS MOTHEPU:** Certainly. I have a B.Com Accounting

Degree from the National University of Lesotho which I obtained in 2000. And then I have a Honours in Corporate Finance and Investment at – from the Witwatersrand University. I started working as a banker at Investec private bank in 2002 and I moved across to I think Nedbank as a – a senior corporate banker dealing with municipalities and public sector. And I was invited by the City of Joburg Jason Ngobeni to head up their head of investor relations programs when the city started issuing  
10 diamond support bonds and so I accepted that appointment. I was there for three years and that is where I met with Regiments Capital as they were the City's sinking fund on managers. And I moved there in 2007 in October and I was primarily in the advisory division reporting to Eric Wood.

**ADV SELEKA SC:** Oh sorry when you say you moved there are you now talking about moving to Regiments?

**MS MOTHEPU:** Yes I resigned from the City of Johannesburg.

20 **ADV SELEKA SC:** The City of Johannesburg.

**MS MOTHEPU:** And in – and I was appointed as an associate director at Regiments.

**CHAIRPERSON:** Which year did you move away – resign from the City of Johannesburg?

**MS MOTHEPU:** I think October/November 2007. Yes and I



was appointed as an associate director reporting to Mr Eric Wood who was one of the directors and shareholders. So the significant mandate that I held I work on – you actually had a discussion with Mr Phetolo Ramosebudi last week. I drafted that mandate letter with Priscilla Mabelane and our mandate was essentially to assist the airports company to upgrade their habit and investment program in preparation for the 2010 World Soccer – Soccer World Cup.

**ADV SELEKA SC:** Yes.

10 **MS MOTHEPU:** So we assisted them in updated their capital investment program, a funding plan and then the execution thereof. So I led that transaction along with Eric Wood.

**ADV SELEKA SC:** so – sorry the full name of Regiments is that Regiments Capital Pty Ltd?

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** So you joined them towards the end of 2007?

**MS MOTHEPU:** Yes October/November.

20 **ADV SELEKA SC:** October/November 2007 as an associate director?

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** Associate director with Mr Eric Wood?

**MS MOTHEPU:** Pardon?

**ADV SELEKA SC:** Did you say associate director with Mr

Eric Wood – together with?

**MS MOTHEPU:** So Eric is a director.

**ADV SELEKA SC:** Is a director okay.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** So for how long...

**MS MOTHEPU:** So are Mr Leballo associate yes.

**ADV SELEKA SC:** Oh I see. Yes. So for how long were you with Regiments?

**MS MOTHEPU:** I was with Regiments for three years.

10 ACSA kept me busy.

**ADV SELEKA SC:** So that is until 2010?

**MS MOTHEPU:** Absolutely then I moved to Transaction Capital as a debt capital specialist and then I decided to go Wits and do my M.Com and I managed to do the course work but my thesis is still outstanding. And then I was approached by KPMG to be an associate director at their division in I think it was Infrastructure of Projects and that was now November 2014 and I was an associate director there as well. So I got a call in May 2015 from Eric Wood

20 and we had coffee.

**ADV SELEKA SC:** May 2015?

**MS MOTHEPU:** Yes. And he told me that would I consider returning to Regiments it has changed significantly working with McKinsey one of the best consultancy firms in the world and now they have got Blue Chip Public Sector

clients and they are doing very structured and interesting work. And he essentially gave me a black – blank cheque and he gave me my salary and a sign-on bonus.

**ADV SELEKA SC:** So by that...

**CHAIRPERSON:** He gave you?

**MS MOTHEPU:** The salary increases from what I was earning at KPMG and a sign-on bonus to have me back.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Sorry I do not know whether...

10 **ADV SELEKA SC:** Ja the microphone is not good.

**MS MOTHEPU:** Pardon?

**CHAIRPERSON:** There is an echo or whatever I am not sure there is something that..

**ADV SELEKA SC:** Ja there is – the sound.

**CHAIRPERSON:** Ja where are the technical people? Also if the technical people can switch off the screen. I assume that they can switch it off without interfering with television and so on because it was used for the witness who needed to use a screen for – to show some figures. Ja. Okay let

20 us try again and see whether the echo is still ...

**MS MOTHEPU:** Is that better? Or am I too close?

**CHAIRPERSON:** Maybe you are too close but probably that is not the only reason. Do not be too close do not be too far.

**MS MOTHEPU:** Okay.

**CHAIRPERSON:** So ja okay let us try again. You said – you were talking about Mr Eric Wood having giving you a blank cheque or whatever?

**MS MOTHEPU:** Yes he was...

**CHAIRPERSON:** So?

**MS MOTHEPU:** He was very keen ...

**CHAIRPERSON:** And you said something about your salary that is what I need?

**MS MOTHEPU:** Yes he substantially increased my salary  
10 from KPMG to Reg –

**CHAIRPERSON:** Tripled it?

**MS MOTHEPU:** No I think there was a KPMG I think I was on 1.3 and then I went to 1.75 and then...

**CHAIRPERSON:** Oh he

**MS MOTHEPU:** And then I got an R500.000,00 sign-on bonus.

**CHAIRPERSON:** Oh okay.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay.

20 **MS MOTHEPU:** So he was keen for me to come.

**CHAIRPERSON:** Yes Okay.

**ADV SELEKA SC:** Yes and it was good. So I started at Regiments on the 15 June and we had a good rapport.

**CHAIRPERSON:** Is that 2015?

**MS MOTHEPU:** 2015.

**ADV SELEKA SC:** Sorry Chair.

**MS MOTHEPU:** Yes. And we had a good repore. I found out that they had contracts with McKinsey and the Public Sector clients were Eskom, Denel, SA Express and Transnet and if felt good to be part of a – I would say a transformed black advisory firm because when I had left there; there were only fifty people and when I – when I returned there were two hundred and fifty people. So I was so proud that black professionals can have a credible  
10 business.

**ADV SELEKA SC:** Can you – can you tell the Chairperson your relationship with Mr Eric Wood?

**MS MOTHEPU:** I think he took me everywhere. So...

**CHAIRPERSON:** Is that now including before you left or only after you came back?

**MS MOTHEPU:** After I came back. So I would go with him to all the meetings with Anoj Singh, Gary Pita, Matshela Koko, SA Express and Unathi Njanga [?] so essentially where every single meeting I would accompany him, take  
20 notes and I will execute. So we had a very good relationship. And we were both early birds and so he used to come...

**ADV SELEKA SC:** Just before that what – what is your position now in June 2015?

**MS MOTHEPU:** Oh a Principle.

**ADV SELEKA SC:** Is Principle is that equivalent to a CEO?

**MS MOTHEPU:** No it is – it is below partner.

**ADV SELEKA SC:** I see. Okay you may proceed.

**CHAIRPERSON:** And below – I assume partner obviously must be above CEO?

**MS MOTHEPU:** They took on McKinsey's hierarchy so it is Principle and then you become a partner. But with Regiments it is below a director.

10 **CHAIRPERSON:** And CEO is where in that hierarchy?

**MS MOTHEPU:** CEO was I would say Litha Nyhonyha so I was two levels below him.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** Yes so proceed you were saying the two of you were early birds?

**MS MOTHEPU:** Yes we were early birds. We had a very good relationship. We would share professional and private stories in the – the – so I used to have coffee with  
20 him from around seven o'clock. And so one morning on the 26 October 2015 out of the blue he tells me that the President of the Republic Jacob Zuma was going to fire Nhlanhla Nene who was then the Finance Minister. Now I did not understand the significance of what he was telling me I was actually quite bored because our previous

President had been doing various re-shuffles and I did not understand why I was being told about this one Minister getting fired. And he told me that the new Minister will be more pliable and he will approve various transactions that the old Minister was not approving. He mentioned too the nuclear deal and hybrid capital which he wanted to potentially have a mandate from the state owned companies so that they can earn a fee but a lot of the state owned companies were reluctant to issue it.

10           So subsequent to that – so I did not ask him how is the people.

**CHAIRPERSON:** I am sorry did you say he mentioned two like projects or?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** One was the nuclear deal the other one was what?

**MS MOTHEPU:** Hybrid capital.

**CHAIRPERSON:** Oh. Were those projects that Regiments was working on already or had been working on that you  
20 knew about? Or was he mentioned to you projects that were still being planned?

**MS MOTHEPU:** He had proposed it to the CFO's of I think Eskom and Transnet because they were the ones who had the largest funding debt requirements and the CFO's response was that the board does not understand the

instrument. So they were very reluctant to approve an extracted instrument that they did not understand. So it was something that they had already proposed.

**CHAIRPERSON:** Now which of the two projects are you talking about now nuclear?

**MS MOTHEPU:** The Hybrid Capital.

**CHAIRPERSON:** Yes. Okay.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** And were you at that time before he told  
10 you about Mr Zuma's plan to fire Mr Nene were you aware of the existence of those projects?

**MS MOTHEPU:** I – we have had discussions with him regarding the Hybrid Capital that is why I knew the reluctance of the CFO's and the boards to approve them. But the nuclear deal no I had only heard about it in the media.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** So it was the first time.

**CHAIRPERSON:** That you heard about it.

20 **MS MOTHEPU:** He discussed it with me.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** Correct. And I have to say that he did not tell me who the new Finance Minister was and I did not – I was not curious as to why he is telling me and who told him. Because for me I did not understand the significance



of it.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** Then he went to...

**ADV SELEKA SC:** Just before that.

**MS MOTHEPU:** Sorry.

**ADV SELEKA SC:** Ms Mothepu. What sort of services does Reg – did Regiments offer? Is it in the – I see you have qualifications in finances.

10 **MS MOTHEPU:** Hm.

**ADV SELEKA SC:** Was that the services Regiments were offering?

**MS MOTHEPU:** Well ja Regiments had asset management. It had advisory, it had management consulting and it had securities. So I was in the advisory division. So most of our services were in the – in providing public sector clients with capital raising, debt restructuring, financial risk management, drafting funding plans for them, the club loan.

20 **ADV SELEKA SC:** Yes.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** So that is in the finance field?

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** In the finance field.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** Now the – what you refer to as the Hybrid Capital. If you break it down for us in layman's terms so that we can understand it.

**MS MOTHEPU:** Okay.

**ADV SELEKA SC:** What did it entail?

**MS MOTHEPU:** Okay. So Hybrid Capital is when you raise an instrument that has the characteristics of both equity and debt. And – so that the rating agencies will allocate a little bit of that instruments to equity and debt. And what –  
10 and it is subordinated in terms of the – in the waterfall. So it is senior debt and subordinated debt. And the good thing about it is that for example a preferent share you can defer interest payments so it is quite flexible.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** And Eskom and Transnet had their debt service ratios were very high. So if the issued a Hybrid Capital some of that debt.

**ADV SELEKA SC:** Debt.

**MS MOTHEPU:** Will be to – will be in equity where it will  
20 not – detriment their debt service ratio and then they will not get an A – a credit downgrade.

**ADV SELEKA SC:** Ja. My understanding of a debt which is subordinate is that means it is not made immediately payable – repayable. Is that correct?

**MS MOTHEPU:** Yes you can defer the interest payments.

**ADV SELEKA SC:** So they defer the payments.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** So this is the concept.

**MS MOTHEPU:** Of our...

**ADV SELEKA SC:** Regiments was proposing to SOE's at the time.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** So we – ja they subordinate a debt and kind of increase your capital so you look good in the books  
10 – your debt can be paid over time.

**MS MOTHEPU:** Yes. Plus your – you will look good with your credit rating agencies which will keep your credit rating on a – an investment grade which means your cost of borrowing will be cheaper.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** Plus some of the existing loan agreements had ratios that could not be breached. So...

**ADV SELEKA SC:** Do you know – do you know which SOE had been offered this proposal?

20 **MS MOTHEPU:** Transnet and Eskom because those were the ones with the largest funding requirements and a lot of pressure on their balance sheet.

**ADV SELEKA SC:** I see. So Mr Eric Wood then tells you Minister Nene will be replaced by a more pliable...

**CHAIRPERSON:** Maybe – I am sorry Mr Seleka.

**ADV SELEKA SC:** Thank you Chair.

**CHAIRPERSON:** When you have that debt that is a subsidiary you said?

**MS MOTHEPU:** Subordinated.

**CHAIRPERSON:** Subordinate that probably means that the client whether it is Eskom or Transnet ends up paying more interest than it otherwise would – would have had is it not? Because if you make the period of the loan longer then you will – you might be happy that you do not have to pay now  
10 but for quite some time but later the interest would hit you.

**MS MOTHEPU:** Correct.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** That is very true.

**CHAIRPERSON:** Ja.

**MS MOTHEPU:** Plus I think they are a little bit more expensive because they are riskier. So they are ranked below the senior loans so they are subordinated. So of course the investor would want a little bit more return for the subordination.

20 **CHAIRPERSON:** Okay alright.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** Thank you. So that may well have been the reason why the then Minister Nene was reluctant to accept these proposals.

**MS MOTHEPU:** I suspect so.

**ADV SELEKA SC:** So you say he did not say – he did not tell you however who is the pliable Minister who will replace Minister Nene?

**MS MOTHEPU:** No he did not tell me who the new Minister would be.

**ADV SELEKA SC:** Yes so you have – you have placed the date of this conversation on the 26 October 2015 and I mean what is your observation of events thereafter?

**MS MOTHEPU:** From what I have been ...

10 **CHAIRPERSON:** Before – before that how certain are you that that was the date?

**MS MOTHEPU:** There is a – he sent me an email.

**CHAIRPERSON:** Ja.

**MS MOTHEPU:** Afterwards.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** Okay.

**CHAIRPERSON:** Alright – yes.

20 **ADV SELEKA SC:** So tell the Chairperson about that email and does it relate to what he was telling you?

**MS MOTHEPU:** Oh.

**CHAIRPERSON:** Ja we can go to the email.

**MS MOTHEPU:** Okay.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Mr Seleka should be able to guide you if you do not find it.

**ADV SELEKA SC:** Have you found it?

**CHAIRPERSON:** Have you found it?

**MS MOTHEPU:** Yes I have.

**CHAIRPERSON:** What page if you look at the black numbers top left corner of the page?

**ADV SELEKA SC:** 679.8 Chairperson.

**MS MOTHEPU:** Yes.

10 **CHAIRPERSON:** 679.8.

**ADV SELEKA SC:** .8.

**MS MOTHEPU:** It is interesting because when I first went to the Public Protector I said and told her but then I retrieved my Regiments email and then that is why I can say it was the 26 of October.

**CHAIRPERSON:** Oh.

**MS MOTHEPU:** So...

**ADV SELEKA SC:** Oh so – sorry so that the Chairperson...

**CHAIRPERSON:** Okay I am at 679.8.

20 **MS MOTHEPU:** Correct.

**CHAIRPERSON:** Okay talk about that email?

**MS MOTHEPU:** So it is National Treasury 26 October 2015 as you can see it is an email from Eric Wood on Monday what time is that?

**CHAIRPERSON:** It is ...

**ADV SELEKA SC:** The time...

**CHAIRPERSON:** It is eighteen minutes past ten on the 26<sup>th</sup>.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** October 2015.

**MS MOTHEPU:** To Mosilo Mothepu.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** So he comes to my desk .

**CHAIRPERSON:** And that email address there was ...

10 **MS MOTHEPU:** Is my email address.

**CHAIRPERSON:** Was your email address at Regiments?

**MS MOTHEPU:** At Regiments.

**CHAIRPERSON:** Okay that is [mosilom@regiments.co.za](mailto:mosilom@regiments.co.za).

**MS MOTHEPU:** Mosilo. Yes.

**CHAIRPERSON:** Okay continue.

**MS MOTHEPU:** Then he tells me that he has sent me this document and I should keep it because...

**CHAIRPERSON:** I am sorry. The email just says one attachment 18KB is that right?

20 **MS MOTHEPU:** Yes.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** And this is the attachment.

**CHAIRPERSON:** And is the attachment the document that starts at page 679.9?

**MS MOTHEPU:** That is correct Chair – Mr Chair.

**CHAIRPERSON:** Which is headed National Treasury discussion points key initiatives?

**MS MOTHEPU:** Yes. So...

**CHAIRPERSON:** Okay was it just that document – oh that must have been just that document.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Not the next one as ...

**MS MOTHEPU:** A – there is twelve initiatives so  
10 essentially these were the projects that they wanted the  
new Minister to approve. For example if you go to one that  
we have just discussed number 6. Hybrid debt capital it  
says?

“Support the issuance of Hybrid debt issuance by SOE’s in  
order to bolster their equity positions in particular Eskom  
ensuring that the Hybrid instruments are in fact quasi debt  
i.e. subordinated debt and that they do not confer real  
equity rights and benefits.”

So there that hundred basis points is the fee that they want  
20 to earn if they raise R50 billion of Hybrid Capital. That is  
1% of R50 billion is how much?

**ADV SELEKA SC:** Is it R500 million? Or is it...

**CHAIRPERSON:** Finance person and she ...

**ADV SELEKA SC:** She should know.

**CHAIRPERSON:** Document from your company.



**MS MOTHEPU:** 10% is ja – it is something big.

**ADV SELEKA SC:** [Inaudible].

**MS MOTHEPU:** 1% of R50 billion somebody.

**ADV SELEKA SC:** R5 billion it is R5 billion.

**MS MOTHEPU:** No – it is R5 billion.

**ADV SELEKA SC:** R5 billion.

**MS MOTHEPU:** Yes so this was the fee R5 billion that they envisioned if Eskom issues a Hybrid Capital. And then the rest I do not think we should go but it was just – they  
10 wanted - the minister projects so that he looks good but the engine room will be Regiments.

**CHAIRPERSON:** Now, let us ...[intervenes]

**MS MOTHEPU:** And though ...[indistinct] [speaker not clear]

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** The ...[indistinct] [Speaker unclear] approves these ...[intervenes]

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** contracts(?). [Speaker not clear]

**CHAIRPERSON:** Ja, that document is headed: National  
20 Travel - Treasury Discussion Points – T Initiatives. Then it has got 12 topics.

**MS MOTHEPU:** Yes, Chairperson.

**CHAIRPERSON:** Yes.

1. Is Collateralised Municipal Debt.
2. DBS ...[intervenes]

[Parties intervening each other – unclear]

**MS MOTHEPU**: Find model.

**CHAIRPERSON**: ...find the model.

- “3. Risk Charge on National Treasury Debt.
4. Debt Redemption Management.
5. Collateralised Property Development.
6. Hybrid Debt Issuance.
7. Project and Specialised Finance.
8. South African National Black Bank.

10 That is about facilitate the establishment of a black bank in order to ensure state business supports black industry.

9. A South African National Black Insurer.
10. SA National Black Life Company.
11. Centralised Procurement of Key-Items.
12. Collection of Municipal Debt.

I have mentioned 8 what it seems to be about according to the document. Nine, which refers to the South African Black – National Black Insurer. The document says:

20 “Ensure that the state supports the establishment of a National Black Insurer for the short term insurance requirements of state. Vehicle fleet, aircraft infrastructure, insurance and other insurance.

The National Insurer will work closely with state to ensure that the right product and partnerships are

established for the benefit of all.

And the Supply National Black Life Company, the document says:

“Assist in the establishment of a National Black Life Company for the life insurance requirements of state and state employees (life cover, general cover, credit life, additional investment products).”

In terms of the first time: Collateralised Municipal Debt is:

10           “Assist hereto municipal entities to efficiently tap capital markets through facilitating the collateralisation of debt with the financial assistance of De Beers, AN and PIC through support for the...”

Is it me-se-mine(?)? ...[intervenes]

**MS MOTHEPU:** [Indistinct] [Speaker unclear]

**CHAIRPERSON:** “...portion of the collateralised debt.

This will assist the infrastructural required of the country and will (with empty(?) oversight and assistance) begin to instil financial discipline,  
20           inherent lacking in the tier to municipalities.

Approximately R 20 billion per annum at thirty ...[intervenes]

**MS MOTHEPU:** [Indistinct]

[Parties intervening each other – unclear]

**CHAIRPERSON:** [Indistinct]

**MS MOTHEPU:** This is ...[intervenes]

**CHAIRPERSON:** It ...[intervenes]

[Parties intervening each other – unclear]

**MS MOTHEPU:** [Indistinct]

**CHAIRPERSON:** It sounds like ...[intervenes]

[Parties intervening each other – unclear]

**MS MOTHEPU:** [Indistinct] [Speaker unclear]

**CHAIRPERSON:** It sounds like plans for something  
...[intervenes]

10 **MS MOTHEPU:** Yes, so ...[intervenes]

**CHAIRPERSON:** ...that was to be proposed. Is that  
correct?

**MS MOTHEPU:** Exactly. So if – the fee will be ...[indistinct]  
[Speaker unclear] which is 0.3% of R 20 billion. Yes.

**CHAIRPERSON:** Am I right to say, it sounds like plans  
...[intervenes]

**MS MOTHEPU:** Yes, these ...[intervenes]

**CHAIRPERSON:** ...or certain projects that ...[intervenes]

[Parties intervening each other – unclear]

20 **MS MOTHEPU:** [Indistinct] [Speaker unclear]

**CHAIRPERSON:** ...propose?

**MS MOTHEPU:** Yes. So these are the new key initiatives.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** But they wanted the new minister to look at,  
approve and ...[indistinct] [Speaker unclear] they have also

put their fee on each project.

**CHAIRPERSON**: Project, yes.

**MS MOTHEPU**: Yes.

**CHAIRPERSON**: Now that – what you have just said, of course, is not written here. Is that because that is what he told you or where do you get that from?

**MS MOTHEPU**: Yes, that is what he told me when he sent me this. He told me that these will be the new minister's initiatives.

10 **CHAIRPERSON**: Ja.

**MS MOTHEPU**: And I should say that because he has bad admin skills. And indeed I say it. It is all here.

**CHAIRPERSON**: Ja. So he sent as a document ...[intervenes]

**MS MOTHEPU**: An email.

**CHAIRPERSON**: ...that reflected the new initiatives that would be the new minister's initiatives?

**MS MOTHEPU**: Yes.

**CHAIRPERSON**: Is that correct?

20 **MS MOTHEPU**: That is correct.

**CHAIRPERSON**: But proposed by him?

**MS MOTHEPU**: By him, yes.

**CHAIRPERSON**: Or Regiments.

**MS MOTHEPU**: Exactly.

**CHAIRPERSON**: He said you must keep it safely because

he had bad admin.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay alright.

**MS MOTHEPU:** Yes, Mr Chair.

**CHAIRPERSON:** Okay continue Mr Seleka.

**MS MOTHEPU:** It is worth mentioning that ...[intervenes]

**ADV SELEKA SC:** Yes...[intervenes]

**MS MOTHEPU:** Oh, sorry.

**CHAIRPERSON:** Yes.

10 **ADV SELEKA SC:** Chair ...[intervenes]

**CHAIRPERSON:** Or maybe let her mention what she wants to mention.

**ADV SELEKA SC:** Oh, okay.

**MS MOTHEPU:** It is worth mentioning. In the Regiments' papers, they – the three directors have instigated court cases to declare each other a delinquent director. He sent this same email to Salim Essa at eight o'clock. So I will try and get the court documents.

**CHAIRPERSON:** Yes, yes.

20 **MS MOTHEPU:** So... Yes.

**CHAIRPERSON:** Yes, okay alright.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** So what Ms Mothepu is trying to say Chair, which she told us yesterday, is that this email with the

document is part of the court papers between Mr Eric Wood and Regiments.

**ADV SELEKA SC:** And so there is ...[intervenes]

**CHAIRPERSON:** Corroboration of what she says.

**ADV SELEKA SC:** Yes. That this email would have been sent to Mr Salim Essa prior to it coming to her. And is dealt within the papers and she will try to locate that for us.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Ja, okay alright.

10 **ADV SELEKA SC:** But what I wanted to say to say to the Chairperson because you were reading those paragraphs. Particularly, paragraph 8 and paragraph 9. It is interesting. They say it is a black bank.

“Facilitate the establishment of a black bank in order to ensure state business supports black industry.”

And when you look further Chair.

20 “The stage wage accounts, SOE, provincial governments and the municipalities will use the services of this bank as opposed to the services of the current commercial banks.”

[laughs]

**CHAIRPERSON:** I did not pick up that part.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** You see the same thing? In the next paragraph, that is targeted but actually to the state even though they use a black insurer.

“Ensure that the state supports the establishment of a National Black Insurer for the short term insurance requirements of state. Vehicle fleet, aircraft infrastructure, insurance and other insurance.”

So it is a target on government

**CHAIRPERSON:** Yes.

10 **MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** Mr Chair?

**CHAIRPERSON:** H'm?

**MS MOTHEPU:** I wanted us to connect the dots. Something happened in October. From what I have seen from former Finance Minister, Mr Mcebisi Jonas. On the 23<sup>rd</sup> of October, he was taken to Saxonwold.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** And after ...[intervenes]

20 **CHAIRPERSON:** It is two days before you went.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** And he was offered 600 000 in a bag.

**CHAIRPERSON:** Million?

**MS MOTHEPU:** No, a deposit. Six hundred thousand in a



bag and six hundred million ...[intervenes]

**CHAIRPERSON:** I cannot remember the figures  
...[intervenes]

[Parties intervening each other – unclear]

**MS MOTHEPU:** Yes, if he works with them.

**CHAIRPERSON:** H'm.

**MS MOTHEPU:** So he... From what I can recall. He called  
the Minister Nhlanhla Nene and they were ...[intervenes]

**CHAIRPERSON:** Mr Nene?

10 **MS MOTHEPU:** Over the weekend.

**CHAIRPERSON:** Who called?

**MS MOTHEPU:** Mcebisi Jonas.

**CHAIRPERSON:** Oh, ja.

**MS MOTHEPU:** But ...[intervenes]

**CHAIRPERSON:** Yes, he called him on Friday after the  
meeting with the Saxonwold.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** And Mr Nene was on his way to KZN.  
They arranged to meet on Sunday and then Sunday, they  
20 shifted it to ...[intervenes]

**MS MOTHEPU:** To Monday.

**CHAIRPERSON:** ...to Monday morning.

**MS MOTHEPU:** Yes. And they had a conversation in the  
morning on the minister's ...[intervenes]

[Parties intervening each other – unclear]

**CHAIRPERSON:** [Indistinct]

**MS MOTHEPU:** ...balcony.

**CHAIRPERSON:** It was on the balcony. [laughs]

**ADV SELEKA SC:** [laughs]

**MS MOTHEPU:** So after having that conversation, Eric is telling me ...[intervenes]

**ADV SELEKA SC:** Sorry, say again?

**MS MOTHEPU:** At the same time, Nhlanhla Nene and Mcebisi Jonas are having a conversation about what  
10 happened in the weekend. I have been told that the finance minister is going to be fired.

**ADV SELEKA SC:** Oh, just... Just ...[intervenes]

Parties intervening each other – unclear]

**CHAIRPERSON:** Oh, I thought the meeting was on the 23<sup>rd</sup>. It was on the 23<sup>rd</sup> which was a Friday. That is the meeting between Mr Jonas and one of the Gupta brothers ...[intervenes]

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** ...as well as, according to him,  
20 Mr Duduzane Zuma and mister – somebody else who was Mr Duduzane Zuma's friend. And then ...[intervenes]

**MS MOTHEPU:** Bana.

**CHAIRPERSON:** And then...[intervenes]

**MS MOTHEPU:** Bana.

**CHAIRPERSON:** ...they – Mr Jonas and Mr Nene meet at

Treasury, at National Treasury in the balcony in the morning,  
on Monday ...[intervenes]

**MS MOTHEPU**: 26<sup>th</sup>.

**CHAIRPERSON**: And that Monday is the 26<sup>th</sup>.

**MS MOTHEPU**: Yes.

**CHAIRPERSON**: And you say that is the day you were told  
by Mr Eric Wood that Mr Nene was going to be fired.

**MS MOTHEPU**: Correct.

**CHAIRPERSON**: And are you also saying, it was actually in  
10 the morning when you were told this by Mr Eric Wood?

**MS MOTHEPU**: Yes. Remember, I was an early bird.

**CHAIRPERSON**: Yes. [laughs]

**MS MOTHEPU**: And he sent the email at ten.

**CHAIRPERSON**: Yes.

**MS MOTHEPU**: Yes. So it was in the morning.

**CHAIRPERSON**: So you say it was around ten o'clock?

**MS MOTHEPU**: Probably earlier.

**CHAIRPERSON**: Earlier?

**MS MOTHEPU**: Because I think an hour or so passed after  
20 me going back to my office.

**CHAIRPERSON**: Yes.

**MS MOTHEPU**: So it was not immediate.

**CHAIRPERSON**: Yes. So but you are simply saying... It is  
interesting that ...[intervenes]

**MS MOTHEPU**: Yes.

**CHAIRPERSON**: According to Mr Jonas, he was told at the meeting on the Friday at the Gupta house, that Mr Nene would be fired.

**MS MOTHEPU**: Yes.

**CHAIRPERSON**: And when he tells Mr Nene this on Monday, the 26<sup>th</sup>. That is the morning you were also being told by Mr Eric Wood the same story.

**MS MOTHEPU**: That is correct.

**CHAIRPERSON**: Yes.

10 **MS MOTHEPU**: [Indistinct] [Speaker unclear]

**CHAIRPERSON**: Thank you.

**ADV SELEKA SC**: And the email that you have referred the Chairperson to, comes, you say, an hour or so later after Mr Eric Wood had told you this is what is going to happen.

**MS MOTHEPU**: Correct. And he sent that email at around eight o'clock to Salim Essa. If I recall from the court papers.

**ADV SELEKA SC**: From the court papers.

**MS MOTHEPU**: Yes.

**ADV SELEKA SC**: Well...

20 **MS MOTHEPU**: Okay.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Yes.

**MS MOTHEPU**: So during this time, Tebogo Leballo who was the Financial Director of Regiments Capital. He tells ...[intervenes]

**CHAIRPERSON:** [Indistinct]

**MS MOTHEPU:** He tells me ...[intervenes]

**CHAIRPERSON:** Just repeat the name?

**MS MOTHEPU:** Tebogo Leballo.

**CHAIRPERSON:** Oh, okay.

**MS MOTHEPU:** Who was the Financial Director at Regiments Capital. And he tells me that Mohammad Bobat was going to be the minister's special advisor which I thought was quite interesting because he does not have any  
10 public service experience but we continued our day.

**CHAIRPERSON:** Is that on the same day now/

**MS MOTHEPU:** No, it was a few weeks later.

**CHAIRPERSON:** A few weeks later?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** So ...[intervenes]

**CHAIRPERSON:** But still in October? Oh, no. Probably November?

**MS MOTHEPU:** Yes, probably November.

20 **CHAIRPERSON:** Oh, okay.

**MS MOTHEPU:** Probably November.

**CHAIRPERSON:** H'm?

**MS MOTHEPU:** So by that time, the Regiments' directors had decided to split. Erich and Salim Essa wanted to buy Regiments' advisory. So Eric had picked a team that he

wanted to take to Trillian, for form Trillian. So he was supposed to acquire Regiments and then he forms Trillian. So ...[intervenes]

**ADV SELEKA SC:** Sorry. May I interrupt?

**MS MOTHEPU:** H'm.

**ADV SELEKA SC:** They just want you to sit a little bit... Just put the mic away from you. Pull it away from you. Push it away from you a little bit.

**MS MOTHEPU:** Oh.

10 **ADV SELEKA SC:** Push it away.

**MS MOTHEPU:** Okay.

**ADV SELEKA SC:** Ja, a little bit away.

**MS MOTHEPU:** So he invited to signature in Morningside and – sometime in November.

**CHAIRPERSON:** Who invites you now?

**MS MOTHEPU:** Eric Wood.

**CHAIRPERSON:** Mr Wood, ja.

**MS MOTHEPU:** And tells me that he is going to form Trillian and he would like me to the CEO of Trillian Financial  
20 Advisory and he would like Mohammed Bobat to be the CEO of Trillian Management Consulting and Grant Joseph to be the head of – CEO of Securities and Daniel Roy was already CEO of Trillian Asset Management.

What is significant to that is. Because they knew that Mohammed, Mr Bobat was already going to be the minister's

advisor. Eric Wood and Clive Angel and Mr Bobat and Salim Essa started to recruit for the new Trillian Management Consulting CEO and they recruited Ms Bianca Goodson.

She will come soon and you will see that her contract is signed on the 30<sup>th</sup> of November. So they were already planning or what will – to happen in December.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** So Ms Bianca Goodson ...[intervenes]

**CHAIRPERSON:** Do we have a copy of that contract by any  
10 chance? If we do not have it, it will be good to have it.

**ADV SELEKA SC:** Yes. I cannot recall whether it is annexed to Ms Goodson's affidavit but she does refer to the contract and when she – when it was signed.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** If... We will double check ...[intervenes]

**CHAIRPERSON:** Somebody must check, ja.

**ADV SELEKA SC:** It will be part of her affidavit Chair.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** Yes, continue.

**MS MOTHEPU:** Okay. So on the 9<sup>th</sup> of December 2015, so while I was asleep, I received a call from my former life partner, Ambassador Vusi Mathibela.

**CHAIRPERSON:** What is the date now?

**MS MOTHEPU:** This is the 9<sup>th</sup>.

**CHAIRPERSON:** On the 9<sup>th</sup> of December?

**MS MOTHEPU:** Of December.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** I received a call from him. He was the Ambassador ...[intervenes]

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** ...of South Africa and Zimbabwe, based in Harare.

**CHAIRPERSON:** Did you say while you were still sleeping?

10 **MS MOTHEPU:** Yes, he called ...[intervenes]

**CHAIRPERSON:** In the morning?

**MS MOTHEPU:** I used to sleep at ten and the reshuffle(?) was usually on the night ...[indistinct] [Speaker unclear]

**ADV SELEKA SC:** [laughs]

**MS MOTHEPU:** [laughs]

**CHAIRPERSON:** So you are not sure ...[intervenes]

**MS MOTHEPU:** I ...[indistinct] [Speaker unclear] in the morning Chair. [laughs]

20 **CHAIRPERSON:** So you are not sure whether it was the 8<sup>th</sup> or the 9<sup>th</sup>?

**MS MOTHEPU:** Yes. So ...[intervenes]

**CHAIRPERSON:** But ...[intervenes]

**MS MOTHEPU:** Ja.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** H'm.



**CHAIRPERSON:** Alright.

**MS MOTHEPU:** So he calls me. So I will say, he told me that the president had fired the minister. I told him I had known for some time but he could not – how could I possible know? But he was trained in Intelligence. So he always told me never discuss political issues on the phone.

**ADV SELEKA SC:** Sorry ...[intervenes]

**MS MOTHEPU:** So he ...[intervenes]

**ADV SELEKA SC:** Ms Mothepu?

10 **MS MOTHEPU:** H'm?

**ADV SELEKA SC:** So when was Minister Nene fired?

**MS MOTHEPU:** Midnight.

**CHAIRPERSON:** It was on the 9<sup>th</sup>.

**ADV SELEKA SC:** On the 9<sup>th</sup>?

**MS MOTHEPU:** On the 9<sup>th</sup>, yes.

**CHAIRPERSON:** Ja, on the 9<sup>th</sup>.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** So then you get a call from  
20 ...[intervenes]

**MS MOTHEPU:** Yes. As in the president has just made the announcement ...[intervenes]

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** But he told me.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** I was sleeping.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** H'm. So and then you tell her – you tell him that: I have known that for some time.

**MS MOTHEPU:** Yes. H'm.

**ADV SELEKA SC:** And he is wondering how did you know that?

**MS MOTHEPU:** How... Yes. I am not part of the  
10 Deployment Committee of the ANC.

**ADV SELEKA SC:** Yes. And so what do you say in response?

**MS MOTHEPU:** I tell him: I cannot go on. Because he has trained me never to discuss these kind of matters over the phone. So I – he pressed and he did not succeed.

**ADV SELEKA SC:** He succeeded?

**MS MOTHEPU:** He did not. I did not tell him.

**CHAIRPERSON:** Oh, okay.

**MS MOTHEPU:** How I knew. But ...[intervenes]

20 **CHAIRPERSON:** Now the – if I recall correctly. The announcement of Mr Nene's dismissal was either early evening or somewhere close or around midnight but it might have been early evening. Do you recall when the announcement was made or is that something you cannot recall?

**MS MOTHEPU:** I know Nene's date is the 9<sup>th</sup>.

**CHAIRPERSON:** H'm?

**MS MOTHEPU:** I know that the date, the Nene date was the 9<sup>th</sup>.

**CHAIRPERSON:** Ja.

**MS MOTHEPU:** So I suspect he(?) needed(?) late on the 8<sup>th</sup>. Remember, the markets were acted(?) on the 9<sup>th</sup>.

**CHAIRPERSON:** Well, announcement was on the 9<sup>th</sup>.

**MS MOTHEPU:** Was it on the 9<sup>th</sup>?

10 **CHAIRPERSON:** Ja.

**MS MOTHEPU:** Okay.

**CHAIRPERSON:** Ja.

**MS MOTHEPU:** Okay.

**CHAIRPERSON:** It is ...[intervenes]

**MS MOTHEPU:** So difficult to ...[intervenes]

Parties intervening each other – unclear]

20 **CHAIRPERSON:** Ja, because Mr Fuzile who was Director General of the – of National Treasury. He was on his way home in the afternoon when he got a call from Mr Godongwane of the ANC, telling him that he was going to get a new minister who would be accompanied by advisors... I cannot remember whether he said advisors supplied by the Gupta's ...[intervenes]

**MS MOTHEPU:** Gupta advisors.

**CHAIRPERSON:** Or advisors that he did not know.

**MS MOTHEPU:** H'm.

**CHAIRPERSON:** But the announcement at that stage had not been made yet. And that was ...[intervenes]

**MS MOTHEPU:** Okay. That was on the 9<sup>th</sup>.

**CHAIRPERSON:** Ja. Then the question arose. How Mr Godongwane knew before the formal announcement was made.

**MS MOTHEPU:** Okay.

**CHAIRPERSON:** But he has dealt with that in his affidavit  
10 ...[intervenes]

**MS MOTHEPU:** Okay.

Mr Godongwane

**CHAIRPERSON:** ...that has been furnished to the Commission. So the announcement was certainly on the 9<sup>th</sup>.

**MS MOTHEPU:** Okay.

**CHAIRPERSON:** So it means, Mr Magibela also knew before the formal announcement was made.

**MS MOTHEPU:** No, he knew... He called me after.

**CHAIRPERSON:** If it is after, then it could not have been  
20 between the 8<sup>th</sup>, later on the 8<sup>th</sup> in the night and morning of the 9<sup>th</sup>.

**MS MOTHEPU:** It was at midnight, the announcement.

**CHAIRPERSON:** It must have been in the night  
...[intervenes]

**MS MOTHEPU:** Yes, it was midnight.

**CHAIRPERSON:** The 9<sup>th</sup> or 10<sup>th</sup>.

**MS MOTHEPU:** So I... So he made it at night.

**CHAIRPERSON:** So when he spoke to you, he spoke on the basis of what was official?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Oh, okay.

**MS MOTHEPU:** What the president had announced.

**CHAIRPERSON:** Oh, okay.

**MS MOTHEPU:** Yes.

10 **CHAIRPERSON:** Alright. Okay.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** Chair, from the president's website, back in 2015, the statement by President Jacob Zuma on the appointment of the new finance minister, the date is 9 December 2012 at 12:00 a.m.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** At 12:00?

**ADV SELEKA SC:** A.m.

**MS MOTHEPU:** Yes, midnight.

20 **CHAIRPERSON:** Oh. [laughs]

**MS MOTHEPU:** Yes. Hence the ...[intervenes]

**CHAIRPERSON:** Then it should be 12:00 midnight.

**ADV SELEKA SC:** [laughs]

**MS MOTHEPU:** Hence the confusion. [laughs]

**CHAIRPERSON:** Ja, okay. Ja. So it was a – one of the

late night announcements – officials ...[intervenes]

**MS MOTHEPU**: Yes, yes.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Okay alright.

**ADV SELEKA SC**: No, 2015. Oh, they say I said 2015(?).

Parties intervening each other – unclear]

**MS MOTHEPU**: 2015.

**CHAIRPERSON**: 2015, ja.

**ADV SELEKA SC**: 2015.

10 **CHAIRPERSON**: So Mr Magibela must have called you then  
...[intervenes]

**MS MOTHEPU**: Immediately after.

**CHAIRPERSON**: ...in the early hours of the 10<sup>th</sup>?

**MS MOTHEPU**: Yes. As soon as the president made the  
announcement, then he called me.

**CHAIRPERSON**: Yes. That would have ...[intervenes]

**MS MOTHEPU**: Immediately, yes.

**CHAIRPERSON**: That would have been probably early  
hours of the 10<sup>th</sup>.

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

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Ja, okay. Continue.

**ADV SELEKA SC**: He deals with it in his book Chair.

**CHAIRPERSON**: Yes.

**MS MOTHEPU**: Yes. He deals with it ...[intervenes]

**ADV SELEKA SC:** [laughs]

**MS MOTHEPU:** On the... [laughs]

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** He deals with... I know he always asked:  
Who else did you tell? So I ...[intervenes]

**CHAIRPERSON:** Ja, I have got it but just deal – just...

**MS MOTHEPU:** I do not ...[intervenes]

Parties intervening each other – unclear]

**CHAIRPERSON:** ...what he says.

10 **MS MOTHEPU:** We are on ...[intervenes]

**CHAIRPERSON:** Well, his book ...[intervenes]

**MS MOTHEPU:** [Indistinct]

Parties intervening each other – unclear]

**CHAIRPERSON:** What is his book called?

**MS MOTHEPU:** Vusi Magibela, Time is not the Measure, A  
Memoir. And it is published ...[intervenes]

**CHAIRPERSON:** Yes, and you are referring to what page?

Parties intervening each other – unclear]

**MS MOTHEPU:** ...eighteen. And we are on page 416.

20 **CHAIRPERSON:** Yes. 416?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Ja?

**MS MOTHEPU:** Okay. So I will ...[intervenes]

**ADV SELEKA SC:** So that is page... The paginated page is  
679.12.

**CHAIRPERSON:** Yes, I have got it. And it is 416 of the book?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** I will just go to the relevant ...[intervenes]

**CHAIRPERSON:** Just go to the relevant part.

**MS MOTHEPU:** Yes, so I will not take long. So I start with the – on the 9<sup>th</sup> which is the second last paragraph.

10 “On the 9<sup>th</sup> December 2015, I got back to my official residence in Harare after eleven at night.

I decided to catch up on the latest news in South Africa.

I sank into my sofa next to my bed in dismay.

In a late night announcement, Zuma had fired the Minister of Finance, Nhlanhla Nene.

Nene had been in the office for less than two years.”

Then we will go to ...[intervenes]

**ADV SELEKA SC:** I think it is ...[intervenes]

**MS MOTHEPU:** Yes.

20 “I immediately called Msilo ...[intervenes]

**ADV SELEKA SC:** Yes ...[indistinct] ...[intervenes]

**MS MOTHEPU:** “...who was supposed... Skip the first paragraph and then go to 417.

**ADV SELEKA SC:** Yes?

**MS MOTHEPU:** Yes.



“I immediately called Msilo, my life partner, who worked for a company called Regiments Capital who would later joint Trillian Capital Partners as the Chief Executive and Executive Director of the Subsidiary and financial Advisory.

I knew she understood the Treasury, state-owned enterprises, banking institutions and her work entailed interaction with them.

10 She told me how well-connected her boss, Eric Wood was with all those institutions and the higher echelons of government.

So you people have decided to fire Nene.

I second(?) guessed(?), referring to a company who has close ties with government.

Eish, eish [vernacular] explain.

I told her, I just switched the TV on and discovered that Nene was out.

I already knew what she said.

20 I asked her to tell me what had happened but she lowered her voice and said: Unfortunately, I cannot talk over the phone. I will tell you when we meet. It is very sensitive.

I pressed on further for an explanation but she asked me not to insist.”

**CHAIRPERSON:** Yes, okay thank you. Yes?

**ADV SELEKA SC:** Are you done miss ...[intervenes]

**CHAIRPERSON:** Continue. Not the reading necessarily. Not reading the book unless there is something else in the book that you want to highlight?

**MS MOTHEPU:** No, I think I have made my point here.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Ja. Okay.

**ADV SELEKA SC:** Miss... Okay. So this – he would have been the person you informed that you were aware  
10 beforehand that Minister Nene was going to be removed?

**MS MOTHEPU:** Correct Chairperson.

**ADV SELEKA SC:** Ja. Well, what is apparent from that passage that you have just read, the last, is that he was aware that Regiments was closely connected to government.

**MS MOTHEPU:** Yes, he was my partner. I shared my professional life with him. [laughs]

**ADV SELEKA SC:** I see.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** What would you say about Trillian's  
20 connection to government, higher echelons of government from your observation at the time?

**CHAIRPERSON:** Ja, what was that?

**MS MOTHEPU:** At the time I was at Regiments?

**ADV SELEKA SC:** Ja.

**MS MOTHEPU:** The liberal come later.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** So ...[intervenes]

**ADV SELEKA SC:** But Regiments – was Regiments itself not serving government?

**MS MOTHEPU:** It was. It was – they had Business Development Partners. Salim Essa and Moodley, who essentially got the contracts and then they got a fee for it. So I understood – because when I left Regiments, they were struggling to get those things on company contracts.

10 But the minute they find on with Salim Essa and Moodley, the doors were opened. So – and it was from ministers to chairpersons to CEO's of companies, FD's, treasurers.

**ADV SELEKA SC:** The meeting with them?

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** They were having meetings with ...[indistinct] [Speaker unclear]

**MS MOTHEPU:** Yes.

20 **ADV SELEKA SC:** Ja. So, I mean, you know the connection is investigating State Capture. From – and I wanted you to explain to the Chairperson the nature of the relationship that you saw at the time, meaning, the business relationship, whether Trillian or Regiments had with – as it is expressed here, the higher echelons of government.

**MS MOTHEPU:** At the time, I was – I thought: Wow, they

have hit the jackpot. They have just close relationships. And sometimes the chair-people will come to our offices and it is courtesy when you got to a client's office.

So it felt like Salim and Eric were more in control than the client. It is like they are trying to get what the service provider told them to do which was a weird relationship.

But I want a problem(?). So there will be a problem(?). [Speaker unclear] And if it does not happen, then somebody will call Salim and it will happen.

10 **ADV SELEKA SC:** H'm.

**MS MOTHEPU:** That kind of relationship.

**ADV SELEKA SC:** So you were personally aware of ...[intervenes]

**MS MOTHEPU:** Of?

**ADV SELEKA SC:** You were personally aware of this? You personally witnessed ...[intervenes]

**MS MOTHEPU:** I became aware of it.

**ADV SELEKA SC:** We know that later you became – I mean, you reported these matters to the Public Protector.  
20 But what was your sense of what was happening? Did you realise that this, at the time you are there, that this is, what we have know come to refer to as the Capture of the State?

**MS MOTHEPU:** Not at that particular point. Can I just - lead the evidence and then I will let you know when the light bulb hits?

**ADV SELEKA SC:** Okay.

**MS MOTHEPU:** Yes. So on that morning of ...[intervenes]

**CHAIRPERSON:** What morning are you talking about?

**MS MOTHEPU:** The morning after the midnight announcement.

**CHAIRPERSON:** So that would be the 10<sup>th</sup>?

**MS MOTHEPU:** The 10<sup>th</sup>, yes.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** I walked into Eric's office.

10 **CHAIRPERSON:** Yes.

**MS MOTHEPU:** And I told him: Oh, you were right about Nene ...[intervenes]

**CHAIRPERSON:** H'm?

**MS MOTHEPU:** ...getting fired. And he said: Yes, of course. But then he went further to say: But Mohammed Bobat who was a Principle at Regiments Management Consulting reported to Eric.

He said he will be the Van Rooyen's, the new minister's minister – new minister's special advisor and he will,  
20 essentially, set up a team at Trillian (because now we are moving to Trillian) with special expertise and those people will be the one who execute these initiatives. And he will ...[intervenes]

**CHAIRPERSON:** The ones contained in the document?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** And ...[intervenes]

Parties intervening each other – unclear]

**MS MOTHEPU:** And he will... us or his team insider knowledge so that when the tenders come, they already have privilege information.

**CHAIRPERSON:** H'm?

**MS MOTHEPU:** So he was – that was the purpose of his appointment. And he was supposed to be there for two years and then come back to Trillian.

10 **CHAIRPERSON:** H'm. Do you recall roundabout what time that discussion took place on the 10<sup>th</sup>?

**MS MOTHEPU:** It was probably first thing in the morning.

**CHAIRPERSON:** And your morning was seven o'clock?

**MS MOTHEPU:** Yes. And he told me that... Sorry. Bobat was with the minister.

**CHAIRPERSON:** Was...?

**MS MOTHEPU:** Was with the new minister.

**CHAIRPERSON:** H'm.

**MS MOTHEPU:** Yes.

20 **CHAIRPERSON:** Okay. So certainly before eight o'clock when this discussion took place.

**MS MOTHEPU:** That is right, Mr Chairman.

**CHAIRPERSON:** Yes, okay, because Mr van Rooyen gave evidence that on the morning of the – either on the 10/10 or the 11<sup>th</sup> he went to a meeting I think in Melrose Arch

where he had to meet somebody but I think Mr Bobat and/or Mr Eric Woods both came into the meeting in circumstances where he had not had any plans to meet them. Okay, alright.

**MS MOTHEPU:** Yes, so through this time Mr Bobat did not resign from Regiments Capital, he was – I do not know, he was moonlighting as an adviser or he was adviser and moonlighting at Regiments. He kept the laptop, he kept the email address, he kept – he got paid. In December he  
10 got paid and January he got paid and February and we used to have two drivers. So in the morning when you have a client meeting you fill out a form and you tell what time I have to go, please collect me.

So I realised one of our drivers, Lawrence, is not longer available. So I go to Eric and ask Eric what happened to Lawrence? He said no, we cannot expect Mohammed to drive himself to National Treasury every day so he has exclusive rights to Lawrence.

**CHAIRPERSON:** This was on the same date, nearly the  
20 10<sup>th</sup> or when was it?

**MS MOTHEPU:** During that week.

**CHAIRPERSON:** During that week.

**MS MOTHEPU:** During that week.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** He was at National Treasury and then the

following date he was at COGTA – I mean, the following Monday but it was still in Pretoria.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** But it took me time to realise that one of your drivers was no longer available.

**CHAIRPERSON:** Did you say you wrote to somebody about the issue of the driver?

**MS MOTHEPU:** Yes, I went to Eric Wood.

**CHAIRPERSON:** Yes.

10 **MS MOTHEPU:** And complained and he said no, Lawrence has been designated because it is not fair for Mohammed to drive to Pretoria every day without a driver.

**CHAIRPERSON:** Mr Seleka is that email here or not?

**ADV SELEKA SC:** No.

**MS MOTHEPU:** No.

**ADV SELEKA SC:** She does not say she wrote, she says ...[intervenes]

**MS MOTHEPU:** It was a conversation.

**ADV SELEKA SC:** Yes, she went and spoke to...

20 **CHAIRPERSON:** Oh, you spoke, I thought you said you wrote to him [inaudible – speaking simultaneously]

**MS MOTHEPU:** No, I had a conversation with him.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** Yes. So Mr Mothepu, Mr Bobat is now – you say he does not resign at Trillian, he still remains



...[intervenes]

**MS MOTHEPU:** Regiments.

**ADV SELEKA SC:** At Regiments. He remains an employee there but he is also serving as the special adviser to the minister, Minister van Rooyen.

**MS MOTHEPU:** That is correct, Mr Chair.

**ADV SELEKA SC:** The newly appointed Minister of Finance.

**MS MOTHEPU:** Yes, that is correct.

10 **ADV SELEKA SC:** And we know that his stay at the Finance Ministry was short-lived.

**MS MOTHEPU:** Yes, Mr Chair.

**ADV SELEKA SC:** What happened to Mr Bobat's position?

**MS MOTHEPU:** He moved across with Mr van Rooyen to COGTA.

**ADV SELEKA SC:** To COGTA?

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** Okay, so he stayed there still, he continued there as a special adviser.

20 **MS MOTHEPU:** Yes, he continued there as a special adviser.

**CHAIRPERSON:** You said he was paid by Regiments in December 2015, is that right?

**MS MOTHEPU:** 2015, January 2016 and then February 2016. So the market and the media did not know who the

two advisers were and I think Barry Bateman, a journalist broke the story, but which named Mr Bobat as one that advises and Eric and ...[intervenes]

**CHAIRPERSON:** That is Mr Wood.

**MS MOTHEPU:** Mr Wood, sorry. Eric panicked a little bit so they conjured a plan because his partners, Litha Nyhonyha and Niven Pillay did not know about Nene being fired prior and he did not know that Mohammed was a special adviser.

10           So when Tebogo - Mr Leballo had to meet Mohammed in mid-February just after the story broke.

**CHAIRPERSON:** That is Mr Bobat and Mr [inaudible – speaking simultaneously]

**MS MOTHEPU:** Yes, so Mr Bobat and Mr Leballo met and Mr Bobat had to sign a backdated December resignation letter. I recall Eric was on leave and his PA was also on leave.

**CHAIRPERSON:** Mr Wood.

**MS MOTHEPU:** Oh, sorry.

20           **CHAIRPERSON:** Yes.

**MS MOTHEPU:** You know, we – sorry. And Mr Wood was on leave and his PA Ms Mapasa was also on leave so Tebo called her to come in to unlock Eric's office and they put the resignation letter just underneath some papers just to essentially advance Eric's misleading his partners that

indeed Mohammed had resigned in December, he just forgot to process the resignation letter. Ja.

**ADV SELEKA SC:** Okay.

**MS MOTHEPU:** I think one last part of Mr Bobat, Regiments Financial year ends end of February and we normally get bonuses in April, half in April and half in September but you have to be within the employ. So obviously Mohammed had to be within the employ to get it.

**CHAIRPERSON:** You have to be within the employ on  
10 both months.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Ja.

**MS MOTHEPU:** So when we moved across to Trillian on the 1 March 2016, Regiments transferred the bonuses of the people that were going to get bonuses because we were transferred via a Section 197 in terms of the Labour Act but they did not include Mohammed Bobat. So I was told by Mr Leballo and Mr Woods that it was Salim Essa who paid Mohammed a million bonus to compensate the  
20 fact that he was no longer of the employ of Regiments.

**CHAIRPERSON:** That is Mr Bobat was paid that amount.

**MS MOTHEPU:** Yes, yes, so I am sure the investigators can verify bank statements to that effect.

**CHAIRPERSON:** Okay, I am going to stop you there, Ms Mothepu I think both Mr – I think Mr Seleka underestimated

how long your evidence would be. I think your counsel was closer to the mark.

**MS MOTHEPU:** Okay.

**CHAIRPERSON:** He thought it would be an hour, Mr Seleka thought 45 minutes might do.

**ADV SELEKA SC:** 45 minutes.

**MS MOTHEPU:** May I have ...[intervenes]

**CHAIRPERSON:** But of course he has not managed your evidence because we allowed you to just go on.

10 **MS MOTHEPU:** How – can I be given ...[intervenes]

**CHAIRPERSON:** No, hang on, hang on, Ms Mothepu, hang on. I am going to unfortunately disrupt our programme. I need to take an adjournment. Now I did not mention this to both Mr Seleka and your counsel and Mr Crouse because I thought we would finish at least by eleven o'clock.

I told counsel who was going to come after, after you. I need to go and speak for a very short time at a function at Constitution Hill. So I had said to counsel who  
20 is going to lead the McKinsey evidence that we would start at one, so we will have our lunch during the break when I am there and then we go on.

But now I think we will have to – I will have to come back a little earlier so that we can continue with this evidence but I do not have an idea of how much more time

we need in order to finish with her evidence.

**MS MOTHEPU:** 15 minutes.

**ADV SELEKA SC:** Ms Mothepu says 15 minutes.

**CHAIRPERSON:** 15?

**ADV SELEKA SC:** One, five.

**CHAIRPERSON:** What are counsels' estimate? What is your estimate.

**MR CROUSE:** Chair, I do not imagine it will be longer than 15 minutes.

10 **CHAIRPERSON:** Oh, okay. Alright, okay. No, that is fine. Well, all the evidence that – even though it has gone beyond what we expected is relevant and important.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So that is fine. So I think if – I think we are going to stop now. I am speaking at twelve, I am supposed to speak for only 10, 12 minutes, so I think we should start at quarter to one, so we can use that 15 minutes before I start at one o'clock with the McKinsey witnesses.

20 **ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** I am sorry that we have to have this interruption, I did not think it would affect you because I thought we would finish earlier.

**MS MOTHEPU:** Thank you, Chairperson.

**CHAIRPERSON:** Yes. So let us adjourn now and we will

resume at quarter to one.

**ADV SELEKA SC:** Thank you, Chair.

**CHAIRPERSON:** Okay, we adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Thank you to everybody, are we ready?

**ADV SELEKA SC:** We are ready Chairperson.

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

**ADV SELEKA SC:** Yes, may I start Chairperson by  
10 drawing the Chairpersons attention we have managed to  
obtain a copy of Ms Bianca Goodson's employment  
contract.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Just for present purposes Chairperson  
I will hand it up so that we confirm the date of her  
employment contract.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** That is the one. The document I have  
just handed up Chairperson is not paginated but if you go  
20 to the second last page, the penultimate page that is where  
the parties have signed the contract and the Chairperson  
will see there the date, the contract is dated at Melrose  
Arch on the 17<sup>th</sup> day of November 2015.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** She refers to that herself also in her

own affidavit.

**CHAIRPERSON:** Yes. Do you want this to be admitted as an exhibit, or you want to deal with that later?

**ADV SELEKA SC:** I think I should deal with it later Chairperson.

**CHAIRPERSON:** Ja, okay, alright. Maybe Ms Mothepu you can just refresh our memories with regard to what was significant about the fact that Trillian and Bianca Smith concluded this contract at the time that they did.

10 **MS MOTHEPU:** Certainly Chairperson. If you recall sometime in October/November, the Regiments directors decided ...[intervenes]

**CHAIRPERSON:** 2015?

**MS MOTHEPU:** Pardon?

**CHAIRPERSON:** 2015?

**MS MOTHEPU:** Yes, 2015.

**CHAIRPERSON:** Ja, it is important to always mention the years so that everyone knows which year we are talking about.

20 **MS MOTHEPU:** Yes, 2015 they decided to part ways and then Eric ...[indistinct]

**CHAIRPERSON:** Okay hang on Ms Mothepu, you speak while I am speaking so, that will not ...[intervenes]

**MS MOTHEPU:** Apologies.

**CHAIRPERSON:** I am sorry. That will not be captured

properly on the transcript so you need to wait until I am finished then you can speak. So just answer the question again, what was significant about the fact that Trillian and Ms Bianca Smith concluded this contract at the time that they did?

**MS MOTHEPU:** We had known that Mohammed Bobat was going to be the new Minister's advisor and Mohammed was supposed to Trillian's management consultant so they had to replace him because he was going to the Minister in  
10 December.

So they head-hunted Bianca Goodson and if you can see that her contract is indeed signed in November 2015. So essentially she filled Mohammed Bobat's vacancy in preparation of them knowing that he will be deployed at National Treasury in December.

**CHAIRPERSON:** So in October 2015 Mr Bobat was employed by Regiments.

**MS MOTHEPU:** Yes, he was an employee of Regiments.

**CHAIRPERSON:** Regiments.

20 **MS MOTHEPU:** Correct.

**CHAIRPERSON:** But you are saying that it was contemplated that because he was going to be an advisor to the new Minister of Finance he would need to leave Regiments or Trillian and that would create a vacancy and Ms Bianca Smith was appointed to the position that



otherwise would have been Mr Bobat's position.

**MS MOTHEPU:** Correct Mr Chairperson.

**CHAIRPERSON:** Okay alright, thank you.

**ADV SELEKA SC:** Then the second item Chairperson is we managed to obtain a copy of the founding papers in the court application that Ms Mothepu referred to and I beg leave to hand that up as well.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** It is a court application between  
10 various applicants and Regiments Capital against Mr Eric Wood for him to be declared a delinquent director.

**CHAIRPERSON:** Yes, when was it lodged?

**ADV SELEKA SC:** It was lodged on the 11<sup>th</sup> of October 2016.

**CHAIRPERSON:** Okay is the first applicant is it Ms Litha or Litha Veliswa Nyhonyha and various other applicants.

**ADV SELEKA SC:** Regiments is the third applicant.

**CHAIRPERSON:** The first respondent is Eric Anthony Wood, the second one is Eric Anthony Wood NO the  
20 second respondent and then there are a number of others up to six respondents. You say it is an application where the applicant sort among other orders an order declaring the first respondent that is Mr Eric Anthony Wood a delinquent director.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** This one Chair I think I will beg leave to have it admitted as an exhibit.

**CHAIRPERSON:** Do you want to deal with that as an exhibit now or you want to deal with them later I guess do you not need to deal with the agreement first.

**ADV SELEKA SC:** This other one.

**CHAIRPERSON:** Well in the end it can be either.

**ADV SELEKA SC:** It can be...[intervene]

10 **CHAIRPERSON:** Ja, you want to deal with this first?

**ADV SELEKA SC:** The agreement is well it is sort to be an annexure in Ms Bianca Goodson's affidavit.

**CHAIRPERSON:** Oh you want to check that because if it is there then you do not want to repeat it.

**ADV SELEKA SC:** Correct then we deal with it, yes.

**CHAIRPERSON:** Okay, so let us take this, this is a notice of motion and a founding affidavit in the matter, in case number 16/35530 in the Gauteng Local Division Johannesburg that is Gauteng Local Division of the High  
20 Court and the founding affidavit is that of Mr Litha Veliswa Nyhonyha. Yes, and I guess...[intervene]

**ADV SELEKA SC:** And 19 other and 18 other applicants.

**CHAIRPERSON:** Sorry?

**ADV SELEKA SC:** It is Mr Litha Veliswa Nyhonyha and 18 other applicants against Mr Eric Anthony Wood and five

other applicants', other respondents.

**CHAIRPERSON:** I had put that on record I thought you would give me the exhibit number.

**ADV SELEKA SC:** Oh the exhibit number is U32.

**CHAIRPERSON:** U32.

**ADV SELEKA SC:** Point three.

**CHAIRPERSON:** Point three.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** The notice of motion and the founding  
10 affidavit in the matter of Litha Veliswa Nyhonyha,  
Nyhonyha is N-y-h-o-n-y-h-an and others versus Eric  
Anthony Wood and others case number 16/35530 is  
admitted as Exhibit U32.3.

**ADV SELEKA SC:** Thank you Chair.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** The relevant portion of this exhibit  
Chair is on page, there are paginated pages let me refer  
the Chairperson to the paginated one, page 100.

**CHAIRPERSON:** Oh if Ms Mothepu has already looked at  
20 it she can just as part of her evidence tell us the relevant  
part of it because she is the one who raised the issue of  
this papers then she can tell us the relevant part. Well you  
can start by saying why it is important to have regard to  
this papers and then you can go to the relevant part if you  
are not sure where it appears Mr Seleka will guide you.

**MS MOTHEPU:** Thank you Mr Chair. So we can start on how we doing the pages?

**ADV SELEKA SC:** Yes, the...[intervene]

**MS MOTHEPU:** The top, right?

**ADV SELEKA SC:** Correct, yes.

**MS MOTHEPU:** It is National Treasury and Mr Bobat this is – if you recall I have said that Eric Wood had sent me that document on the 26<sup>th</sup> of October shortly after telling me that the President will be...[intervene]

10 **CHAIRPERSON:** The one that was talking about projects that would be initiated?

**MS MOTHEPU:** Correct.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** So even the Regiments matter where they wanted to declare Mr Wood a delinquent Litha Nyhonyha says on the 26<sup>th</sup> of October 2015.

**CHAIRPERSON:** Where are you reading from?

**MS MOTHEPU:** I am reading from 119.

**CHAIRPERSON:** What paragraph?

20 **MS MOTHEPU:** 119.

**CHAIRPERSON:** Paragraph 119?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Of Mr Nyhonyha's affidavit?

**MS MOTHEPU:** That is correct Mr Chair.

**CHAIRPERSON:** Let me go there, yes okay.

**MS MOTHEPU:** May continue Mr Chair?

**CHAIRPERSON:** Start from the beginning of that paragraph actually.

**MS MOTHEPU:** Okay.

“on 26 October 2015 Wood sent an email to Mr Essa  
a copy of which is marked AF46 thereto.”

Unfortunately, we do not have the annexures. The subject heading of the email was:

“National Treasury 26<sup>th</sup> October 2015.”

10 And Wood writes:

“Hi Salim,

As discussed I have crisply jotted down a few points  
for the FM these are not comprehensive in time I  
am sure. I can develop a more comprehensive list.

King regards, Eric.”

**CHAIRPERSON:** And do you know what FM stands for  
then or do you...[intervene]

**MS MOTHEPU:** Finance Minister.

**CHAIRPERSON:** Finance Minister?

20 **MS MOTHEPU:** Yes.

**CHAIRPERSON:** And you based your knowledge on what  
just on FM or there were discussions where Minister of  
Finance was referred to as FM or correspondence?

**MS MOTHEPU:** I think it is just an inference from the  
conversation that I had with Eric that he was talking about

a new Finance Minister and my inference is that he just decided to abbreviate it.

**CHAIRPERSON:** Yes, okay well I see that Mr Nyhonyha shares that view in the next sentence he says:

“The reference to FM in context is a reference to the Minister of Finance.”

**MS MOTHEPU:** That is correct.

**CHAIRPERSON:** This email and the accompanying document with a list of initiatives for National Treasury and  
10 the Minister of Finance has absolutely nothing to do with Regiments business and it was clearly intended by who to assist Mr Essa and the latter over shows to National Treasury on behalf of Trillian.

**MS MOTHEPU:** Yes, Mr Chair.

**CHAIRPERSON:** Yes, is it only that part you wanted to indicate or is there another part?

**MS MOTHEPU:** I think the other parts they just confirm the fact that he was given exclusive use of the driver and he still had a salary. So I think, I do not think we  
20 should...[intervene]

**CHAIRPERSON:** Yes, if there are parts that are relevant we can cover them as well.

**MS MOTHEPU:** Alright.

**ADV SELEKA SC:** Can I read them quickly Chairperson.

**MS MOTHEPU:** Oh yes, thank you.

**ADV SELEKA SC:** May I do so?

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** So you read paragraph 119 which confirms the email that is...[intervene]

**CHAIRPERSON:** Sorry Mr Seleka the aircon how is it like?

**ADV SELEKA SC:** It is again on.

**CHAIRPERSON:** I think it is too noisy. Okay alright.

**ADV SELEKA SC:** Yes, so which confirms the email that it  
10 was sent - Chairperson we have received from the  
instructing attorney for the applicant a copy of FA46 which  
they are busy printing out. So...[intervene]

**CHAIRPERSON:** I am sorry just repeat that oh you have received a copy of Annexure FA46.

**ADV SELEKA SC:** FA46 from the instructing attorney for the applicants in this very application they are busy printing it out for us.

**CHAIRPERSON:** Oh okay.

**ADV SELEKA SC:** So we will see that, it should  
20 correspond with Ms Mothepu's email in the document that she received from Mr Eric Wood.

**CHAIRPERSON:** Ja, okay alright.

**ADV SELEKA SC:** So the next part is paragraph 120 it says:

“Wood withheld, the applicants are alleging, Wood

withheld the Regiments material information in his possession pertaining to the employment of a key Regiment senior executive Mr Mohammed Bobat in a position outside of Regiments in December 2015. The circumstances of this appointment cost both reputational and financial harm to Regiments. Mr Bobat suddenly and without any notification to Regiments took up an appointment in a high profile position outside of Regiments. Regiments became aware of this only when it was reported in the media that Mr Bobat had taken up an appointment as a special advisor to the new Minister of Finance despite apparently not having the requisite qualifications and while still an employee of Regiments.”

10

Which is what Ms Mothepu was saying earlier.

**MS MOTHEPU:** I concur.

**ADV SELEKA SC:**

“In accordance with Bobat’s employment contract he was required to dedicate his services to Regiments and for which he was paid a salary. He was not permitted to take up the position as a special advisor to the Minister of Finance or any other Minister and remain as an employee of Regiments and being paid as salary for two months whilst he

20



was entirely absent from Regiments. The complaint against Wood is that he plainly knew that Bobat was illegitimately drawing his salary from December 2015 to January 2016 whilst he was engaged at other at one or other Ministry and with the intention of returning Bobat as an employee until March 2016 so as to enable him to qualify for a bonus to which he was obviously not entitled.”

That is what you testified about.

10 **MS MOTHEPU:** Yes, and being compensated by Salim paying him the bonus through the Trillian bank account the R1million.

**ADV SELEKA SC:** Okay.

**MS MOTHEPU:** Yes, if you recall my testimony that he was not entitled to a bonus but Salim Essa paid him using a Trillian bank account.

**CHAIRPERSON:** Yes, I remember that evidence.

**MS MOTHEPU:** Thank you.

**ADV SELEKA SC:** What - the deponent carries on:

20 “What exacerbated the problem was the fact that Wood then pretended that Bobat had already resigned in December 2015 of course this was plain nonsense because Bobat drew a salary in December 2015 and January 2016 and Wood obviously had knowledge of this.”

Attached hereto marked FA7, then the attach exchange between the two gentleman Mr Bobat and Mr Rossouw.

The next paragraph says:

“Bobat’s email was in response to Rossouw’s requesting Bobat’s comments and response after the matter was reported in the press and alluding to the appointments of Bobat and Whitley as special advisors to National Treasury. I emphasise that Wood further permitted and consented to Bobat’s continued use of Regiments resources including a laptop and other infrastructure facilities as well as the use of Regiments vehicle and driver to transport him to his new place of work as advisor to the new Minister between the period 9 December 2015 and 15 February 2016 when the matter was first drawn to Regiments attention through the media.”

Chair I think so far so good. Now Ms Mothepu the next thing is the removal of Minister Pravin Gordhan.

**MS MOTHEPU:** Yes, on the 1<sup>st</sup> of March 2016 I moved across to Trillian Financial Advisory as the CEO via a Section 197.

**CHAIRPERSON:** What date was that?

**MS MOTHEPU:** The 1<sup>st</sup> of March 2016.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** So I became the CEO of Trillian

Financial...[intervene]

**CHAIRPERSON:** Hang on one second before that is done. It looks like paragraph 128 might still have relevant information.

**ADV SELEKA SC:** Yes, in fact it talks about exactly what she is starting to say.

**CHAIRPERSON:** Oh is that where she is starting okay alright.

**ADV SELEKA SC:** But let us read it Chair.

10 **CHAIRPERSON:** No but that is fine if it were you wanted to fit it, so she can start and come to it at the time that you planned to let her bring it in. If you wanted to read it now if it is convenient it is okay.

**ADV SELEKA SC:** Ms Mothepu can I read it now you want to deal with it?

**MS MOTHEPU:** Ja, I am happy.

20 “Moreover Regiment has recently discovered contemporary communication exchanged between Wood and the Minister Van Rooyen and Whitley and another special advisor and Bobat pertaining to commentary from Wood on input required by him into a speech that the Minister Van Rooyen subsequently delivered to the media. In this regard I attach the following series of emails 28.1 Bobat using his Gmail account,

Mohammedbobat@gmail.com email inter alia Wood on talks December 2015 forwarding him an email trail of communications concerning a subject having feedback from Minister Nqwene meeting with an attached economic outlook presentation 12 December 2015 being an apparent power point presentation.” Minister – how do you pronounce that surname? Minister?

**ADV SELEKA SC:** Which paragraph?

10 **CHAIRPERSON:** Nqwene.

**MS MOTHEPU:** Nqwene thank you.

“As Accounts Minister serving in the cabinet of South Africa as per Minister Rural Development and Land Reform.”

This paragraph jogs my memory Mr Chairperson.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** I recall on the morning, on the Monday when the Minister of Finance was now appointed the Minister of COGTA. The Minister called Eric we were in  
20 the same car coming back from Transnet and I was with Mohammed Bobat and of course they had appointed a public relations team to write the speeches of the Minister.

So obviously they had prepared a National Treasury speech and over the weekend his portfolio had changed. So now Eric had to ensure that the public relations people

write a new speech that related to COGTA. So thank you for jogging that memory.

**CHAIRPERSON:** Yes, okay one second before you continue I do not know Mr Chaskalson is here. We did not finish at the time we hoping to finish Mr Chaskalson and the witnesses for McKinsey but we should be finishing anytime from now. Okay alright let us continue.

**ADV SELEKA SC:** Thank you Chair if you are done there Ms Mothepu we can go into how you became...[intervene]

10 **MS MOTHEPU:** Yes, the finer parts on Mr Bobat he spent a lot of time at Melrose Arch meetings and Mr Salim Essa and Mr Eric Wood having meetings while he was the special advisor to the COGTA Minister. Ms Bianca Goodson will come and testify about their relationship, yes.

**ADV SELEKA SC:** Now just remind us quickly before you go over to the next point. What was the purpose of Mr Bobat being placed at the office of the Minister of Finance as a special advisor?

**MS MOTHEPU:** He was supposed to essentially give  
20 Trillian insider information on tenders and give price and technical specification and Ms Goodson will attest to that, so he transferred to COGTA.

**ADV SELEKA SC:** Do you know whether, do you personally know whether that did happen? Personally do you know?

**MS MOTHEPU:** Yes but I would prefer Ms Goodson to testify but she did confirm that indeed he use to give her documents on Gmail accounts and leave white paper envelopes with confidential government information. Yes, so I think the plan just moved from National Treasury to COGTA.

**ADV SELEKA SC:** Oh I see, so you also say in your affidavit you were given prior knowledge of the removal of Mr Previn Gordhan as a Finance Minister. Can you tell the  
10 Chairperson briefly how did that come about?

**MS MOTHEPU:** Yes, so after I had...[intervene]

**CHAIRPERSON:** I am sorry please do not forget the question you put to her. Paragraph 128.2 of that affidavit seems to have some importance. It says:

“On 14 December 2015 Ian Whitley in (also using a Gmail email account) emailed the Minister “S Van Rooyen” (using likewise a Gmail email account) in regard to the content of a draft media statement for the Minister.”

20 A copy of the email trail is marked FA48 hereto as is evident from the contents of the email emanating from Minister Van Rooyen it states and this is quoted:

“Morning and thanks Ian,  
Please solicit Eric’s input on usage of municipal household assets for collateralisation we will

discuss my inputs this morning.”

Now what I want to ask you is whether what Minister Van Rooyen is referring to there in that quote namely he wants Mr Wood’s input on the usage of municipal local source assets or collateralisation. Now I remember that that document that you said Mr Wood sent to you on the 26<sup>th</sup> of October had quite a few places where it was talking collateralisation.

**MS MOTHEPU:** You are correct Chair.

10 **CHAIRPERSON:** Could this be; could this provide a connection that one what he was talking about now on the 14<sup>th</sup> of December 2015 that is Mr Van Rooyen was something that had been contained in the document that Mr Wood sent to you on the 26<sup>th</sup> of October or it might not be.

**MS MOTHEPU:** It is the same thing Mr Chairperson.

**CHAIRPERSON:** It is the same thing?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay so you have a situation where on the 26<sup>th</sup> of October Mr Wood sends you a document and  
20 says these are the projects or that we want the new Minister to initiate or we want to initiate with the assistance of the Minister I am not sure which is which and now you have an email a quotation from an email address from Mr Van Rooyen of course I think by then he had moved to COGTA but you are saying that this quotation

links with one or more of the items included in the document that Mr Wood had sent you on the 26<sup>th</sup> of October.

**MS MOTHEPU:** That is correct Mr Chair and it dealt with the municipal debt so it was a COGTA initiative and they wanted and they wanted to securitize it or what is the expression collateralisation so now that portfolio fell under COGTA and I think that was why they hurried with this, yes.

**CHAIRPERSON:** I think Mr Seleka it is important that we  
10 quickly go through that document.

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** That was sent to the witness on the 26<sup>th</sup> of October by Mr Wood and identify which of the 12 items links to this.

**ADV SELEKA SC:** Page 679.9.

**CHAIRPERSON:** 679?

**ADV SELEKA SC:** Yes, 679.9 of Eskom Bundle 14.

**MS MOTHEPU:** Yes, it was the first item on the initiatives list the collateralised municipal debt.

20 **CHAIRPERSON:** Oh ja item one of that document which appears at 679.9 is collateralised municipal debt, okay alright, continue.

**ADV SELEKA SC:** Thank you Chair, then my question Ms Mothepu was explain to the Chairperson how did you get prior knowledge that Minister Pravin Gordhan would be



removed as a Minister of Finance?

**MS MOTHEPU:** Okay just a way of background on the 1<sup>st</sup> I was appointed as Trillian CEO of financial advisory and Bianca Goodson was CEO of management consultant and Tebogo Leballo had moved across to be the financial director. By this time my relationship with Eric has deteriorated and with...[intervene]

**CHAIRPERSON:** Had deteriorated which times was that now 2017,2016?

10 **MS MOTHEPU:** I would say January 2016.

**CHAIRPERSON:** January?

**MS MOTHEPU:** 2016.

**CHAIRPERSON:** 2016?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** 16?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay alright.

**MS MOTHEPU:** So I no longer went to his office for coffee and he was not telling me anything. So I got my primary  
20 information from Mr Leballo the financial director. So we were sitting in a very tight open plan and it was the 16<sup>th</sup> of March I remember it was my birthday and Mr Leballo tells me and Bianca that the President wants Minister Pravin Gordhan ...[intervenes]

**CHAIRPERSON:** This is Mr Leballo telling you?

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Ja.

**MS MOTHEPU:** And alongside Ms Goodson.

**CHAIRPERSON:** Hm.

**MS MOTHEPU:** Alongside Ms Goodson.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** So it is three of us. But he was whispering so he wrote it down on my notepad changing Finance Minister. I still have the original notepad and it is – but I  
10 have made a copy.

**CHAIRPERSON:** Alright Mr Seleka will know exactly what page.

**MS MOTHEPU:** It is.

**ADV SELEKA SC:** Yes page 679.

**CHAIRPERSON:** 679.

**ADV SELEKA SC:** Point 16.

**CHAIRPERSON:** Point?

**ADV SELEKA SC:** Point 1.6.

**CHAIRPERSON:** Point 1.6.

20 **ADV SELEKA SC:** Yes. Which is Annexure NM3 to Ms Mothepu's affidavit.

**CHAIRPERSON:** Oh yes I see do you want to read what is written there Ms?

**MS MOTHEPU:** Changing Finance Minister. Yes. So I was shocked and horrified given the fact that NeneGate had –

had such a devastating economic impact on South Africa and that the former President was considering removing the new Minister who had essentially stabilised the market. So that really caught me off guard.

**CHAIRPERSON:** So this – you say you still do have the original document?

**MS MOTHEPU:** It is here.

**CHAIRPERSON:** It is in your...

**MS MOTHEPU:** It is

10 **CHAIRPERSON:** Yes.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay alright. I think it will be important Mr Seleka that we have a Commissioner of Oaths who certifies that these copies are copies of that original

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** And he or she has seen the original.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** And – and if the witness is happy to let us keep the original that is fine but if she would like to keep the original then we must just have a certified copy by a Commissioner of Oaths who certifies – will certify that he or she has seen the original.

**ADV SELEKA SC:** Yes. We will attend to it.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Do that Chairperson.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Thank you.

**CHAIRPERSON:** Okay. So is the page from your diary or just your notebook?

**MS MOTHEPU:** It is a notebook. When I go to meetings I always write.

**CHAIRPERSON:** Yes. Okay.

**MS MOTHEPU:** Summary of the notes.

**CHAIRPERSON:** So this – this handwriting here is it Mr  
10 Leballo's handwriting?

**MS MOTHEPU:** It is Mr Leballo's handwriting. You will even peruse my notes and you will see a significant difference in handwriting plus Ms Goodson when she comes to testify she will confirm that indeed he wrote it there.

**CHAIRPERSON:** Mr Leballo wrote these words – changing Finance Minister in front of you?

**MS MOTHEPU:** In front of me.

**CHAIRPERSON:** Ja.

**MS MOTHEPU:** Because he was whispering.

20 **CHAIRPERSON:** Yes.

**MS MOTHEPU:** And I could not hear.

**CHAIRPERSON:** Yes okay.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Yes Mr.

**ADV SELEKA SC:** Thank you Chair.

**CHAIRPERSON:** So – so effectively continue to tell me about the conversation between you and Mr Leballo in the context of this writing?

**MS MOTHEPU:** I think I expressed my shock and horror saying I cannot believe after the economic devastation of NeneGate the President would fire a – a credible Finance Minister who has managed to stabilise the market and I felt like the – the advancement of capturing Treasury was still happening.

10 **CHAIRPERSON:** And did he – did he say anything on this – on what he wrote here or in terms of mention the name for example and maybe when the changing of the Finance Minister would happen?

**MS MOTHEPU:** No he did not give a date or the new name.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** Of the new Finance Minister.

**CHAIRPERSON:** Yes. Okay but obviously at that time 2016 the Minister of Finance was Mr Pravin Gordhan.

**MS MOTHEPU:** That is correct Mr Chairman.

20 **CHAIRPERSON:** Yes so if there was a changing of Ministers – Finance Minister it would be him leaving the Portfolio?

**MS MOTHEPU:** Yes. Correct.

**CHAIRPERSON:** Okay alright. So – but you say he did not tell you that is Mr Leballo who the new Minister would be?

**MS MOTHEPU:** That is correct Mr Chairman.

**CHAIRPERSON:** Yes. How did your discussion around this issue proceed?

**MS MOTHEPU:** My shock and concern about the President's advancement.

**CHAIRPERSON:** Yes what else –

**MS MOTHEPU:** Advancement.

**CHAIRPERSON:** Yes so I just want you to continue if there is still more that you have not told me around this issue of changing Finance Minister?

10 **MS MOTHEPU:** No I do not think – I think I just expressed my views and then I remember we had to go to EXCO and it was my birthday and then there was cake and then – and we left.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** I do not think we spoke about it again.

**CHAIRPERSON:** Yes. So did it appear like he just wanted you to know that there was going to be – or the Minister of Finance was going to be changed and nothing more – there was nothing he wanted you to do about it he just wanted you  
20 to know?

**MS MOTHEPU:** That is correct.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** It is the same principle as Eric Wood.

**CHAIRPERSON:** Yes.

**MS MOTHEPU:** Just for your information.

**CHAIRPERSON:** Yes okay.

**MS MOTHEPU:** Yes.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Okay just give us the date again of this?

**MS MOTHEPU:** I cannot forget it was my birthday the 16 March 2016.

**ADV SELEKA SC:** 16 March 2016.

**MS MOTHEPU:** Yes.

10 **ADV SELEKA SC:** And was Minister Gordhan removed?

**MS MOTHEPU:** He was removed on that – the following year.

**ADV SELEKA SC:** 2017.

**CHAIRPERSON:** 2017.

**MS MOTHEPU:** But there is a few things that I need to traverse before we go there if you do not mind? The last five minutes.

**ADV SELEKA SC:** Ja let us see – the Chairperson is..

**MS MOTHEPU:** Yes. I – so I...

20 **CHAIRPERSON:** I can hear what you say.

**ADV SELEKA SC:** Yes.

**MS MOTHEPU:** I am saying there is a few significant events that happened before then and then we will deal with his firing if that is okay?

**CHAIRPERSON:** Okay let us me hear those.

**MS MOTHEPU:** Okay. So I – I – he asked me a very pertinent question about when did I realise Trillian was part of state capture and I think by that time the AmaBhungane and the Daily Maverick and the Sunday Times started to write the Gupta's dealings with Tegeta, Eskom. I was given unlawful instructions to issue invoices without contracts or work being done. Trillian was doing work at Eskom about a contract and without being done so I left on the 31 May and then I resigned on the ...

10 **CHAIRPERSON:** Which year? Always mention the year.

**MS MOTHEPU:** 2016.

**CHAIRPERSON:** 31 May 2016.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** You resigned?

**MS MOTHEPU:** I left the – I wrote Eric a letter raising my concerns and I resigned on the 22 June 2016. Then I went to my lawyer because I was a director and I had to tell him what I suspected, the fraud, the impropriety and what my obligation was as a director because I had to fulfil my  
20 fiduciary responsibilities. So when he told me I had to go the PP or to a member of Parliament or to the police and I was very, very scared and because at that time I think the Gupta's and Salim Essa were very, very powerful in the political arena.

So I went to Cairo. Now my partner was living in



Cairo and I – when I saw the Hawks charges circling around Minister Pravin Gordhan and then when I saw the terms of reference of Thuli Madonsela I realised that I can help her in certain areas.

So I – my partner and I decided that I had to go back to South Africa. So I spent a couple of days writing my statements and we cut my vacation short and I made an appointment to meet the former Public Protector Thuli Madonsela and I gave her my statement but I asked her not  
10 to have my name in the report because I – I was not a Minister I do not have security.

And then I – I asked her if I can trust Minister Pravin because I wanted to warn him that I suspect those fraud charges are related to the fact that Trillian was already talking about the President wanting to fire you and I suspect these would – if the Finance Minister is charged with fraud he has to step aside.

So I asked Thuli Madonsela if I could trust him the Minister and she said yes. So I had his – the Minister's  
20 special advisor made contact with me and told me unfortunately the Minister could not meet me. This is I think the 18 September 2016 so – but he wants me to meet Mr Jean Ravelle [?] who was the Minister special adviser.

Now remember we – it was a Sunday afternoon and we met in a steakhouse and we were sitting in a booth and

we ordered I think two bottles of wine because what I had to tell him was just so shocking and I conveyed that I do believe – it is a suspicion that I cannot really prove it but – so he went on to convey the – my message to the Minister.

And then after that...

**CHAIRPERSON:** And your message to the Minister was basically that you understood that he was going to be changed?

**MS MOTHEPU:** Yes and he was only changed if you recall I  
10 think it was 31 March.

**CHAIRPERSON:** Ja it was ...

**MS MOTHEPU:** Because of an intelligence report.

**CHAIRPERSON:** I cannot remember whether 17 March or 31  
March 2017.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** But March 2017.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Hm. Yes – so – but your message you say  
about him revolved around the fact that you understood that  
20 he was going to be changed as the Minister of Finance.

**MS MOTHEPU:** Yes.

**CHAIRPERSON:** Okay.

**MS MOTHEPU:** Even though it was a year later.

**CHAIRPERSON:** Yes okay. Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. 31 March 2017 seems

to be the date.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes. So yes the – he gets removed – well you know that brings to mind what we have heard here something said the previous year also happening in a later year what gets to be told to what you may not know if you have been following maybe you will know Mr Hank Bester the year before that we decided who is going to the boss of Eskom and lo and behold that is said in 2015 lo and behold  
10 in 2015 – April 2015 Mr Brian Molefe gets to be seconded to Eskom. So it does not surprise. If you are done with your evidence Ms Mothepu I have no further questions.

**MS MOTHEPU:** I would just like to make a closing statement? I will not take more than three minutes.

**CHAIRPERSON:** Hm. You are done with her evidence.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** Okay alright. Yes.

**MS MOTHEPU:** Thank you very much. So after I went to the Public Protector my statement got leaked to the Sunday  
20 Times but it was not from her office and what ensued were nine criminal charges that Trillian had laid a charge against me. Cybercrime, fraud, theft, perjury, corruption and it was quite shocking how I was called by the police to give a warning statement.

And he tells me – I will not mention his name since

he has not – I have not put him in my affidavit. He tells me that because of who these people are and the political connections they have they have – he has to expedite my case.

When my lawyer went to see him he said there was no case here. He is getting pressure from upstairs for him to move to the – for it to be moved to the NPA.

And it was the first time I realised that institutions can be used to [00:14:10]. I used to [00:14:12] against  
10 people who stand up for the truth.

And what was also quite disappointing is that I was – I could find employment after two years because South Africa doubted my integrity. Some of the banks said – were not sure how this Minister will react if you are part of the team.

So corporate is always saying we want people of integrity but I can say the people who have sat here with you like Suzanne Daniels and myself we are unemployed, we have lost our livelihoods and also so I am just saying  
20 corporate give us a chance. We stood up and our lives have been devastated plus on the legislation we need tighter legislation to protect whistle blowers. We need to protect them. We need to reward them and I am hoping in your recommendation we need something called reparations that like what KPMG is doing with SARS.

We have – I mean I have gone to the Parliamentary Inquiry. I have gone to the FBI. I have gone to the NPA. I have gone to the Hawks. I have gone to – I got involved in the Eskom matter. All of this of course takes time and it has an effect emotionally, psychologically. Luckily I was employed at MTN for two years but my contract ended in March this year so – but I am using this year till just heal, write my book and I am just hoping that South Africa will just take the heed and say we need – that is the legislation; that  
 10 is the protection and rewards for the people who stood up for this country.

That is my [00:16:40].

**CHAIRPERSON:** Yes. Thank you very much. I want to check with your counsel whether there is any question for re-examination that he wants to put or there is nothing?

**COUNSEL FOR WITNESS:** No Chair we happy with the evidence and the submissions made.

**CHAIRPERSON:** Yes okay thank you. Well I want to mention to you that Ms Mothepu that the – there is – there  
 20 are people within the legal team of the commission who are looking at the issue of legislation that seeks to protect whistle blowers to see whether it is adequate and whether there is a need for any amendments – whether there is a need for any changes so that in due course submissions will be made to me in regard to that because certain things

appear to be quite important for this country if we are going to deal with corruption in any significant way.

One of those is ensuring that there is adequate protection, statutory protection for whistle blowers and that there are adequate incentives if possible for people to blow the whistle and of course adequate protection is one of the incentives.

But there will be an examination of the legislation to see and the public is free to send submissions if they want  
10 to make submissions on that and they can do that just right away.

Another measure is to see whether there are adequate oversight mechanisms for Parliament over the executive.

Another relates to the appointment of executives at SOE's as well as members of boards of SOE's. How do we make sure that the kinds of board members that SOE's are going to have in the future are the kinds of board members who are going to make sure that they fight against  
20 corruption? How do we make – what criteria should be followed in selecting for appointing people to be members of boards of SOE's? That might go to even DG's maybe and CFO's in government departments but certain areas need to be looked at so that if they are weaknesses in the systems that those can be addressed.

So – and the public must feel free anytime to send submissions.

**MS MOTHEPU**: Thank you Chairman I will definitely engage you.

**CHAIRPERSON**: Yes.

**MS MOTHEPU**: Your legal team.

**CHAIRPERSON**: Okay.

**MS MOTHEPU**: Much appreciated.

**CHAIRPERSON**: No thank you very much for coming to give  
10 evidence. I suspect that we will need you at some stage in  
the future so we will ask you to come back but thank you  
very much you are now excused. I think counsel for Mr  
Bobat indicated that they would reserve their right to cross-  
examine and if they want to cross-examine they will apply for  
leave at some stage. So that is fine. You are now excused.

**ADV SELEKA SC**: Thank you Chair.

**CHAIRPERSON**: Maybe I should take a five minutes  
adjournment. Excuse those who need to be excused so that  
Mr Chaskalson can – and his team can come in and set up.

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

**CHAIRPERSON**: We adjourn.

### **INQUIRY RESUMES**

**CHAIRPERSON**: Good afternoon, Mr Chaskalson. Good  
afternoon everybody.

**ADV CHASKALSON SC**: Good afternoon, Chair.

**CHAIRPERSON:** Yes. Are we ready?

**ADV CHASKALSON SC:** We are Chair. Our first witness is going to be testifying on Zoom from Paris. He is Mr Mieszala. And he is online as we speak.

**CHAIRPERSON:** Yes, okay. We will need to make sure that at some stage before the expiry of the last commission, if it at all possible, if he is in South Africa and he comes in, just make sure that we cover certain aspects regarding the oath. If possible.

10        Because with people who are outside of the country, that is how we have arranged it up to now but there is no urgency now. It is something that can be given thought to in due course.

**ADV CHASKALSON SC:** Thank you Chair.

**CHAIRPERSON:** Yes. Okay alright.

**ADV CHASKALSON SC:** Chair, we will be using Bundles 7 and 8A and B today. And Mr Mieszala's statement is at the start of Bundle 7. It is the document commencing at page - FOF-7, page 4.

20        And Mr Mieszala, can I first ask you to confirm the correctness of your statement? Do you have a full set of paper with you where you sit?

**CHAIRPERSON:** Before he does that. Let us do the oath. Even though he is outside of the country's borders but we will take the other precaution in due course. Just to – just in



case there may be challenges. Okay.

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

**WITNESS:** [No audible reply]

**ADV CHASKALSON SC:** Sorry. Mr Mieszala, can you hear us here?

**WITNESS:** Sorry, I did not hear the last question. It is very low. I do apologise for this.

**ADV CHASKALSON SC:** We are trying to swear you in as a witness.

10 **WITNESS:** I do. I do swear.

**CHAIRPERSON:** [laughs]

**WITNESS:** I am afraid I cannot see.

**CHAIRPERSON:** Good afternoon, Mr Mieszala. The registrar will now administer the oath or affirmation to you. Please listen to him and he will ask you questions and you will answer each question in accordance with the sequence of the questions. Okay. Please proceed.

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

20 **WITNESS:** Can I – what am I supposed to say? I am just swearing in by you.

**CHAIRPERSON:** Can you hear us?

**WITNESS:** I did not hear the last question. Sorry.

**CHAIRPERSON:** Okay can you hear me well?

**WITNESS:** [No audible reply]

**CHAIRPERSON:** Can you hear me well?

**WITNESS:** No ...[intervenes]

**CHAIRPERSON:** It does not look like that.

**WITNESS:** Chair, I wonder if I can place myself [break in transmission – speaker unclear]

**CHAIRPERSON:** Ja, okay.

**WITNESS:** [break in transmission – speaker unclear]

**CHAIRPERSON:** Alright.

**WITNESS:** May I place myself on record?

**CHAIRPERSON:** Okay. I think we will take an adjournment  
10 just to make sure that he can hear us properly. If this can be improved. If it can be improved. And for my registrar to explain to him what questions he will put to him and hear what the procedure is with the swearing in. Mr Chaskalson, that seems to be necessary to ...[intervenes]

**ADV CHASKALSON SC:** Yes, we do need to sort out the connection.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** If that is possible Chair.

**CHAIRPERSON:** Yes, yes. And then the issue of the oath  
20 can – the registrar can explain to him so that when the questions are put to him, he knows what questions will be put and he is clear about the answers, whether it is ...[intervenes]

**ADV CHASKALSON SC:** Yes, I think the problem is – I am sure it is just the connection.

**CHAIRPERSON:** Oh, not... Okay alright.

**ADV CHASKALSON SC:** Yes.

**CHAIRPERSON:** It is just that I heard him say, at some stage: Am I supposed to say I do or something. But maybe because of the connection. So let us adjourn for five minutes. If it takes longer, you will just call me so that the connection can be sorted out.

**ADV CHASKALSON SC:** Thank you, Chair.

**CHAIRPERSON:** We adjourn.

10 **INQUIRY ADJOURNS:**

**INQUIRY RESUMES:**

**CHAIRPERSON:** Has it been sorted out?

**ADV CHASKALSON SC:** We think so.

**CHAIRPERSON:** Ja, okay.

**ADV CHASKALSON SC:** We think so Chair. Chair, before we go further. I forgot to ask if you could let Advocate Cockerel SC and Van Zyl SC place themselves on record. They are also here remotely.

20 **CHAIRPERSON:** Okay let them do so. They can do so, either from where they are if the microphone is working or otherwise... Oh, they are also... Oh, they are – you said they are also ...[intervenes]

**ADV CHASKALSON SC:** They are here remotely.

**CHAIRPERSON:** Oh, okay alright. Let them do so.

**ADV COCKEREL SC:** Good afternoon, Chair. It is Alfred

Cockerel. I appear for Mr Mieszala ...[intervenes]

**CHAIRPERSON:** Yes ...[intervenes]

**ADV COCKEREL SC:** ...on instructions of Norton Rose Fulbright.

**CHAIRPERSON:** Yes. Good afternoon. Good afternoon. Okay. Is it only him?

**ADV CHASKALSON SC:** It is Mr Van Zyl as well.

**CHAIRPERSON:** Oh, and Mr Van Zyl. Okay.

**ADV VAN ZYL SC:** Good afternoon, Chair.

10 **CHAIRPERSON:** Good afternoon.

**ADV VAN ZYL SC:** I am representing Mr Fine on instructions of Norton's but I believe he will only be on later today.

**CHAIRPERSON:** Yes, okay. No, that is fine. It is okay. We know you are on record and when we get to that, you can just place yourself on record again but it is fine.

**ADV VAN ZYL SC:** Yes. May I be excused from this and come back later?

**CHAIRPERSON:** Yes, that is fine. As long as you will be  
20 able to know when we get to your client... I do not know between yourself and the Commission's legal team, you might be able to work out something for you to be there when we start.

**ADV CHASKALSON SC:** Chair ...[intervenes]

**ADV VAN ZYL SC:** [Indistinct] [Speaker not clear] I will do

that.

**CHAIRPERSON:** Okay alright.

**ADV VAN ZYL SC:** May I be then excused?

**CHAIRPERSON:** Yes, you are excused. Thank you.

**ADV VAN ZYL SC:** Thank you.

**CHAIRPERSON:** Thank you. Okay. And then, Mr Mieszala is back. Okay. Can you hear me well now Mr Mieszala?

**WITNESS:** I do hear you Mr Chairperson.

**CHAIRPERSON:** Okay alright. The registrar will now  
10 administer the oath to you or affirmation as the case may be.  
He is going to speak to you now.

**REGISTRAR:** Please state your full names of the record.

**WITNESS:** Jean-Christophe Mieszala.

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

**WITNESS:** No objection.

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

**WITNESS:** Yes.

20 **REGISTRAR:** Do you swear that the evidence you are about to give, will be the truth, the whole truth and nothing else but the truth? If so, please raise up your right hand and say, so help me God.

**WITNESS:** So help me God.

**CHAIRPERSON:** Thank you very much.

**JEAN-CHRISTOPHE MIESZALA:** [d.s.s.]

**CHAIRPERSON:** Did I pronounce his surname correctly Mr Chaskalson?

**ADV CHASKALSON SC:** I am not sure Chair. I think... Mr Mieszala, have I pronounced your surname, broadly, correctly there?

**MR MIESZALA:** Ja. [laughs]

**ADV CHASKALSON SC:** Thank you.

**CHAIRPERSON:** Okay alright. Thank you, Mr Mieszala.

10 **CHAIRPERSON:** Okay. No, that is fine. Thank you. You may start Mr Chaskalson.

**EXAMINATION BY ADV CHASKALSON SC:** Thank you, Chair. And we will be in Bundle 7 and 8 today.

**CHAIRPERSON:** Yes, okay.

**ADV CHASKALSON SC:** Mr Mieszala, you have furnished a statement to the Commission which appears at page 6 of Bundle 7. Can you confirm that that is your statement?

**MR MIESZALA:** I do confirm.

**ADV CHASKALSON SC:** And do you confirm the correctness  
20 of the contents of that statement?

**MR MIESZALA:** I do.

**ADV CHASKALSON SC:** Mr Mieszala, I will be taking through certain parts of your statement to begin with just to sketch and outline of what your evidence is. And then I will be addressing some specific issues with more focussed

questions.

**CHAIRPERSON**: Before you do so Mr Chaskalson. Can you confirm that his statement that starts at page, goes up to page 33? Is that correct?

**ADV CHASKALSON SC**: [No audible reply]

**CHAIRPERSON**: Mr Mieszala, is that correct? Does your statement ...[intervenes]

**ADV CHASKALSON SC**: Chair, Mr Mieszala's signature is on page 22. So the statement ends at page 22.

10 **CHAIRPERSON**: Oh, okay, okay. I wanted to make sure that we...

**ADV CHASKALSON SC**: 21 Chair. I apologise 21.

**CHAIRPERSON**: Ja, 21. So that is your signature on page 21 Mr Mieszala? Is that correct?

**MR MIESZALA**: Yes.

**CHAIRPERSON**: Yes, okay alright.

**MR MIESZALA**: Yes, Mr Chair.

**CHAIRPERSON**: Okay alright. You may proceed Mr Chaskalson. You want me to admit it as an exhibit?

20 **ADV CHASKALSON SC**: Please Chair. Can it be BB6?

**CHAIRPERSON**: Yes.

**ADV CHASKALSON SC**: Mr Mieszala, at ...[intervenes]

**CHAIRPERSON**: Let me just admit it formally. Mr Mieszala's statement that starts at page 6 and goes up to page 21 is admitted as Exhibit BB6.

**STATEMENT AND OF JEAN-CHRISTOPHE MIESZALA IS  
ADMITTED AND MARKED AS EXHIBIT BB6**

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** Chair, in fact, there are a long range of annexures to that statement.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** So the exhibit should go longer than page 21.

**CHAIRPERSON:** Ja, that includes the annexures.

10 **ADV CHASKALSON SC:** Thank you.

**CHAIRPERSON:** Okay.

**ANNEXURES TO STATEMENT OF JEAN-CHRISTOPHE  
FORMS PART OF EXHIBIT BB6**

**ADV CHASKALSON SC:** Mr Mieszala, at paragraphs 1 and 2 of your statement, you briefly described who you are and what role you play within McKinsey and Company. Can you tell the Chair?

**MR MIESZALA:** Certainly Mr Chair. And first, I would like to thank the Commission to accept my evidence remotely,  
20 given the pandemic here in Paris. But I want to say on record that I stand, of course, to accommodate any requests you may have for me to come to South Africa.

As I was saying I am a French National and based in Paris. I am senior partner at McKinsey and on the Board of McKinsey I play the role of Chief Global Chief Risk Officer



which means that I oversee our legal compliance risk, security or cyber functions.

**ADV CHASKALSON SC:** Thank you, Mr Mieszala. And just so that the Chair knows what is within your personal knowledge and what is not within your personal knowledge.

Would it be correct to say that the underlining events that took place in relation to the McKinsey contracts with Eskom and Transnet and SAA are not facts of which you are personally aware but that you conducted an investigation  
10 into some of those facts after the event?

**MR MIESZALA:** That is correct Mr Chair. I was appointed as Global Chief Risk Officer early 2018. I, myself, have never been working in South Africa.

Therefore, I have never been based in South Africa but I have always seen our investigations since 2018 and I am happy to record and answering questions related to those investigations.

And I have also been in charge of drawing the implications and the learnings from those events and to  
20 implement those in the broader context of my firm.

**ADV CHASKALSON SC:** Thank you, Mr Mieszala. And although it is not in your statement, I do want to draw attention to the fact that you were personally responsible for one very important letter in this saga which is at Volume 7, page 550.

Can I ask you to go to page 550 and just confirm that the letter that we see there was a letter that you signed? It is the letter that informed Trillian that they could not be McKinsey's Supply Development partner.

**MR MIESZALA:** It is correct and I do confirm. At that time, I was chairing the Risk Committee session at the firm level, actually, that concluded and decided that we were not going to work – to partner with Trillian. And secondly, we did inform Trillian but also Eskom, our client.

10 **ADV CHASKALSON SC:** And for the record Chair. I think that letter is the first recorded letter we have from any company, telling Trillian that they will not do business with them. Mr Mieszala, at paragraph 1.3 of your statement, you talk about the role that you played in McKinsey's decision to commit to repay fees to Eskom on the turnaround programme. Can you describe that role to the Chair?

**MR MIESZALA:** Absolutely. So our firm made the commitment publicly in November 2017. I believe it was one of your client's statement in front of the parliament or in the  
20 parliament inquiry, that we would take any responsibility for repaying for all the fees that we have earned relating to situations that would be a matter of concern.

In this context, when we were made aware in 2017 that the Eskom, the turnaround programme/contract was filled with irregularities, we decided to return those fees.

More precisely, we have been told by Eskom that the National Treasury had approved and was cited with – in respect of this contract. When we learnt that was not the case, we decided to return the fees. Then – but there was a process with Eskom.

Ultimately, it was resolved in high court. I believe it was in July 2018 and we returned the fees to Eskom related to our turnaround programme.

**ADV CHASKALSON SC:** And Mr Mieszala, you have  
 10 recently been involved in the decision of McKinsey to repay the fees that it earned on projects with Regiments Capital at Transnet and SAA. Can you tell the Chair about that?

**MR MIESZALA:** Yes, Mr Chair. It is true. As I was saying, we do recognise our errors and we believe we do the right thing when we are presented with New evidence that is related to those contract.

The Commission has approached us for our testimony and that was over the last month and shared their findings and their investigations. Our teams and the teams of the  
 20 Commission compared notes, our own findings and the findings of the Commission.

But those new evidence that were brought to us and showed that there were improper actions on the part of Regiments, in particular, gave us the confidence that we should return the fees related to the contracts at Transnet

and South African Airways when McKinsey was working alongside Regiments.

**ADV CHASKALSON SC:** Thank you, Mr Mieszala. At paragraph three point... Oh, sorry 1.5, 1.6 and 3.4 of your statement, you give McKinsey's general perspective on the State Capture Inquiry. Can you address the Chair on that?

**MR MIESZALA:** Let me go to... You said three point what?

**ADV CHASKALSON SC:** Starting with 1.5, I think. It is 1.5 on page 4.

10 **MR MIESZALA:** Oh, 1.5.

**ADV CHASKALSON SC:** Page 6.

**MR MIESZALA:** Yes, certainly. So our firm is very committed actually to work with all the authorities in the country and other countries to go to the bottom of those – of the things and all the events that took place and which are called the State Capture.

We have been following and I have been personally following closely the work of the Commission. We engaged with the Commission when it was – since it was established  
20 in August 2018.

I, myself, went to South Africa several times to oversee our own investigations, to meet with clients, with communities, with my colleagues to also try to get to the bottom of these things. We take it very seriously.

In particular, we want to also thank the work that was

done by journalists, that was done by honest people and the country to try and bring everything to the light.

And we want McKinsey to be part of this and helping find the truth. And allow everyone to take responsibility on these matters. I hope that I did answer your question.

**ADV CHASKALSON SC:** Yes, you did. Certainly. Maybe you can also just tell the Chair what you set out in paragraphs 1.6 and 3.4.

**MR MIESZALA:** Yes, I believe here Mr Chair,  
10 Mr Chaskalson refers to statements that I made here and that my firm has made several times and that is that it is – it was a source of regret and embarrassment for our firm that we have been associated with those events.

It does - be a source of pain, not only for the 150 colleagues in South Africa but also for all the partners and the colleagues worldwide of McKinsey.

It is certainly not a situation that we feel good about it. We have expressed our regrets but also our scourges(?) for all the process mistakes, the lapses of judgment and the fact  
20 that our name and our brand has been used in these events.

**ADV CHASKALSON SC:** Thank you, Mr Mieszala. Can we then talk, just broadly to set out the extent of your cooperation with the Commission? It is an issue that you address at paragraphs – or briefly at paragraph 1.4 but maybe at paragraph 4.9.7. And then we can then possible

come back to 1.94.

**MR MIESZALA**: Yes. So as we have said before Mr Chair. Our firm has initiated a very thorough investigation and we have done this ourselves with two applicable law firms, but more so with Forster and Norton Rose. We have also hired a forensic firm.

All in total, we had collected monumental documents that were close to 65 attorneys or document reviewers the whole time to collect and review all the evidence that were in  
10 our possession.

I am happy to talk more about our findings. But more importantly, we have engaged with the Commission. We have shared with the Commission, as we have with other authorities, all our findings. We had always been ready to turn all the pages related to meetings, to documents.

We also recorded any concerns that we had unveiled as part of our findings. The Commission, over the last weeks, in forward to share evidence that they have uncovered themselves.

20 I do believe that it was – they were coming from Regiments' servers but sharing with us evidence that were not in our possession, related to, on one hand, actions that were taking place between Regiments and other Gupta related companies.

But also related to emails that were to in our possession

in respect to one of our former colleagues. So we have worked with the Commission extensively in comparing all these different facts.

But I believe it is also in the possession of the Commission – the Commission is in possession of all the documents, we have also handed to them in respect to our own investigations.

**ADV CHASKALSON SC:** Thank you, Mr Mieszala. I can confirm that certainly from the side of the Commission, that  
10 we have no complaints whatsoever about the – the way in which McKinsey has interacted with us.

We found McKinsey to be very transparent in its interactions with us where we have asked for materials. We have always received them and sometimes where we have not asked, we have received them to.

Can I – just to clarify one issues? The evidence that you are referring to does not, in fact, come from...

Well, it originally came from Regiments Service but it comes from Trillian's service which included materials which  
20 were taken from the Regiments' server by people who left Regiments to Trillian.

So we do not have access to the Regiment Service but we do have access to the copy of the Trillian Server.

Can you briefly tell the Commission which other South African inquiries and investigations McKinsey has

cooperated with?

**MR MIESZALA**: Certainly. So we have cooperated with the Parliamentary Inquiry. My colleague, Dr Wise – by Dr Weiss testified in front of the Commission – of the parliament, sorry. We have also collaborated with the National Treasury Inquiry which I believe is called Pamensky(?) Inquiry.

We have also collaborated with Eskom as part of our effort with Eskom to return our fees from March to July 2018. We have also collaborated with Transnet.

10 We have collaborated MMS Attorneys that were commissioned to review some of the contracts and the work at Transnet.

We then also collaborated with Transnet in 2019 in reviewing the work that McKinsey has been doing at Transnet and the impact of its work.

And we have also, of course, collaborated with authorities like the NPA when we did record in answering the questions and recording about the findings of our investigations.

20 **ADV CHASKALSON SC**: Getting back to McKinsey as opposed to McKinsey's investigations. Can you maybe just sketch for the Chair a brief background of McKinsey's presence in South Africa?

And then we can move on, briefly, to describe the – an overview of the work that McKinsey did with Transnet, Eskom



and SAA. But starting first with McKinsey's history in South Africa.

**MR MIESZALA**: Certainly. I mean, we are a global firm and the partnerships are present in over 66 countries and 100 locations. One important location is South Africa.

Our firm is a global firm that on a matter of principle has decided not to open an office until 1995. We had to wait until the end of the apartheid regime and then we established an office.

10 I guess Mr Fine and Mr Weiss can answer more questions if you wish so about the history of our office. He was one of the first local South Africans to be hired by McKinsey. Today we have about 150 colleagues. Sixty percent are black South Africans.

Over these 25 years, we have conducted about a thousand projects in the country. We have enforced South African companies, including SOE's.

I believe that there were about 350 engagements for South African SOE's. So we do have an extensive  
20 experience working across different sectors.

And if you allow me to say so. We take great pride of the work or the role we have done in and with that country over these last 20-years despite the regret, as I have said before, of all the events that we have been associated to with respect with the State Capture.

**ADV CHASKALSON SC:** Can you briefly describe because you were not there but just give the Chair an outline of where we will go today. What particular work McKinsey has done at Eskom and then at Transnet and then at SAA?

**MR MIESZALA:** Certainly Mr Chair. So we worked at these Free State owned enterprises for many years. We started working with those companies either in 2005 or in the case of SAA, it was 1999. We worked across a – we worked in a broad range of topics, ranging from organisation, operational  
10 improvements, strategy, procurement.

These pre-sectors are clearly important for the country and for the growth and the prosperity of the country. Our firm, in working with these firms, bring the expertise that we gained from working in these similar sectors and similar companies in other countries and this is how we have been working since 2005 or since 1999 with South African Airways, Transnet or Eskom.

And the reason I am pointing this is also to highlight the fact that our work at these institutions by no way are linked  
20 to the Regiments and we have been working with these companies before.

Now, I believe that my colleagues, Mr Fine and Mr Sagar are scheduled to testify in front of the Commission.

**ADV CHASKALSON SC:** Sorry, Mr Mieszala. You said Mr Sagar. I think you meant doctor ...[intervenes]

**MR MIESZALA:** I am sorry. I do apologise. Mr Fine and Mr Weiss are scheduled to testify in front of the Commission. And then themselves have been working and serving these companies. So I think that they can also speak very locally and much more greater detail than myself about the work that was done with these companies.

**ADV CHASKALSON SC:** Again this is a matter that we will be go into in a bit more detail with – I think it is Dr Fine and Dr Weiss. But can you speak briefly to the Chair just to set  
10 the scene about McKinsey's approach to Supply Development obligations and the transition from Letsema who was the original primary Supply Development partner of McKinsey to Regiments. And then the issues of the start of the move from Regiments to Trillian.

**MR MIESZALA:** Yes. So McKinsey has been working with Black Empowerment entities. We started working, I believe, it was with Letsema and we had a long record of working with Letsema and that was primarily between the years 2005 and 2012.

20 Again, Mr Fine who is scheduled to testify in front of the Commission, he himself would be able to provide more details if you so wish. And I also referred you to the documents that were annexed to my statement.

McKinsey began working with Regiments in 2012 and I believe that relates to a project that was submitted by – we

started working with Regiments in August or September in making a proposal to Transnet. The – depends on how all of this happened again, Mr Fine can answer these questions in greater details when he appears in front of the Commission but the logic, the way I do understand was to also help and work with other supply [indistinct] 00.00.18 companies and help them grow.

In addition to this, our understanding was also that it was suggested by Transnet where Regiments was  
10 working also before independently although our own firm and finally they had the relevant expertise to carry the work. But again, Mr Fine should be able to provide more details that related to that transition.

Our work with Regiments ended up in February/March 2016. We did a review back then because there were some concerns and we decided to stop any partnership, any future work with Regiments and that was communicated to the management of Regiments by then.

With respect of Trillian, there was a –we look into  
20 whether or not we would be working with Trillian – again and let me state this very carefully because I know that there has been I misunderstandings or allegations, we never had any partnership with Trillian. The origin of this was that we thought that Regiments – my colleagues thought that Regiments was not devoting enough resources

from their consulting home, there was an attempt to set up a new company names Trillian and we were approached on whether or not to establish a partnership in the context of the BBEE framework.

What happened then is that we commissioned, we did a diligence, it was part of our policy back then. I personally oversaw parts of those diligences with other colleagues and we concluded that there were concerns and we could not partner with Trillian and that was  
 10 communicated to Trillian, that was communicated to Eskom as well and therefore we never worked and never partnered with Trillian. Trillian, my understanding is, that they worked – the firm worked for Eskom on - separately of McKinsey but McKinsey never worked with Trillian, Trillian was never an SDP of McKinsey.

**ADV CHASKALSON SC:** Can you elaborate on the due diligence that persuaded you not to agree to contract with Trillian? What were the issues?

**MR MIESZALA:** Certainly. So the main – one of the main  
 20 issue was related to the lack of transparency with respect to what the company was, who were the owners, how the company was set up and we on multiple times were asking questions related to these issues and we never got answers or we were getting answers that were not satisfactory, so after several weeks, not getting the proper

answers and while our diligence was continuing with respect to other matters, we just took the decision actually that it was going nowhere, we were not in confidence and therefore we decided to stop any attempt to partner with Trillian.

**ADV CHASKALSON SC:** As I understand it there were two broad issues, one was the lack of transparency about ownership but there was also a second issue about conflicts. Do you recall that issue and can you address the

10 Chair on it?

**MR MIESZALA:** With respect to Trillian or with respect to Regiments?

**ADV CHASKALSON SC:** No, no, with respect to Trillian.

**MR MIESZALA:** I believe that Mr Weiss(?) can better address this question in his testimony later on.

**ADV CHASKALSON SC:** We will ask Dr Weiss. Can I – very briefly to come back to the investigation that you have conducted into the events at Transnet and Eskom, can you broadly – well, first of all, have you found any evidence of  
20 corrupt payments made by McKinsey to Transnet or Eskom officials?

**MR MIESZALA:** Mr Chair, the answer is simply no, we did not find any such evidence.

**ADV CHASKALSON SC:** Have you found evidence that nevertheless concerns you even if it falls short of corrupt

payments made by McKinsey to Transnet or Eskom officials?

**MR MIESZALA:** Forgive me, I did not hear well you question, would you mind repeating?

**ADV CHASKALSON SC:** Have you evidence that falls short of corrupt payments but nevertheless gives you cause for concern?

**MR MIESZALA:** So when we were doing our own investigations – and I will leave aside the evidence that  
10 was brought forward to us by the Commission itself, as I said we reviewed 9 million – we collected 9 million documents, we conducted interviews with about 160 people. We did not find any evidence that there was any attempt on the side of McKinsey to instigate any form of corruption, we did not find any evidence of money and payments that would be a source of concern and they were not related well-established contracts and we did not find any, I would say, improper attempts to influence or benefit from I would say connections that we should not - had  
20 been used.

We did find in our investigations several facts that were a source of concerns and which we have reported with respect to professional behaviours and with respect to our own internal processes. I am happy to elaborate with respect to these findings but let me again repeat, these

were related to professional standards or conduct or violations of our own internal policies.

**ADV CHASKALSON SC:** Can you maybe tell the Chair about the issues that you address at paragraph 7.2.1 and 7.2.2 of your statement.

**MR MIESZALA:** Certainly, Mr Chair. So these are some of the – these are the concerns that we did – we they did find, as I was saying, these are true violations of our code of conduct or our professional standards. They relate to  
10 our former senior partner, Mr Vikas Sagar, I believe that is why I misused his name previously and these issues were first an assistance to Mr Gama at Transnet for his MBA, so helping him on his MBA. That was late 2015 and early 2016.

Now when we found this in 2017, as part of our investigation, we decided to make a Section 34 report in terms of the Prevention and Combating of Corrupt Activities Act. That is a clear violation of our internal policy.

20 The second source of concern was the I guess now famous February 9, 2016 letter. It is a letter that was sent by Mr Sagar to Eskom on February 9, 2016. This letter was – which was related to another project at Eskom than the MSA or turnaround project was related I believe to the corporate plan was poorly written, had factual errors



including the fact that, you know, that it inaccurately referred to Trillian as a subcontractor of McKinsey, which it was not and, by the way, Trillian was not involved on the corporate plan.

So this letter was – had mistakes and was confusing. This is one of the multiple – this is one of the reasons why our firm also did apologise in July 2018. So that is a second area of concern.

There was a third area of concern which is when we  
10 were doing our investigations in the [indistinct] 11.21 of  
2017, we found also evidence that Mr Sagar had used a  
software tool named CC Cleaner to wipe his computer.  
Now we could not recover the parts that were deleted by  
that tool. That was a source of concern as well in itself  
and we also decided to report that act to authorities.

**ADV CHASKALSON SC:** Can you tell the Chair about Mr  
Sagar's departure from McKinsey? When did he leave  
McKinsey in what circumstances?

**MR MIESZALA:** Mr Sagar – do you allow me to drink a  
20 little bit of water?

**ADV CHASKALSON SC:** Certainly.

**CHAIRPERSON:** No, that is fine, ja.

**ADV CHASKALSON SC:** Sorry, Chair.

**MR MIESZALA:** Yes, Chairperson, so Mr Sagar, departed  
McKinsey in October 2017. Given the facts, the evidence

that I was just sharing related to his conduct, February 2016 letter, the MBA assistance, our firm decided to launch a disciplinary process against Mr Sagar. I have to report also that I was part of this process and of the [indistinct] 13.14 that overseas this disciplinary process in our firm and we have decided to terminate Mr Sagar.

Mr Sagar appealed that decision, that is part of our own internal processes and while he was appealing, he decided nevertheless to leave our firm. That was October 10 2017.

**ADV CHASKALSON SC:** Now thus far we have been talking only of evidence that your evidence revealed. Just over six weeks ago the Commission exchanged or showed some of the evidence in relation to Mr Sagar that it had uncovered and you address that at paragraph 7.2.4.2 of your statement at page 17. Can you tell the Chair what was of significance in relation to the – well, the two emails of 16 and 18 November that the Commission shared with you.

20 **MR MIESZALA:** Certainly, so Mr Chair, these two emails are the following, one is an email dated November 16, 2015, this email from Clive Angel is written to Mr Sagar and Mr Wood copying Mr Salim Essa and the emails suggests that, at least in our eyes, that Mr Sagar would have been aware that Mr Essa was involved at Trillian.

That email, even though it was to a McKinsey address, was not on our system, so it was not part of the documents and emails that have been collected. I can only speculate that the email must have been deleted at some point and before it was copied onto our systems, but the fact that Mr Sagar was aware that Mr Essa was involved at Trillian is, of course, a contradiction, I mean, is not appropriate and was in contradiction to anything that he had reported to us.

10           There is a second email which is dated November 15, 2015 ...[intervenes]

**ADV CHASKALSON SC:**   Sorry, Mr Mieszala, can we just pause at that point? Can I ask you to go to volume 8, 8A, page 393, just to identify that email to which you have just been referring? 393, volume 8.

**MR MIESZALA:**   393, let me see.

**ADV CHASKALSON SC:**   But it is not the volume that your statement is in, it is the next volume.

**MR MIESZALA:**   I have to find it, sorry. I do not think I  
20   have the volume 8 in front of me.

**ADV CHASKALSON SC:**   Sorry, you do or you do not have volume 8?

**MR MIESZALA:**   I do not find the volume 8 in front of me. Is this my bundle?

**ADV CHASKALSON SC:**   The reference bundle, yes.

**MR MIESZALA:** Yes, let me see.

**ADV CHASKALSON SC:** It may be described as VV9. I am hoping it has the same pagination. Page 393.

**MR MIESZALA:** My volume goes until page 182.

**CHAIRPERSON:** It is not that one.

**ADV CHASKALSON SC:** Well, maybe you can ...[intervenes]

**CHAIRPERSON:** Well, do you want him to look at the spine of the file, if he is using a file. I do not know if he is  
10 using a file like me.

**ADV CHASKALSON SC:** I have a concern that the reference bundle may not have been sent through to him.

**CHAIRPERSON:** Because my one says Flow Funds bundle 08A and is exhibit – ja.

**ADV CHASKALSON SC:** Yes.

**CHAIRPERSON:** Which has got at page 393 an email from Clive Angel to Mr Sagar.

**ADV CHASKALSON SC:** Mr Mieszala, maybe we can cut through the – we are actually going to run into a problem  
20 at a later stage because I will need to refer to a series of documents in this bundle.

**CHAIRPERSON:** Do you need time to...?

**ADV CHASKALSON SC:** Chair, maybe if we could take a five minute adjournment. On a worst case scenario we can arrange for a file therefore so that Mr Mieszala has them

electronically.

**CHAIRPERSON:** Ja. Okay, we will take a short adjournment to enable Mr Chaskalson to attend to this. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV CHASKALSON SC:** Thank you Chair, sorry about that.

**CHAIRPERSON:** Yes.

10 **ADV CHASKALSON SC:** Mr Mieszala do you now have that document, the email that we are talking about, 16 November 2016 at ...[intervenes]

**MR MIESZALA:** I do.

**ADV CHASKALSON SC:** ...Bundle 8A 393. So that's the document that you – can you just confirm that that's the email to which your – you were referring the Chair when you spoke about that email a short while ago in the context of indicating that Mr Sagar was aware that Mr Essa stood behind Trillian?

20 **MR MIESZALA:** Yes Chairperson this is the email I was referring to, so it is F0839, it is a memo dated November 16 2015 written by our – sent by Clive Angel to Vika Sagar and Eric Wood, copying Salim Essa.

**ADV CHASKALSON SC:** And then if you can go while you're in that file to FO8, page 395, is that a second email

that was furnished to you by the Commission that gave you cause for concern.

**MR MIESZALA:** Yes, so this second email is an email between Mr Angel Clive and Eric Wood and in this email Mr Sagar appear under his personal email, so it is not a McKinsey email. Now the fact that he was using a personal address with respect to clients or professional matters is something that is prohibited under our policies, but more importantly I see this that his intent was to move  
10 his communication to a personal email as a way of hiding this to anybody within our firm.

**ADV CHASKALSON SC:** And is there anything else about these two emails that the Commission made available to you that gave you cause for concern in relation to Mr Sagar?

**MR MIESZALA:** Yes well of course one could argue that the new documents, ...[indistinct] documents related to discussions that would not have been out of the ordinary at that time in terms of arrangements between ...[intervenes]

20 **CHAIRPERSON:** Sorry Mr Mieszala.

**MR MIESZALA:** Can you hear me.

**CHAIRPERSON:** Mr Chaskalson I wonder whether particularly the one at page 393 there are certain features that you wanted to read first before commenting on them.

**ADV CHASKALSON SC:** Chair we will come back to these

emails later, at this stage I just want to lead Mr Mieszala on his own statement.

**CHAIRPERSON:** No, no that's fine. Mr Mieszala I interrupted you, please proceed. I interrupted you please proceed.

**MR MIESZALA:** Yes Mr Chair, I was saying that one could argue that the new documents as with other documents relate – could relate to discussions that would have not – that would not have been out of the ordinary at  
10 the times in terms of business arrangement between companies serving the same client. However, however my role is not to defend Mr Sagar and I have absolutely no desire to do so.

In all our views actually it is a matter – it is a source of concern. This is adding to the sources of concerns we already have with respect to Mr Sagar and Mr Sagar's behaviour, in particular to us it is clear that Mr Sagar has not been truthful when engaging with our internal counsel, our external counsel and his colleagues  
20 and we see these emails as another proof that he was hiding, that he was aware of Mr Essa's connection to Trillian, which he never reported to us, and secondly the use of personal emails as a way of apparently trying to hide things from us which of course is a matter of concern, it is difficult to trust anybody who is behaving in this

context.

Now it is not for me to infer more out of this, it is not my role but clearly it is validating the decision that we took to terminate Mr Sagar on the ground of professional conduct and professional standards.

**CHAIRPERSON:** Mr Chaskalson maybe you will deal with this at some stage, I will be interested to knowing why Mr Sagar would want to us – or I would be interested in knowing whether in whatever he was doing it involved now  
 10 it seems using his personal email address whether he was going to benefit personally from some of those activities, because I am wondering whether if he was no to benefit anything personal but the company was going to benefit, why he would decide to use ...[indistinct – loud buzzing on audio] that might be something that you intend to ...[indistinct]

**ADV CHASKALSON SC:** Yes Chair what I can say is that we – we don't have access to any bank records of Mr Sagar so we cannot ...[intervenes]

20 **CHAIRPERSON:** So you don't know whether he ...[intervenes]

**ADV CHASKALSON SC:** We don't know whether he did or didn't benefit personally but maybe I can put some questions to Mr Mieszala. I do want to come back to these emails a little later, and maybe it would be the



...[intervenes]

**CHAIRPERSON:** That is fine.

**ADV CHASKALSON SC:** At the moment I just want to lead Mr Mieszala on his statement.

**CHAIRPERSON:** No, no I am fine with that, as long as it is not staged.

**ADV CHASKALSON SC:** We will certainly raise those questions.

**CHAIRPERSON:** If not with Mr Mieszala with some other  
10 witness if possible, okay.

**ADV CHASKALSON SC:** Mr Mieszala you set out in your statement why McKinsey has decided to repayment the fees both, one McKinsey originally decided to repay the fees to Eskom and has now decided to repay the fees to SAA and to Transnet. Can I ask you to take the Chair through that ...[intervenes]

**CHAIRPERSON:** We are moving away from this bundle?

**ADV CHASKALSON SC:** We are moving away from 8A for a while Chair and back to 7.

20 **CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** I am thinking of paragraphs 8.1 and 2 in – at page 18 of Bundle 7, and then the specific statements that you make in relation to Transnet and Eskom at – both at paragraphs 2.4 and 2.5 and 8.3 – sorry Transnet and SAA, 2.4 and 2.5 and 8.3 and 8.4. Can you

take the Chair slowly through that and McKinsey's rationale for repaying the fees?

**MR MIESZALA:** Certainly so you said 2. ...[intervenes]

**ADV CHASKALSON SC:** I think maybe to start 8.1, 8.2, 8.3, 8.4 and if there's anything else that remains – that you would want add from 2.4 and 2.5 feel free to do so.

**MR MIESZALA:** Ja, certainly so Mr Chair we made the decision to repay the entirety of the fees for our work at Transnet and South African Airways, work related that was  
10 done with or alongside Regiments. This decision is based out of the evidence that was brought forward to us by the Commission. The reason we do this is a matter of principle, so it is not because we feel that it is a legal obligation or whatsoever but it is a matter of principle that we have said in November 2017 we do view the situation of State Capture as a source of concern, a very serious matter. Our firm does not want to benefit from anything that was related to State Capture.

So that is the rationale for us to decide to return  
20 those fees obviously we have to work out the proper legal framework to do that correctly and ...[indistinct] but it is a commitment that I want to reaffirm here.

**ADV CHASKALSON SC:** And you talk also with reference to the public statement that the then head of McKinsey, Mr Kevin Sneader made in 2018 about the acknowledgement

of mistakes that McKinsey made in this period around 2014, 2015, 2016.

**MR MIESZALA:** Yes.

**ADV CHASKALSON SC:** I am looking at 7.3 of your affidavit at page 18 and – that Mr Sneader's statement is something more detailed at pages 40 to 44. Can you talk to the Chair about what mistakes McKinsey has actually identified as having given rise to the problems or given rise to the situation where it has now decided to repay  
10 fees?

**MR MIESZALA:** Certainly although we did – have identified several mistakes and there are also lessons that have been learnt, and the reason I speak about lessons learnt is independently of mistakes there are also that in retrospect now you learn that it is worth doing things differently, even if they don't relate to specific mistakes. However ...[indistinct] specific Mr Chair when we talked about our mistakes it is for instance the February 2016 letter it is not a correct letter, it led to confusion, it had in-  
20 corrections and we have ...[indistinct] and we apologise for this. The fact also that we worked at Eskom and we worked along Trillian again without Trillian being our partner but nevertheless along Trillian before we had concluded our investigations. We stopped any and we communicated about our investigation when we made the

decision but in retrospect we should not have worked on this contract before that investigation was concluded in February 2016.

As we have done before I want to apologise again for the fact that we were slow in responding to Advocate Budlender for instance, maybe we ...[indistinct] reason but nevertheless it is something that should not have happened.

Now these are some of the mistakes and crosses  
10 gaps that I was mentioning. I want to also highlight some of the lessons that we have learnt and that are very important and some of these lessons are not specific to South Africa, what I mean here is that we learnt them and decided then to implement them across our entire firm. I can highlight for instance ...[intervenes]

**ADV CHASKALSON SC:** Sorry Mr Mieszala I would like you to spend quite some time on this and possibly follow your – the structure of your statement and amplify what you say in this statement where you feel this is appropriate  
20 because those sorts of corporate governance are issues with which the Commission is very concerned.

Can I ask you maybe to go to paragraph 9.2 at page 20 and deal first with the changes that you have made to the way you do business in South Africa and then to move to the changes that you have made worldwide, in

paragraph 9.2.2, so start at 9.2.1 and then 9.2.2.

**MR MIESZALA:** Certainly, so Mr Chair Mr Chaskalson refers to the changes we made in South Africa first and so what we did was to strengthen our legal compliance finance and risk teams locally. The second thing is that we have established a regional risk committee, ...[indistinct] or a global committee what we decided to was actually also to establish a regional one to make sure that our local office was also properly equipped in terms of governance  
10 for discussing and reviewing risk and compliance related matters.

We have contracted several anti-corruption trainings with respect to our South African office. We have also taken a different look at our supply development partners for the future and the lessons learnt clearly is that we should have or we – I just wish in retrospect that we would have known what we are dealing with and so moving forward we are going to be – to apply a much higher level of strictness in partnering with such firms.

20 This is in the broader context of us also beefing up our diligence requirements and capabilities with respect to third parties and partnering with their ...[indistinct] so we have established a central team now and we are keeping, adding more resources, we are talking about fifteen to twenty people ultimately by the global level to conduct

diligence on any third party before we contract with them and those diligences we hope are exhausted now, we are viewing not only just media statements but also looking at individuals, ownerships, and any other label information that is – that we might have on these companies.

This is now a requirement, it is of course very applicable in the context of South Africa but it is also something that we have generalised more globally.

Do you wish me to talk also about the measures we  
10 are taking, we have taken at a global level?

**ADV CHASKALSON SC:** Please do yes, and I presume these measures would apply equally to South Africa, they are just not special South African measures?

**MR MIESZALA:** Absolutely those – the measures I was just mentioning are specifically South Africa. Now more globally we undertook major initiatives and efforts over the last two to three years, I was mentioning diligence requirement and capabilities with respect to third parties but that also applies to our clients so we made compulsory  
20 now to conduct diligence with any new client and then regularly with existing clients, again we had established this global central capabilities to conduct such diligences, so they are done in an independent manner, those teams had access also to external sources, external companies that can also supplement them in terms of diligences. We

do these diligences on the institutions, we do them as well on the individuals executives or board members or owners of those companies.

We have also established a framework policy for our client selection, that establishes the lines in – before deciding which client to serve on which topic, there are lines where we are clearly saying these is not work that McKinsey will ever do, it is just forbidden and there are lines where we say for that type of work or that type of  
10 institutions in those ...[indistinct] it does require an approval by a separate risk committee that will thoroughly review the contracts, the conditions, to make sure that our work is both ...[indistinct] but also has all the conditions for impact.

I could if there are no further questions elaborate on this but that was quite an extensive effort that I oversaw myself over these last years. There are also specific rules that we have strengthened with respect to our work with the public sector and SOE's. For instance, and without  
20 being exhaustive we have now decided again based on our South African experience to put caps on our fees, there is also a requirement for a very clear statement of work at the outset before we start any work and there is a requirement also to jointly discuss and agree on the impact of the work at the end of the engagement so that there is no dispute

with respect to our work.

We had also established a global hotline, if I may say, so anybody ...[intervenes]

**ADV CHASKALSON SC:** Sorry I do, I would want you to talk about the global hotline but one of the specific initiatives that you refer to in your statement relates to sole source public sector work. Can you tell the Chair what the McKinsey policy is in respect of sole-source public work.

10 **MR MIESZALA:** Yes Mr Chair so we were confronted with situations where the public sector or SOE's where sole-sourcing work and I hope that most of the time that was, there were good reasons and it was appropriate. Nevertheless it became clear to us that we could not just rely on our partners to decide whether or not that was appropriate or not and so any situation that is a sole-sourcing situation actually requires now a review by our legal department and our legal department is looking whether or not it is appropriate and if all the conditions are  
20 in place given the local regulatory framework for that sole-sourcing, so we are much more thorough we hope in probing whether or not that sole-sourcing is appropriate before we undertake any work.

**ADV CHASKALSON SC:** Thank you Mr Mieszala, you were talking about a global hotline?



**MR MIESZALA:** Yes, so we established a global hotline and we do encourage anybody who has concerns or anything to report to contact that global hotline. The global hotline guarantees of course anonymity, I guess you say anonymity in English, I do apologise for my poor English but people are kept anonymous and they are protected if that is needed, and we do incentivise our people to report any concerns. The reason we did this is also because it is pretty clear to us that people may watch or see things and  
10 we want to encourage a culture where they feel safe to report on concerns.

Now most of the time those concerns may not be relevant or may not be what the people think but it is an inference to help us detect anything that would be wrong otherwise.

**ADV CHASKALSON SC:** And any other ...[intervenes]

**MR MIESZALA:** Excuse me?

**ADV CHASKALSON SC:** Sorry, I interrupted.

**MR MIESZALA:** Ja, I was going to give other examples of  
20 measures that we undertook over the last two to three years. Obviously training and awareness is an important component in enhancing corporate responsibility so we have actually doubled-down on our training programmes, the different matters related to our policies but also just legal or regulatory matters such as anti-corruption for

instance.

Speaking of anti-corruption so we did have a policy that was now in place in 2016 but we strengthened this policy, we established again a global and central capabilities for instance to review if an employee of McKinsey wants to for instance either give a gift or invite a client or actions like this, which could be perfectly legitimate but there is now a central capability to review, advise, and vet if necessary those kind of actions.

10           And of course we have also strengthened our consequence management, our vision is to hold our colleagues to the highest possible standards, professional standards. We praise ourselves for the values and for the purpose of our firm and we have to hold our colleagues responsible *vis-a-vis* these values and professional standards.

              So this is just a bald review if you want of several of the actions that we have undertaken over the last two to three years, some of which have been nurtured and  
20 informed by our experience in South Africa.

**ADV CHASKALSON SC:** Thank you Mr Mieszala is there anything else that you would like to add to what we have canvassed already before I go to very specific issues?

**MR MIESZALA:** To add with respect to what sorry?

**ADV CHASKALSON SC:** Anything in your statement that

you would want to add or amplify before I take you to very specific issues to address with you.

**MR MIESZALA:** I wish to only just add one thing if I may so, which is accountability is not the easiest thing but it is the right thing to do so I hope that, I would like to thank the Commission for the opportunity to bring forward our incidents but also to thank the Commission for having shared with us the evidence that they had and I hope that our commitment to return the fees in question related to  
10 our work at Transnet and South African Airways is seen as a commitment to be a good corporate citizen and to be held accountable and it is not anything else than that.

**ADV CHASKALSON SC:** Thank you Mr Mieszala. I want to focus on a range of very specific issues now but before I do so I just do need to put on record that although my questions that follow may sound critical from time to time I do believe that of all of the companies that we have encountered who have in some ways been involved in contracts that were tainted by State Capture McKinsey has  
20 done far better than most, possibly far better than all, and I should place on record two things, the first is that to the best of my knowledge McKinsey terminated relationships with Regiments and Trillian on probity grounds before anybody else had, so nobody else had seen fit to terminate relationships or to tell or in the case of Trillian to say we

are not going to go into a relationship on the probity grounds by the time that McKinsey did and I think the second point which is a very, very important point is McKinsey has repaid far more than anybody else in relation to these contracts.

Having said that I do need to ask some questions that are a bit more difficult to answer so let me get to them. The first is that if I understand your statement and also the speech of Mr Sneader that broadly three areas  
10 where McKinsey identified errors in the – out of the experience in South Africa in 2014, 2015, 2016.

The first relates to issues of governance, the second relates to issues of charging fees that are too high and the third that Mr Sneader emphasises is a failure to say sorry quickly enough and clearly enough.

Now I think that McKinsey has certainly been saying sorry for quite a long time, I don't want to address that one, and it does seem to me that the changes that you have introduced in relation to the issue of the fee that was  
20 too high on a risk based fee at Eskom which is what Mr Sneader specifically identified would be covered by your new policy of capping risk based fees. Can you talk a little bit about this policy of capping risk based fees?

**MR MIESZALA:** Definitely so risk based is maybe it is worth explaining a little before what it is and what was the

intent and then I move to answering more specifically to the question of the cap. Risk based the intent is to basically say that the consultant or consulting firm is aligning its own interest with the interest of the client, meaning that if there is the impact or the work was delivered then there is a payment, if that is not the case there is no payment and it is aligning the interest in terms of intent to also make sure that the consultants are striving to do their best to maximise that impact in the interest of  
10 their client.

Now obviously if you say so it may sound like good intent but it also raises questions which is why we decided to kind of step back and have a different look at those situations.

The first one is you have to make sure that your client understand exactly what it is, what it leads to, what are the implications.

The second one is you have to be thoughtful about whether those arrangements do make sense, and those  
20 arrangements for instance could make sense if there is a genuine doubt whether or not something can be delivered because for instance does the consulting firm have the proper skills to achieve what is intended to be achieved for instance, but you need to be thoughtful about where those types of arrangements also do make sense and the third

thing as it was implied by our statement in 2018 is that it is wrong to appear as being greedy and trying to benefit from a situation, in particular if your client for instance is struggling in acquiring help, that is morally wrong.

So the reason we do that via those caps is a little bit of a combination if you want of this different analysis again which is to learn from experience, step back from these situations and despite the good intent understand the limitations or the pitfalls you could end up with such  
10 arrangements and this is why we decided to put some guardrails around the use of such arrangements.

**ADV CHASKALSON SC:** Thank you Mr Mieszala. So we talked about too high fees, we talked about apologising, you have given us quite a lot of detail in relation to governance. I want to put to you that there may be a separate issue where there was a problem and I would be interested just in response to this, because it is – when I look back on the events of 2014 to 2016 that affected – well in which McKinsey was involved in South Africa, my  
20 reading of a part of what was going on is that there may have been too much of a premium on bringing in business and bringing in fees and an inadequate balancing of that against the imperative not to compromise on principles, and I see this less as an issue of governance as an issue of culture and I think the examples are examples to canvas

with Mr Fine and Dr Weiss but maybe if I can illustrate what I am suggesting to you with reference to an example that you actually referenced yourself.

**MR MIESZALA:** Please do.

**ADV CHASKALSON SC:** So if you go to page 18 of your report at – sorry 18 of your statement.

**CHAIRPERSON:** His statement yes.

**ADV CHASKALSON SC:** Your statement, bundle 7, page 7.2.5, paragraph 7.2.5, that is the paragraph at the top of  
10 the page that doesn't have a number because it starts on the previous page, there you mentioned that when you conducted your investigation in February/March 2016 individuals raised concerns about potential procurement irregularities related to the award of ...[indistinct] contracts at Transnet and when we look back one of the things that is very striking to us is that just at the point at which Regiments gets involved as McKinsey's supply development partner there is then an extraordinary succession of sole-source contracts awarded to the  
20 Regiments / McKinsey Consortium, but at the same time as this is happening fees at Transnet are growing exponentially for McKinsey and if you go there to Bundle 8, page 475 you can see the illustration, so if you go to 475.

**MR MIESZALA:** Yes.

**ADV CHASKALSON SC:** So the first of the sole-source

contracts to McKinsey comes in 2013, McKinsey and Regiments, they then continue through 2014 and 2015 and if one looks at that paper the fees paid by Transnet from 2012 onwards and I might add that 2012 was a better year for McKinsey at Transnet than 2011 or 2010. The fees from 2012 to 2013 when the sole-source contract, when the first sole-source contract is concluded go up very significantly, probably about 70%. They then more than double from 2013 to 2014 and 2014 is when the sole-  
 10 source contracts come thick and fast and by 2015 they have increased again, and what I want to put to you is that for a person concerned within McKinsey about – and I am just using the example of sole-source, you have now got ...[intervenes]

**MR MIESZALA:** I am sorry, but you are breaking up.

**ADV CHASKALSON SC:** Oh sorry. What I want to put to you is that for someone to raise questions about sole-source contracts at Transnet, not when there was an investigation in 2016 but at the time that those contracts  
 20 were being handed out it requires a particular culture that would facilitate that because what you are doing in the process is you are threatening a very ...[intervenes]

**MR MIESZALA:** Sir [audio breaking up]

**CHAIRPERSON:** Is there a problem with the technology?

**ADV CHASKALSON SC:** Sorry Mr Mieszala can you hear



me at this stage?

**CHAIRPERSON:** It looks like he – are you back Mr Mieszala.

**MR MIESZALA:** I am sorry to interrupt.

**ADV CHASKALSON SC:** Sorry Mr Mieszala I am not sure if you can hear us I am not sure if anybody else can hear us because the problem may be on our side not on Mr Mieszala side.

**CHAIRPERSON:** Can you hear us? Mr Mieszala? It  
10 looks like ...[intervenes] Is it his counsel speaking?

**ADV CHASKALSON SC:** That's Alfred yes.

**COUNSEL:** Yes Chair I am sorry to interrupt my learned friend but the witness has been saying for a few minutes that we have lost sound unfortunately, the witness can't hear my learned friend's question and I can't hear it either, it keeps breaking.

**CHAIRPERSON:** Oh, is that so? Okay, should we  
...[intervenes]

**COUNSEL:** And the problem started about two minutes  
20 ago Chair, I certainly ...[indistinct] that I lost the sound then.

**CHAIRPERSON:** Yes. Should we adjourn a bit or  
...[intervenes]

**ADV CHASKALSON SC:** I think we – I don't think we can continue without trying to repair the connection, I don't

know if we can it will be good but ...

**CHAIRPERSON:** There seems to be an indication that it is going to be sorted out quickly.

**ADV CHASKALSON SC:** Yes.

**CHAIRPERSON:** So I don't know how quickly, whether that's five minutes or two minutes it looks like five minutes.

**ADV CHASKALSON SC:** Let's take five Chair.

**CHAIRPERSON:** A five minute adjournment so that the problem can be addressed. We adjourn.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** I see Ms – Mr Mieszala is not there yet on the screen?

**ADV CHASKALSON SC:** No he is Chair.

**CHAIRPERSON:** Oh not on mine.

**ADV CHASKALSON SC:** I think your – your screen must have been disconnected in the process Chair.

**CHAIRPERSON:** Yes. If somebody is able to connect – reconnect it without us adjourning that would help. Okay the  
20 picture is back. Can you hear me Mr Mieszala?

**MR MIESZALA:** I do hear you Mr Chair.

**CHAIRPERSON:** Thank you.

**ADV CHASKALSON SC:** Thank you Mr Mieszala. I will go back to the start of that question and what I was suggesting is that aside from governance issues where McKinsey's

clearly placed a great deal of effort and has introduced a range of new measures which would prevent a lot of the – or the potentially – the potential problems that may have arisen in 2014 to 2016.

I want to put to you that there is a culture issue and how I framed the culture issue is that at the time when I looked from the outside it appears to me that at the time there was too much of a premium on bringing in business and an inadequate balancing of that imperative against the  
10 need not to compromise on principles. And that the waiting between bringing in business, bringing in fees and staying true to your principles was not – was not correctly struck. And I want to give you this example and would be interested in your response to it.

If you go to page 18 and it was 7.2.5 the unnumbered paragraph at the top of page 18.

**CHAIRPERSON:** Is that of his statement?

**ADV CHASKALSON SC:** Of your statement.

**CHAIRPERSON:** And that is Bundle 7.

20 **ADV CHASKALSON SC:** Bundle 7 Chair. So what page is that?

**ADV CHASKALSON SC:** Page 18 Chair.

**CHAIRPERSON:** Okay. Alright. I have got it.

**ADV CHASKALSON SC:** You mention that when you conducted the investigation in February/March 2016 you

refer to the fact that Dr Fine came forward and advocated for the firm to stop working with Regiments and Trillian due to the results of the due diligence. Then you say other individuals raised concerns about potential procurement irregularities related to the award of sole sourced contracts at Transport – at Transnet. So in 2016 there were people who for the – I would imagine for the first time were raising concerns about sole sourced procurement at Transnet and those sole sourced contracts actually took place 2013/14/15  
10 those were the sole source awards. And if we go to look at the fees on – in Bundle 8 at page 475 we see how dramatically the fees increased over the period where a stream of sole sourced contracts was coming in from Transnet.

So if we start at 2012 before there were any sole source contracts and I mention the 2012 was better than 2011 and 2010 at Transnet although you do not see it on that page.

2013 when the first sole source contract starts  
20 coming is about 70% better than 2012.

2014 where there is a string of sole source contracts I think certainly four maybe five is even double what the good year of 2013 was.

And as those sole source contracts carry on and are supplemented by another sole source contract in 2015 there

is a very substantial improvement on 2015 in terms of fees coming in.

And what I – what that says to me is that there were people who were concerned about this process but were not able to express their concerns vocally until your investigation came in in 2016 and started asking – started essentially inviting people to – to express concerns.

And that I would submit is an issue of corporate culture and rather than an issue of governance. There may  
10 be governance issues that you can put in place that will mitigate that but there is also a culture issue about the difficulty of speaking up at the cost of fees.

Can I give you another example and then maybe you can comment?

Mr Sneader says in his statement that one of the things that McKinsey did wrong was to start work at Eskom while the – alongside Trillian while the due diligence had not been completed.

When the due diligence was completed they made it  
20 very clear to Eskom that they will – to Trillian that they would not contract with them and to Eskom that Trillian could not be a supply development partner.

But Mr Sneader makes clear that it was wrong even to start that the work should not have started until there was clarity – until the due diligence process had been completed.

If one goes back to that table at page 475 once sees maybe why that mistake took place. If one looks at the fees that – that were generated by that Eskom contract they dwarf anything that McKinsey had earned at Transnet or Eskom.

If one looks at 2016 one sees R806 million. And it takes a very courageous person in those circumstances to say no we are not going to start work we may even have to forego this contract entirely but we have to finish our due diligence first.

10           And unless the culture of the organisation is designed to foster that sort of a stand these sorts of problems cannot necessarily always been addressed at the level of governance. Is my submission to you and I would be really interested in your responses.

**MR MIESZALA:** Yes Mr Chair if in advance you forgive me for giving a probably too long answer but I will since you [00:08:17] a couple of questions within the question I will try to address each of them.

20           I would like also to say that with respect to Transnet and the work that was done at Transnet and the conditions for that work at Transnet I would like to also have the commission have this dialogue with Mr Fine who I think will be a – also able to provide more details with respect to the conditions and that – in that work.

Before I go to the issue of the culture in raising

concerns if I may just set in terms and put things in terms of context.

For many if not most of our clients actually there are bursts of activities. We do not work with annuities where our fees tend to be constant every year and there are bursts of activities. Now there is bursts of activities are driven by or it can be driven by unique conditions that our clients do face.

There could be crisis, there could be an acquisition, there could be just a fact that every five years a company  
10 decided to step back and to conduct a strategic review.

So whether or not fees sort of go up and down throughout the years in itself there could be many illegitimate – legitimate reasons.

The underlying question the way I see it is a question of are we looking for impact and the conditions for impact? Are we bringing value independently from the fees and the fees themselves. And I think this is a fair question. It is definitely our aspiration to be impact partners and to bring impact and to bring value not just people who come for the  
20 fees and to – and to spend in the case of Transnet over these years that we are talking about there was 700 consultants or 140 partners who had worked at Transnet so there was activity. I think the right question is probably in my humble respect of what was the impact and the value of that – of this work and I think that Dr Fine will be better

placed than me to answer those questions.

It was by the way an essential part of the [00:10:59] review that was done with Transnet over 2019 and my take from having been in some of these meetings and having seen the proceeds of this review was that the impact had exceeded actually our fees.

Now you mentioned the context of sole sourcing and I – I did I hope address this question on how I think about sole sourcing it is a fair question. At that time my colleagues  
10 would probably say that there was a long established relationship between Transnet and McKinsey that went back to 2005 and that probably the sole sourcing did not create – raise any concern at the time of 2013 or 2014 while there was this sole sourcing.

Now of course in hindsight as I have said the lessons that we drive from the situation is that we have to be suspicious and we have to be suspicious in particularly in dealing with certain companies and we have learnt from these lessons and changed our [00:12:19] and our policies  
20 with this respect.

If I turn now to the question of people raising concerns if I am not mistaken the concerns were raised after we had conducted our investigations. People have raised concerns in the context of the investigation about Regiments and Trillian as they have said Dr Fine played an essential



role in this respect and this led us to decide not to work with these companies.

After that some people came forward to express concerns based on what they were reading or hearing including in the media. All the time we took I hope we managed to take all of this seriously and we have incorporated those into our investigations. People were interviewed by our external counsel.

Having said that I think that you stressed a very  
10 important point which is how can organisation make sure that there is a freedom to speak up, there is a freedom and an obligation to descend if there is a need to. It is a journey. We have as part of our values an obligation to descend it is something that we train or teach to anybody joining McKinsey and we have had these values for decades.

Nevertheless it is not enough just to put that on a statement and part of the values and it is what we can put in place to ensure that there is – there are conditions for people to speak up. That is what matters.

20 And this is one of the reasons that we established this whole client for instance it is also a reason why we have stressed multiple times including in our internal communication that people have an obligation to descend as an obligation to listen to [00:14:38] failure to treat correctly concerns that are raised by people would be considered as a

violation of our professional standards and people could be sanctioned for this.

So I do agree with you that these are essential values and elements and we are [00:15:02] on a journey to keep us strengthening the processes that can lead for people to descent and you know I hope that I therefore address your question.

But again with respect to this situation at Transnet I would defer to my colleague Mr Fine to provide a little bit  
10 more details.

**CHAIRPERSON:** Can I find out before Mr Chaskalson asks the next question whether there would have been an arrangement at McKinsey in terms of which the performance of the South African office or its South African company performed would be monitored so that if its performance in terms of finance, generating fees was too poor a decision would be taken what to do with its future. And also if its performance in terms of generating fees suddenly increased astronomically somebody would be there to pick this up and  
20 ask the right questions. Why is this so? What has caused this astronomical increase in the fees? The past few years you were bringing in fees that were less than R100 million and suddenly you are over R100 million in 2013. In 2014 you are over R200 million. In 2015 I think it is about over R300 million. Somebody must be able to pick this up at the

– at some high level? Was there not a system like that and if there was was this picked up and were the right questions asked to establish what was responsible for this astronomical increase in the fees in the South African company?

**MR MIESZALA:** So to my knowledge it is not something that was picked up nor certain actually that you view it in the aggregate the South African office was coming as unusual for with respect to the amount of fees. We are talking to you  
10 about discreet companies so that is a fair question and I will go back to this. But within an office for within a geography situations tend to level out between different clients and different situations. So really see this kind of burst when you are looking at numbers in aggregated ways.

Having said that Mr Chair I take your question as a fair question which is should we be more [00:18:44] I would say in terms of activity with the more granular levels forgive me with specific questions.

As they said there can be very and most of the time  
20 actually very good reasons and very valid reasons for this but the question is the way I understand it what are the mechanism and the processes for somebody to look into this and who is independent from the partners serving this client or even independent from an office?

I mean clearly part of the lessons learnt or the – in

South Africa over the last years for us is to be more vigilant when it comes to this. And the way we tried to address this type of situation in general and I am by no means saying that it was the case of Transnet. Again I would like to refer to Mr Fine to explain the impact of our work and the nature of our work there but to address the question of how do we make sure that such situations actually could not – would not occur in a non-legitimate way I would say.

10 The first thing is that as part of our evaluations of individuals we have stressed more systematically – it was already there but we have stressed more systematically in an understanding and a review of what was the impact. Was the work legitimate? Was there impact? Was there a reason for this?

Now of course you can imagine the complexity of such an aspiration but nevertheless it is one of the core elements of us evaluating partners.

20 The second thing is that we are global partnership meaning that we tend to – that helps avoiding having an office or a single partner actually to be accessibly [00:20:58] to the activity or the fees that that office or that partner may contribute to. We are a global partnership so we tend to arbitrate. It may not be perfect but it is actually pretty unique we think and that helps also – it has a lot of reasons for this but that helps also making sure that there is not too

much perception by individuals or group of individuals that there is a direct connection between what they do and forgive my French how much they make. Again these systems are never perfect but we – this is the way we try to solve this.

Now having said that in my humble experience is that most of the time people would not do the right things and I am speaking here in terms of judgment I am not speaking in terms of legality not necessarily for financial reasons but  
 10 also for other reasons that leads to [00:22:07] and especially when you have people who are over achievers it can generate bad behaviour and this is why we have to be vigilant and it is pretty clear that the South African situation has taught us a lesson and we are very humbled by that lesson and we hope that we incorporate the learnings from that lesson in the way we keep adjusting not only our processes but as you rightly said also the way we make sure that our culture is in line with our own inspirations and values.

20 **CHAIRPERSON:** You see it is possible that when there is such a high increase of annual fees there could be a legitimate reason for it but it is also possible that there could be an illegitimate reason for it. Okay.

So I would expect that if there was somebody senior at McKinsey sitting somewhere whose duty included

monitoring the performance of the South African entity of McKinsey whether it was doing badly or doing well I would expect that he or she would ask the relevant people at the South African entity the right questions.

So do you know whether there was such a person who had the responsibility to ask questions but did not ask because he thought there could be all kinds of legitimate reason for this substantial increase or is the position that you do not know whether there was such a person. Or if  
10 there was such a person you do not know whether that person did ask the questions that seems to me should have been asked. Or whether that person left matters simply on the basis that generally speaking there could be all kinds of legitimate reasons but did not ask. And if he or she asked was she given an untrue explanation? Was he or she given the right explanation – the true explanation?

**MR MIESZALA:** Right so what I can answer is that there are people – persons in our organisation in our governance who are in charge of overseeing offices. There is an office  
20 manager, there are regional leaders and ultimately there is of course you know a body of – a corporate body I would say for the governance of our firm.

So to the first question which is are there people who are overseeing and should ask questions the answer is no. Probably ask the question what was exactly said and so I

cannot answer that is not to my knowledge. I was not directly involved into this so I am sorry I cannot answer for that part of the question.

Whether or not it was legitimate or not this is a question that we looked backwards if you want as part of the investigation when we looked at our work at Transnet for instance and whether or not that work – this work was legitimate.

Now the question of legitimacy this is a tricky word  
10 because you can read it from different angles. One of the angle that we looked into was that was there real work and what was the impact of that work? And my colleague Mr Fine can talk about this. This is why we conducted this joint review together with Transnet to make sure that there was work and what was the nature of the work, what was the nature of the impact and was there actually an impact there?

Is the work legitimate in the sense that was it contracted correctly or not and so on I would refer to all the investigations that were done not by us necessarily but also  
20 by other parties that looked into this question.

My understanding is that there was a process that was followed even if in the cases of the sole sourcing. Again I refer to Mr Fine testimony to provide more details when it comes to this. My take from the MNS findings was that if there was any wrongdoing it was more on the side of the

companies that were having this process rather than necessarily us.

Now is this something that could have or should have triggered any concern on our side? As I said we take this as a fair question and as part of the lessons that we have learnt to be much more suspicious about such situations especially when it comes to sole sourcing situations especially when it relates to SOE's and this is why we made those changes to our policies, to our processes and to our governance to  
10 make sure that these kinds of situations would lead us to be suspicious and to be much more vigilant in asking questions, in probing, in triangulating if you allow me I think this is a word in English in probing in these things.

This is the best way I can answer the question Mr Chair.

**CHAIRPERSON:** But did you say there were no people overseeing the South African entity in terms of its performance outside of South Africa in McKinsey?

**MR MIESZALA:** Well there – there is a – there was a –  
20 there is a South African location [00:29:08].

**CHAIRPERSON:** So but outside of South Africa McKinsey did not have anybody overseeing how the South African entity was performing is that what you said?

**MR MIESZALA:** No, no I said there was – there is a chain of command if you want.



**CHAIRPERSON:** Oh yes.

**MR MIESZALA:** I said yes there is – there is a location, there is South Africa, there is Africa, there is a region.

**CHAIRPERSON:** Yes.

**MR MIESZALA:** Which includes Africa and other.

**CHAIRPERSON:** Okay is the position that what you did not know or what you do not know is whether those people did ask questions.

**MR MIESZALA:** That is correct.

10 **CHAIRPERSON:** Or whether they just regarded these substantial increases in fees is something that could be due to legitimate reasons and did not see them as red flags. That is what you do not know?

**MR MIESZALA:** It is correct Mr Chair. And to my knowledge, the numbers that they would have, if you go back – if you frame it in terms of numbers, would be aggregated numbers.

20 So it would not actually at the level of somebody who is outside of Africa looking at the numbers, it would not be the numbers at the level, or at least at that time, they would not necessarily be that glamorous.

And you know, looking at an office for a region, you would not see the kind of things that you are referring to.

**CHAIRPERSON:** Yes, okay. Looking at these figures now, are you able to take a view whether or not, on reflection,

they should have served as a red flag to those who were overseeing the South African entity?

At least to say: Let us find out whether there were legitimate reasons for these substantial increases. Is that a view you take now on reflection or that you can express or is it something you are not – is that a view you are not able to express, looking back now?

And in the light of McKinsey's attempts to try and establish how they got to where they are.

10 **MR MIESZALA**: Well, I would say it is quite difficult for me to be very specific cases of Transnet. What I can answer is, is to say that. We have decided to be much more vigilant and paranoid, especially in respect to our work with the public sector and SOE's.

We have established rules, such as independently from those variations in a way that you are referring to. We will also conduct and we have to conduct much more frequent review of our work and our diligence at such institutions.

20 So we are strengthening the fact that we are reviewing our work more frequently, more thoroughly, independently from variations in a way.

And the second angle is to conduct more frequent diligences because even if you have long established relationships with some institutions, there can be changes in those situations that you may not capture.

So that is enough of a, I would say lesson to lead us to decide to do these diligences on a regular basis, even when we are talking about longer established situations.

**CHAIRPERSON:** What are the chances that with the measure that you have now put in place, you would – McKinsey would be able to pick up if – to identify any illegitimate reasons for a substantial or astronomical increase in fees if this were to happen in the future?

**MR MIESZALA:** Well, I just said. Before starting any work  
10 of a certain significance, that work is very likely now to go in front of our committees from different angles in terms of financial aspects, in terms of risk aspect, in terms of risk reputation aspects and so on.

So that will be now way more systematic, as I have explained earlier, with our current service policy. The second thing that I ...[intervenes]

**ADV CHASKALSON SC:** Can I just come in there and just ask? I presume these committees now would be committees with people whose own performance bonus would not be  
20 affected by the work itself. They will be independent committees.

**MR MIESZALA:** That is correct. That is entirely correct. Under good corporate governance, when I was speaking of people who are independent, that means they have no conflicts of interest and particularly when it comes to real

perceived interest as you have said.

So it will typically be people who will be outside of the region, who are outside of the industry, whatever, to make sure that there is no wrong incentive. So that is a principle I would say that is a good corporate principle. It is a principle that we always had.

What we have is that we made it just more systematic to have a review and assessment of those situations. I would like to stress also that any partner – any person at McKinsey  
10 and especially any partner at McKinsey is being evaluated and reviewed every year by somebody who is not at all in that geography and has not connection and no interest.

So as a senior partner at McKinsey, I am being evaluated. I am held against the same standards. And my evaluator has no connection to me and no interest.

And that person will review what I do, what was my impact, whether or not I was upholding our values, our contribution in terms of social responsibility and so on.

All of these would be part of my own evaluation for  
20 instance. And it would be done by somebody who has no interest aligned with my own interest.

**CHAIRPERSON:** Thank you. You may proceed  
Mr Chaskalson.

**ADV CHASKALSON SC:** Sorry, Mr Mieszala. In relation to these specific event. I can point you to at least two of the

governance – two more of the governance interventions that would have gone a long way to stopping them and which have now been introduced. The first is your source scrutiny.

So you have now got a system where if a succession of sole source contracts or not even a succession, one sole source contract comes to McKinsey's Johannesburg office, then there is a legal review that is performed by McKinsey, just to check that that sole source contract is in order.

10 You have also got a system in place now that calls for much more due diligence and scrutiny of supply development partners where previously you did not have a formal structured due diligence mechanism for Supply Development partners because it was a peculiarity of the South African situation.

So I think even those two in addition to what you previously described, would have gone quite somewhere towards flagging issues or possible identifying issues in this case that happened before those mechanisms were introduced.

20 **MR MIESZALA:** This is correct and if I can add two other points, which is, because it is South Africa, public sector and SOE's, any engagement in projects would have to be reviewed and approved by our Risk Committee.

And so far, we have decided, as we made it known I think, not to serve SOE's in South Africa. And so this is still

– it is still a position that we have currently.

And the other thing that I would add is that. You are entirely correct. And these are the strengthening mechanism that we have identified and put in place.

Now having said that. I want to be very humble in the sense that I am always afraid of what we do not know and so this is why we are saying that we are on a journey, a continuous journey to always learn about how can we best know what we do not know. And that is my role as a Chief  
10 Risk Officer.

**ADV CHASKALSON SC:** Can I... Before leave this topic. Can I put something out there for you to consider as Chief Risk Officer and maybe respond to? Although you seem to have a practice of repaying fees when you find out *ex post facto* that there was some sort of taint to the contract, whether – even if it was independent of McKinsey. You do not seem to have a policy to that affect. Is that correct?

**MR MIESZALA:** It is correct.

**ADV CHASKALSON SC:** Can I put it to you that in terms of  
20 the culture issues that I was raising earlier. That a policy on those lines may be a very useful device because it would serve as a counterbalance to any undue emphasis on generating fees.

Because if people knew within a company that if, at the end of the day, they – the contract from which the fees was

generated have been set aside, those fees were going to be have to be paid back. That may affect the way they act primitively. Anyway. Feel free to comment on it or if you just want to ...[intervenes]

**MR MIESZALA**: Just a very quick comment.

**ADV CHASKALSON SC**: Ja.

**MR MIESZALA**: A very quick comment if I may, which is, we work on any situation. Having said that. If there was anything that was not legitimate, we would take sanctions  
10 anyway.

So independently from a pure problem say as I understand it. We would anyway consider that if there was anything that was not legitimate. We would take disciplinary actions and sanction those individuals actually that either did not apply the right professional standards or may have had very poor judgment.

**ADV CHASKALSON SC**: Can I take you off this topic and onto another one which is, I want to go back to what the Commission showed McKinsey and what McKinsey knew and  
20 did not before its engagement with the Commission.

And the crucial chronology I think is the one that starts at Bundle 8, page 199 where there is a chronology of events that the Commission put together from what it could see together with what McKinsey had furnished to it.

**CHAIRPERSON**: What is the ...[intervenes]

**MR MIESZALA:** You said 199?

**ADV CHASKALSON SC:** 199.

**CHAIRPERSON:** Page?

**ADV CHASKALSON SC:** Page 88. It includes the two emails or it refers to the two emails that we looked at earlier. And in that context, if I can make a correction on that chronology because there is one error on the chronology which we do need to correct. It is...

If one goes down to page 205 at paragraph 52 of that  
10 chronology, the chronology says there is an entrance in Segar's electronic diary for a meeting with Essa and Wood. The entry was not in Segar's diary, it was in Wood's diary. And that, in fact ...[intervenes]

**CHAIRPERSON:** I am sorry. I am sorry. You are reading from page 199. What part of it?

**ADV CHASKALSON SC:** Oh, sorry. Paragraph... Page 205.

**CHAIRPERSON:** 205?

**ADV CHASKALSON SC:** 205, paragraph 52.

**CHAIRPERSON:** Okay alright.

20 **ADV CHASKALSON SC:** So the entry was in Wood's diary, not Segar's diary. And in fact, if you go to Annexure 2, it is reflected there. The error was just in the chronology itself. Would it be ...[intervenes]

**MR MIESZALA:** We will be correcting this.

**ADV CHASKALSON SC:** With the assistance of your legal



team, we have established that none of the calendar entries in Mr Segar's electronic diary, which was the electronic diary to which McKinsey had access.

At the time that it was made available to McKinsey, none of those entries referenced meetings of Mr Segar and Mr Salim Essa after 3 September 2014.

3 September 2014 was the last meeting between Mr Segar and Mr Salim Essa that was recorded on his electronic diary or what remained of his electronic diary when  
10 McKinsey was given access to it.

So before the Commission engaged McKinsey approximately six weeks ago, McKinsey would have had no way of knowing about any of the meetings between Mr Segar and Mr Salim Essa after 3 September 2014. Is that correct?

**MR MIESZALA:** It is correct. The calendar entries that are listed in a Annexure 2 and that identify Salim Essa as a participant from September 3, 2014 are not resident on McKinsey's files and system but he starting in a way that were friends with Mr Essa. So therefore, it would not have  
20 been in our own knowledge.

**ADV CHASKALSON SC:** And with the exception of some email exchange or two emails exchange between Mr Segar and Mr Essa in 2014 around the valuation of a mine, and that is not relevant for present purposes, McKinsey also had not access to any email exchanges between Mr Essa and Mr

Segar.

**MR MIESZALA**: That is correct.

**ADV CHASKALSON SC**: And McKinsey found out about this, the 2014 email exchange between through the Gupta leaks because it was there. It was not on McKinsey ...[intervenes]

**MR MIESZALA**: That is right. It is correct.

**ADV CHASKALSON SC**: So based on what McKinsey could find in its investigation. I am putting to you that it may have  
10 been reasonable for McKinsey to had some suspicions about the conduct of Mr Segar particularly in relation to his use of that secretly known programme to remove files from his laptop. But you had no facts upon which you could conclude that Mr Segar had acted improperly.

**MR MIESZALA**: That is correct. We had concerns and suspicions and which is the reason why we took disciplinary actions in deciding to terminate Mr Segar and why we decided also to report to authorities those findings. However, at the same time, we did not have the facts that  
20 could help us reach any conclusions such as the one you just laid out.

**ADV CHASKALSON SC**: But now you have been provided with new evidence by the Commission. And what concerns me about your statement in relation to principles and accountability is that in your statement McKinsey does not

seem to acknowledge the full nature of Mr Segar's impropriety because McKinsey characterises it as an issue of Mr Segar violating McKinsey's policies. Mr Segar lying to McKinsey but it does not go further than that.

And I want to put to you that, when one looks at all the evidence that the conduct of Mr Segar is improper not just against McKinsey but also against Eskom and probably against Transnet too.

And you can respond now or if you want me to take you  
10 through why I make that submission to you before you respond. You can choose.

**MR MIESZALA:** Please do.

**ADV CHASKALSON SC:** So if we start with those emails and the email is at – the 16 November email, it is an email itself in Bundle 8, page 393.

**CHAIRPERSON:** Page three, nine...?

**ADV CHASKALSON SC:** Page 393 of Bundle 8.

**CHAIRPERSON:** Okay. Yes.

**ADV CHASKALSON SC:** So we had Clive Angel emailing  
20 Segar on the 16<sup>th</sup> of November and also Eric Wood and copying Salim Essa. And I want to emphasise for present purposes that Salim Essa is copied at his Gmail address, salimessa@gmail.com.

And it is a fairly lengthy email. What I want to emphasise is the second full paragraph as it were. Well, let

us read from the top.

“Morning. Hope you had a great weekend. I just want to touch base on a few things.”

This is the passage I want to emphasise.

“We are still waiting that the financial spreadsheet be the proposed aggregate 50/50 fee split and timelines.

As mentioned last week, Salim needs this in advance of setting up a meeting for you and Alex with Brian.”

Now when I read that in context, it seems clear to me that Alex is Dr Weiss, Alex Weiss and Brian is Brian Molefe. And what I – or this email makes absolutely clear is that contrary to what he told the McKinsey’s investigators, Segar knew that Salim Essa was behind Trillian. That much you seem to accept.

The second point is that Segar was dealing directly with Salim Essa in relation to the proposed appointment of McKinsey and Trillian at Eskom. You accept that?

20 **MR MIESZALA:** [No audible reply]

**CHAIRPERSON:** Did you hear that Mr Mieszala?

**MR MIESZALA:** No, the sound... The sound wave broke again.

**CHAIRPERSON:** Yes, okay.

**ADV CHASKALSON SC:** Sorry, Mr Mieszala. My second

proposition is that what we see from this email is that Segar was dealing directly with Salim Essa in relation to the proposed appointment of McKinsey and Trillian at Eskom.

Maybe for that proposition, I should read further down because he then goes into some lengthy details about...

He says:

10            "Alex mentioned in our meeting last Thursday that McKinsey had detailed project scope and specifications for each of the current agreed mandates."

That would seem the mandates that McKinsey had agreed with Eskom.

"We need to receive copies of these in order to plan our staffing for each project.

Further to this. Once we have had an opportunity to review the specifications, Bianca...

That would be Bianca Goodson who was the, I think the CEO of Trillian or maybe the COO.

20            "...needs to meet with each of your specific project leaders to discuss and plan the project implementation, staffing and timelines."

And on it goes, the lines and a whole series of engagements that need to be made in relation to the prospective Eskom appointment that relate to Trillian and McKinsey and it includes Salim Essa or that are in an email

that is addressed or copied to Salim Essa.

**MR MIESZALA**: Sorry, you broke again.

**ADV CHASKALSON SC**: So what the emails suggests... Well, not what the email suggests. I want to put to you what the email makes clear, is that Segar was dealing directly with Essa in relation to the proposed appointment of McKinsey and Trillian at Eskom.

He is actually dealing directly with Essa. It is not just that he knew that Essa was behind Trillian. He was dealing  
10 with Essa when it came to that appointment or proposed appointment.

**MR MIESZALA**: Hallo?

**CHAIRPERSON**: I think he... There is a problem again with the connection.

**ADV CHASKALSON SC**: I wonder if we can try and do this exercise again?

**CHAIRPERSON**: I can still adjourn for another five minutes.

**ADV CHASKALSON SC**: Thank you, Chair. I think, it is not satisfactory but I think it is the only option we have.

20 **CHAIRPERSON**: Yes, then let us do the best we can. So let me adjourn for another five minutes. Let us see if the connection can be fixed. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: I hope it has permanently sorted out, the

problem, Mr Chaskalson?

**ADV CHASKALSON SC:** I think it is a recurrent problem, Chair.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** I think we do have connection problems in this venue today, so...

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** But hopefully we will have a window of opportunity.

10 **CHAIRPERSON:** Okay, alright, but let us continue for now, it has been sorted.

**ADV CHASKALSON SC:** So, Mr Meiszala, what I was putting to you is that it is clear from this email that Sagar was dealing directly with Essa in relation to the proposed appointment of McKinsey and Trillian at Eskom and...

**MR MIESZALA:** And...?

**ADV CHASKALSON SC:** I do not know what your comment to that is. Do you accept that? Do you take issue with that?

20 **MR MIESZALA:** Yes, I see this email and clearly this email is concerning, as I have said. It is concerning on multiple accounts, is concerning because, you know, why is Mr Essa actually copied or cc'd to this discussion. Clearly would we have known or seen such an email it would have raised questions and the fact that, as I said,

as part of our investigation, Mr Sagar had hidden from us that he knew that there was this connection between Trillian and Mr Essa was definitely a lie. So therefore it is a source of concern.

**ADV CHASKALSON SC:** Yes and I want to make it absolutely clear, I do not for a minute suggest that McKinsey should have been alert to this before six weeks ago. So I am not – I am talking about – I am talking about his only now in the context of what the Commission has  
10 shown McKinsey and principles of accountability.

Let me go a little bit further. If we read this email, what Angel says is:

“As mentioned last week...”

So there was a presumably a meeting last week.

“Salim..”

That is Essa.

“...needs this.”

Namely the financial spreadsheet with the proposed aggregate 50/50 fee split and timelines.

20 “...in advance of setting up a meeting for you and Alex with Brian.”

And that, to my mind, is even more disconcerting because what it suggest is not only that Sagar was dealing with Essa but also that Sagar knew that Essa had some influence over Brian Molefe and Eskom and that Sagar was



trying to exploit that influence in relation to McKinsey's position at Eskom. He wanted Essa to set up a meeting for him and Weiss with Brian Molefe. Can you respond to that?

**MR MIESZALA:** Well, I read that Mr – and again, I was not part of those facts so it is difficult for me to comment on the elements of context or – and whatsoever. What I read here is that yes, Mr Vikas Sagar was – copies email with a reference to Mr Salim Essa being part of a meeting or setting up a meeting with Mr Brian Molefe. Whether or not Mr Sagar  
 10 needed this meeting and for what purpose, is not something that is clear from reading this email. Well, maybe the Commission has more evidence related to this but at least it is clear that the question of why would Mr Essa been part of such a meeting is it itself an element of concern.

**ADV CHASKALSON SC:** What I can put to you for context and it may be better to raise this with Mr Weiss who will have personal knowledge of the context but at this point McKinsey had been negotiating with Eskom for several months for a letter of appointment for the top consultants programme that  
 20 was going to become the MSA at Eskom in 2016 and those negotiations had not yet got over the line so McKinsey would have a very strong reason for wanting a meeting with Brian Molefe, they were trying to nail down a contract on the top consultants' programme. But that I do not expect you to respond to that because you have no knowledge of that.

Can I take you to the next email which is at page 395.

**MR MIESZALA:** Yes.

**ADV CHASKALSON SC:** And that is the email that is forwarded by Angel to Wood with the attachment, which is the spreadsheet with that – it is called 2015 11/01 Cash Flow Ramp Up Partner V2 XLSX which is in fact the McKinsey document setting out what Angel had called the proposed aggregate 50/50 split in timelines but the important part of that is what is forwarded. Angel is forwarded an email at Sagar, 10 sends from his private email, to hide it from McKinsey to Angel but he sends it to Essa's clandestine email, not SalimEssa@gmail.com that we saw on the last email but businessman [infoportal1@zoho.com](mailto:infoportal1@zoho.com). And again, I do not expect you to have knowledge of this but what I can say to you is that that email address, [infoportal1@zoho.com](mailto:infoportal1@zoho.com) was an address that Essa used only for clandestine business and an address that he shared only with parties to clandestine business and it was not the address that was on the original email, so it means that Sagar had that address independently. 20 Would you accept that, that he had the address independently?

**MR MIESZALA:** I do accept.

**ADV CHASKALSON SC:** And that, to my mind, is ...[intervenes]

**CHAIRPERSON:** I am sorry, what was the answer? What

was your answer, Mr Mieszala?

**MR MIESZALA:** Excuse me?

**CHAIRPERSON:** What was your answer to the question whether you would accept the proposition that Mr Chaskalson put to you?

**MR MIESZALA:** Okay, Mr Chair, I said I do accept.

**CHAIRPERSON:** Okay, alright, thank you. Mr Chaskalson?

**ADV CHASKALSON SC:** So that means that Essa had shared his clandestine email address with Sagar which was, to  
10 the best of our knowledge, and email address he only used in relation to clandestine activities most of which appeared to – well, not most of which, clandestine activities that were of a nature that he wanted to keep extremely secret and that were tainted with illegality in most cases or impropriety in most cases. Now you – I cannot ask you to comment on that because you do not – I mean, you are not party to that information but what it – what it says to me at the Commission is that a relationship between Sagar and Essa went way beyond an improper relationship with respect to Sagar's duties  
20 to McKinsey, it actually involved impropriety towards Eskom and it implicates Sagar, if not McKinsey, because I do not for a minute suggest that anybody else at McKinsey was aware of this, but it does implicate Sagar in state capture linked wrongdoing in relation to Eskom.

Now I cannot ask you to – all I – I can ask you that if

you accept my propositions:

1. That the address was a clandestine address used by Essa, and
2. That it was an address that was no shared by Essa beyond a circle of his conspirators.

Would you accept that this email now takes on a much more sinister [indistinct – dropping voice] if you accept those propositions, I am not asking you to comment on them.

**MR MIESZALA:** I do.

10 **ADV CHASKALSON SC:** Because then if we go back to the chronology, what we see on the chronology, and again this is not evidence that McKinsey was aware of or could have been aware of, is that Essa was definitely involved in the introduction of Regiments as McKinsey supply development partner at Transnet and he was paid 50% commissions on all of the Regiments fees that Transnet paid Regiments arising out of Regiments' position as supply development partner to McKinsey. So let me take you to that in the document. Can I ask you to go to page 202?

20 **CHAIRPERSON:** Of bundle 8?

**ADV CHASKALSON SC:** Of bundle 8. And in fact – I am sorry, let me take you not to the chronology but actually to the underlying document. So I if I can ask you to go to 295 which is the email of 15 August.

**MR MIESZALA:** 295?

**ADV CHASKALSON SC:** 295.

**MR MIESZALA:** And that email is an email from Eric Wood on 15 August 2012 to Kuben Moodley who was the go-between between Regiments and Essa, he had a company called Albatime and he would take 5% when Essa's companies would take 50% and he says to Kuben Moodley, who I presume is not anyone who McKinsey had ever come across.

10                   “Hi Kuben, as discussed with Niven, the following mandates are being worked on with yourselves and the third bold mandate is Transnet, JV appointment with McKinsey for programme at Capex plan, 300 billion Capex.”

So Wood was in some sort of arrangement with Moodley for a mandate to be appointed in a JV with McKinsey for programme management of the Capex plan at Transnet.

And the link to Essa becomes clearer if we go down to page 308 and there what we see is an email that Wood sends to Essa on 11 September 2020 saying:

20                   “I have attached the spreadsheet as discussed.”

And if we go to the spreadsheet which is on page 309 we see that it is a collection of appointments at various organs of state but the three of the first four involve appointments with McKinsey at Transnet. The first one is Capex Management with McKinsey under the heading Transnet.

“Establishment of the project office PMO for the management and optimization of the Transnet 300 billion Capex over four years. Projected revenue per annum, 20 million. Timeline, in September.”

We know, as a matter of fact, that Regiments were brought in on the PMO contract.

“The locomotive management with McKinsey, project management and optimisation of Transnet’s locomotive acquisition and refurbishment programme.  
10 Projected revenue per annum, 30 million. Timeline, in September.”

We know that Regiments were, as a matter fact, brought into the 1 064 locomotives contract as McKinsey to replace Letsema.

Group swot analysis with McKinsey. The former swot analysis on the entire Transnet business, 30 million is the projected fees, again in September, and we know that Regiments were brought in as McKinsey supply development partner on the swot contract.

20 Now I am not suggesting that anyone at Regiments would have known about this but what this does point to is the clear role of Salim Essa in bringing Regiments in as McKinsey’s supply development partner at Transnet.

And then we have independent evidence that shows that Essa was paid 50% of what Transnet paid Regiments

on these McKinsey supply development contracts. So if I take you to page 466 we see a spreadsheet that is an internal Regiments spreadsheet and I will turn in a minute to discuss who it gets shared with, but what this spreadsheet lists is all of these contracts, many of them, the bulk of which are contracts which are contracts on which Regiments was supply development partner to McKinsey. These are Regiments contracts and the ...[intervenes]

10 **CHAIRPERSON:** Did you say 446?

**ADV CHASKALSON SC:** 466.

**CHAIRPERSON:** 466, okay.

**ADV CHASKALSON SC:** And the column – so there is column which says – so you have the client, which is always Transnet on the first couple of pages, the month, date of the invoice, the invoice number, the project, and if you measure – if you cross-check those projects against the ones where McKinsey had Regiments as a supply development partner you will find that the bulk of them fall

20 into that category.

The amount is set out there and then there is a column Chivita/Homix, that is the kickback that goes to Salim Essa's shell company and if you go – and then the shell companies start changing when in order to launder funds after Homix has been exposed, he has to use new

ones called For Sure and Hasta(?) and then there may even be over the page another one called Meju(?) these are Salim Essa's shell companies that launder his proceeds of these contracts and if you go down you will see that 50% of what Regiments is paid gets laundered on to Essa's companies and a little 5% cut goes under the column Albatime which is the company of Kuben Moodley who we saw right at the beginning, I think brokered the arrangement between Essa and Regiments and that was  
 10 email that Wood said these mandates were working on and on it goes.

But it gets worse than that. Again I am not suggesting that McKinsey would have been alert to this. If one goes to page 471 we see that these very kickback schedules are being emails to successive CFOs of Transnet, so if one - sorry, let check that I have got the right – if you look at the name of that file that we have just looked at, it is advisory invoice tracking 2015/2016, it is a running reconciliation of these kickbacks along with  
 20 amounts due from Transnet.

On the 18 May Wood emails that to Anoj Singh at Transnet just at the point that Anoj Singh is about to move over to Eskom. Her was possibly anxious that he would lose his point man at Transnet but he should not have worried because by the 5 August, if we go to page 874, he



is emailing it to Anoj Singh's successor, Gary Peter.

So what we have – and this is not evidence McKinsey could have been aware of more than six weeks ago, is that you have evidence of Sagar dealing directly with Essa in relation to an appointment of McKinsey with Trillian, a proposed appointment of McKinsey with Trillian at Eskom and seeking to use Essa's influence at Eskom.

You also have evidence that whether with McKinsey's knowledge or not, Essa was responsible for  
10 putting Regiments in the position as supply development partner to McKinsey at Transnet but Essa took a 50% cut of the proceeds of those appointments for Regiments and that Regiments kept a running reconciliation of this which from time to time it would email to the CFO of Transnet, two successive CFOs.

And if you look then at the conduct of Sagar, in the light of those facts – you see, a lot of conduct that up until six weeks ago may have seemed neutral, but now it takes on very different colour, Sagar claimed not to have  
20 any relationship with Essa that was linked to McKinsey's contracts with Eskom or Transnet. We know that was a fraudulent misrepresentation of Sagar's to McKinsey. That was an out and out fraud on McKinsey.

Sagar used CD cleaner to wipe incriminating – or to wipe evidence off his laptop. I mean, it looks now that

that is an incriminating act. Sagar was the one inside McKinsey who motivated for Regiments to replace Letsema when Letsema were conflicted.

Sagar had a succession of regular meetings with Wood and Essa going back to April 2013 on the day of the adoption of the 1 064 business case and then at key dates thereafter through the McKinsey/Regiments relationship. It is in that report.

10 Sagar had a series of earlier meetings with Essa's partner, Igbal Sharma, also around key dates in the McKinsey/Regiments relationship. Sagar was the one who within McKinsey motivated for Regiments replacement by Trillian in relation to the Eskom job.

And then Sagar is the one responsible for the 9 February 2016 letter which was written unauthorised by McKinsey to Trillian but assisted Trillian to be paid by Eskom and for present purposes what I want to emphasise is the point that you made earlier but that letter, was used by Trillian to get paid for work on the business plan when  
20 Trillian was not involved in any work on the business plan, it was written by Sagar.

So it is in that context that I want to come to the current dispute between McKinsey and Transnet over paying back interest or not paying back interest, paying back the fees with interest or not with interest and the

starting point is that McKinsey, when it chose to pay back the fees at Eskom, paid back the fees and then paid back the interest on those fees. Is that – I mean, that is correct, is it not?

**MR MIESZALA:** In respect of Eskom, yes, it is correct.

**ADV CHASKALSON SC:** And what did McKinsey do that?

**MR MIESZALA:** At Eskom?

**ADV CHASKALSON SC:** At Eskom. At Eskom, yes.

**MR MIESZALA:** You mean about the interest or why did  
10 it repay fees?

**ADV CHASKALSON SC:** Well, I know why the fees were repaid and I do commend McKinsey for that. But I am asking why did McKinsey pay back – why did McKinsey go further and pay back interest to Eskom?

**MR MIESZALA:** Well, the Eskom situation, the way we looked at it, was – at least at that time, again, now talking about evidence that were brought forward just a few weeks ago, but at that time the main point was the fact that those contracts that we got from – with Eskom, were  
20 not legitimate and we were lied about in the context of the National Treasury approval, which was not the case there.

So also at the same time these were large contracts as we have discussed, these addressed, and those contracts were not actually carried all the way through with all the impact. So that led us to decide that

we would repay the interest as well. I hope I answered your question.

**ADV CHASKALSON SC:** Yes but on that point, your – if the impact was not carried through, because it was risk-based fee, the fee would not have reflected what the full impact may have been because you only charged for the impact that had been carried through. That is correct, is it not?

**MR MIESZALA:** As [indistinct] 24.08, yes, but at the same  
10 time the contract was not supposed to be terminated that early and theoretically they suppose you do all the work and then there is a time needed to see the – and materialise the impact. So, I mean, I do not understand your question well.

**ADV CHASKALSON SC:** The point I wanted to put to you was that the fee was a proportion of the impact that was capable of being measured at the time that the contract was prematurely terminated. That is correct?

**MR MIESZALA:** That is correct, yes.

20 **ADV CHASKALSON SC:** You see, if I look at the Eskom scenario – and I really must commend McKinsey for the stand that it took in relation to Eskom – from your perspective in relation to Eskom at the time that you took this decision, you were dealing with, what on the face of it was vis-à-vis McKinsey, an irregularity in contract of

which McKinsey was entirely innocent and was a fairly neutral irregularity about the absence of Treasury approval that was necessary for a contract like this. That was Eskom's problem – or it was Eskom's fault and McKinsey was innocent. McKinsey in fact had been the victim of a misrepresentation from Eskom who said there was Treasury approval. That is correct, is it not?

**MR MIESZALA:** It is true, plus the fact also that, as we have said as well, we did not feel, when we had to  
10 express our regret for the way the contracts was happening, the fact that we were rushing to do the work before a diligence was done and so on. So but the core issue is exactly the one that you presented.

**ADV CHASKALSON SC:** And in fact when Mr Fine announced that decision in parliament - I think that may have been the first time it was announced, I may be wrong, but certainly how Mr Fine put it is that because the contract was invalid, McKinsey would pay back the fees because McKinsey did not want to benefit from any valid  
20 contract, that was how Mr Fine characterised it and presented it on behalf of McKinsey.

**MR MIESZALA:** And it is correct.

**ADV CHASKALSON SC:** And in that case you paid back the fee plus the interest. Now, I ...[intervenes]

**MR MIESZALA:** In the case of Eskom, yes we did, yes.

**ADV CHASKALSON SC:** Ja. I would have thought that the current cases with South African Airways and Transnet are [indistinct] 26.55 cases when compared to the Eskom case and let me put to you why.

The taint to the SAA/Transnet contract, which we have not discussed today, is not about a neutral irregularity like the absence of Treasury approval, it is about an out and out bribe to distort a tender process. Admittedly a bribe to which McKinsey was not party at all, 10 it was Regiments, McKinsey's supply development partner on that contract that was guilty of the bribe. McKinsey may well have been – or I have every reason to believe McKinsey was completely innocent and ignorant of that bribe, but McKinsey was also innocent and ignorant of the relatively neutral irregularity in relation to the Eskom contract.

A contract is procured with a bribe seems to me to be a much more problematic situation than a contract that is procured in breach of a Treasury regulation given that 20 in both case McKinsey is ignorant of the wrongdoing or the flaw. What is your comment on that?

**MR MIESZALA:** Well, I do agree, I just want to underline the fact that as far as I know, McKinsey did not commit a bribe there but I do agree totally in – with what you say. I hope that you are not concluding that ...[intervenes]

**ADV CHASKALSON SC:** No, no, no, no, I ...[intervenes]

**MR MIESZALA:** ...we should not have repaid this even(?) Eskom.

**ADV CHASKALSON SC:** No. No, no, no, no, absolutely not. I am not suggesting for a minute that McKinsey was party to bribe that Regiments paid Mr Ramosabudi at SAA or knew about it but the point that I am making is that in Eskom McKinsey was ignorant of the irregularity in the contract which was a fairly neutral irregularity. In SAA  
10 McKinsey was ignorant of the taint in the contract which was not a neutral taint, it was a really problematic taint. But let me go to Transnet ...[intervenes]

**CHAIRPERSON:** Well, do you not want an answer of that before you move on or has he answered?

**ADV CHASKALSON SC:** I think Mr Mieszala has – Mr Mieszala and I both agree one, that McKinsey was not – did not know about the problems with either the Eskom contract or the SAA contract, I think that is presumably correct. Mr Mieszala?

20 **MR MIESZALA:** Eskom, I did not hear your words there.

**ADV CHASKALSON SC:** I said Mack had no knowledge problems in the Eskom contract at the time and it had no knowledge ...[intervenes]

**MR MIESZALA:** That is correct.

**ADV CHASKALSON SC:** And it had no knowledge of the

problems in the SAA contract at the time.

**MR MIESZALA:** That is correct.

**ADV CHASKALSON SC:** My second proposition was that objectively the problem in the Eskom contract is relatively neutral when compared to the problem of an out and out bribe in the SAA contract. Do you accept that? Given that McKinsey has no knowledge of either?

**MR MIESZALA:** Well I do accept not knowing if there was not any bribe actually even in our situations there, but I do  
10 accept that statement.

**CHAIRPERSON:** Yes, I just want to make sure I understand your answer because I think the proposition that Mr Chaskalson is putting to you is quite important. His proposition is in regard to the Eskom contracts the irregularity was neutral or less serious compared to the problem in relation to the Transnet contract because in the Transnet contract...[intervene]

**ADV CHASKALSON SC:** Sorry Chair the Eskom contract not the Transnet contract.

20 **CHAIRPERSON:** Okay is it the other way around.

**ADV CHASKALSON SC:** The SAA is the bribe Eskom is the Treasury regulation.

**CHAIRPERSON:** Yes, in the Eskom contract the irregularity was neutral or less serious compared to the problem in the SAA contract because the problem in the



SAA contract was a bribe and out and out bribe accepting that McKinsey might or did not know that that there was a bribe.

Once it is told that there was a bribe that is a more serious situation and I suspect if he has not done so Mr Chaskalson would say he would expect that in regard to the contract where the problem is a bribe there will be a greater determination or preparedness on the part of McKinsey to pay back even the interest because they were  
10 prepared to pay back interest in regard to a contract where the irregularity was neutral or less serious. What do you say to that would you agree with that logic?

**MR MIESZALA:** I do agree Mr Chair bribery is a very serious matter.

**CHAIRPERSON:** Yes, Mr Chaskalson.

**ADV CHASKALSON SC:** And then if we go to the Transnet contract what we see is a corrupt scheme again a corrupt scheme to which no one at McKinsey with one very important possible exception, no one at McKinsey is aware  
20 that it is a corrupt scheme to channel public funds from Transnet to the Gupta Enterprise through shell companies controlled by Salim Essa with running reconciliations of the kickbacks being emailed to successive chief financial officers of Transnet.

And then evidence shows that Mr Sagar who was a

senior partner at McKinsey knew about the influence that Salim Essa could exercise over State owned enterprises sort to use to advance McKinsey's position at Eskom and had been meeting Salim Essa regularly through this period where all of these kickbacks were being paid at Transnet and we submit was most probably aware of the broad outlines of this corrupt scheme. I am not suggesting that anybody else at McKinsey was probably aware of it but my submission to you is that if you look at the facts as a whole  
 10 the inference is fairly compelling that Mr Sagar would have known what was going on at Transnet. Now I presume that you would accept that if Mr Sagar did know...[intervene]

**CHAIRPERSON:** I am sorry I think he wants to respond to your proposition. Mr Mieszala you want to respond to the proposition that Mr Sagar probably knew of what was happening with regard to SAA?

**MR MIESZALA:** Well Mr Chair it is not my role to defend Mr Sagar as I said we have our suspicion and our concern with respect to Mr Sagar and I have no desire to defend Mr  
 20 Sagar. However, if I follow those two things those concerns about where Regiments and there are things and I totally agree with what was said including about the bribery and so on which is exactly why we made this decision to return our piece.

Then there is the question of what did Mr Sagar

know and when about Mr Essa and Regiments. From what I have seen but maybe I have overlooked documents I have seen that indeed and I do agree with the statement that Mr Sagar knew about the improper relationship and role of Mr Essa with respect to Regiments in I believe this was in 2015 kind of emails. What did or should have Mr Sagar know in 2012 I think this is when you went back that I would not know.

**ADV CHASKALSON SC:** I absolutely accept that Mr  
 10 Mieszala and I want to emphasise that McKinsey has not had the information that the Commission gave it for any length of time and has not had an opportunity to consider it. But I would urge McKinsey to look very closely at it and to ask why in the light of that information and if McKinsey needs any further information from the Commission we would be happy to give whatever we have.

Why in the light of that information McKinsey would not want to make the same restitution to SAA and Transnet as it is made in the relatively neutral case of the violation  
 20 of the Treasury regulation at Eskom.

**MR MIESZALA:** Okay.

**ADV CHASKALSON SC:** I do not expect an answer now and I would urge McKinsey to take its time and really consider that.

**MR MIESZALA:** I am happy to give you already an

element of answer I think I understand now better where you were heading to and let me rephrase and make sure that I understand your question. You are asking whether or not McKinsey intends to repay also the interest related to those contracts of South African Airways and Transnet and the lot as it has with Eskom, is this your question?

**ADV CHASKALSON SC:** Well that was the last question, yes.

**MR MIESZALA:** Got it so as I think we have said we made  
10 a decision on principle to return our fees. We have to work out with the institutions the SOE's but also with the authorities all the details of what this would be and how it will be done. So please do not consider that any statement that was made about the details of that repayment is definitive.

The second thing that I would also like to coin but again it is not a – I am here at the level of principles so it is not about arguing on a legal basis or whatsoever but it is in the case of Transnet I could also argue which is  
20 different from Eskom that there was real work that was done with benefits incurred by the SOE's who have also not only benefited from the impact of the work but also the interest of that impact of the work McKinsey has also incurred cost.

Now I am not saying this as an element you know

would sort of steer by no means you know what is our intention here but I just wanted to coin this two elements which is we have to look into all these facets and we intend to work with the authorities as well as with the SOE's on all of the details and the modalities on how to return these funds. But what we wanted to do today is to share which I think is your proposition which is the evidence that was shown to us clearly laid out improper actions and we do not want to be associated with these

10 actions and we are committed to be responsible and took responsibility so that we are returning all the revenues that we derived from those contracts.

**ADV CHASKALSON SC:** Thank you Mr Mieszala my one response to that would be and I mean something that we will take up with Mr Weizz, Eskom sorry McKinsey committed very substantial resources at Eskom and achieved very substantial results at Eskom as well. I have always understood McKinsey's position not to be, is there a legal obligation? Did we deliver value?

20 It to be we do not – when we see this sort of thing we want nothing to do with it and certainly that is how I understood it at Eskom and I do not and maybe this is something to raise with Dr Fine later but I think I mean I do not and we running late and I think this questioning should probably end. But I do want to say – I do not want it to

end on the wrong note because my own view and I want to place it on record here is that McKinsey has been unjustifiably criticised in relation to State Capture in South Africa.

And I do want to emphasise that to the best of my knowledge and the knowledge of my investigation team it is points I have made already but I want to emphasise it again. McKinsey was the very first company in South Africa to terminate relationships with Regiments and  
10 Trillian on prohibited grounds no one else had done it by the time McKinsey did. I would also like to emphasise that no present partner or employee of McKinsey was to the best of our knowledge party to or aware of any corruption to McKinsey's contracts at SAA, Eskom or Transnet and finally I would like to emphasise that McKinsey has already repaid far more than any other party in fees on contracts stated by State Capture, but I do want to emphasise all of that but having said that McKinsey has always presented itself as a leader on issues of corporate governance and  
20 corporate citizenship.

So I would ask McKinsey not to measure itself by what other companies have done but rather by what standards it sets for itself and so although it has done more than most other companies in South Africa in relation to State Capture I would urge it to look again at the

question of interest and also look again at the question of accountability in relation to Mr Sagar who is no longer part of McKinsey but who was at the time. Sorry that was a speech not question.

**CHAIRPERSON:** Well if you are not going to comment on the speech Mr Mieszala I do have a question that I want to put to you. You do not intend commenting on the speech?

**MR MIESZALA:** I do not intend to comment on the speech.

10 **CHAIRPERSON:** Okay alright maybe the fact that you do not want to comment on the fact what Mr Chaskalson says is a speech should give me an indication of what your answer is going to be to my question but before I put the question I want to say the following. One, feel free to say you would not like to add or qualify the answer you gave earlier on at this stage.

Feel free to say you would not like to answer this question until you have reflected on it further. Feel free to say you would not like to answer this question until you  
20 have spoken to your advisors and you are not being pressurised to make any decisions or to say anything. Is that clear?

**MR MIESZALA:** It is clear Mr Chair.

**CHAIRPERSON:** Okay in the answer you gave earlier on to Mr Chaskalson did you mean that in principle McKinsey

does not have a problem with paying interest as well in regard to SAA and Transnet but it is the figures and the amounts that need to be worked out or did you simply mean to say it is something that McKinsey must still reflect on in the light of the evidence and matters that Mr Chaskalson has put up and there is no finality yet.

**MR MIESZALA:** I was responding Mr Chair on the principle now having not studied all the potential legal financial fiscal implications and so on. I prefer not to go  
10 into the details so I prefer to respond that we committed to take responsibility to work all these elements in a constructive manner with an open mind together with the authorities and the SOE's.

**CHAIRPERSON:** Yes, no I think that is – I understand that answer thank you very much, Mr Chaskalson.

**ADV CHASKALSON SC:** No I do not have any questions thank you Mr Mieszala. I do not have any further questions Chair.

**CHAIRPERSON:** Okay Mr Mieszala thank you very much  
20 for your evidence unless your counsel wishes to re-examine you we are done and I am ready to release you but thank you very much for your evidence and I am sure that the cooperation that McKinsey has given to the Commission is going to continue in regard to whatever matters must still be dealt with.



**MR MIESZALA:** Thank you Mr Chair.

**CHAIRPERSON:** Your counsel I am sure they do hear me, do they intend, is he intending re-examining you - I am sure he is going to tell me.

**ADV COCKEREL SC:** Just to confirm I have no questions for Mr Mieszala, thank you.

**CHAIRPERSON:** Okay thank you very much, thank you very much for that Mr Mieszala is now excused.

**MR MIESZALA:** Thank you.

10 **CHAIRPERSON:** Thank you very much.

**ADV CHASKALSON SC:** Chair the next witness is Dr Fine, I wonder if we might just take two minutes with yourself Chair and the legal representatives how we going to proceed and how we should try and schedule timing to finish both outstanding witnesses tonight.

**CHAIRPERSON:** Okay we will adjourn for five minutes and then you will see me in chambers. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**CHAIRPERSON:** Okay are you ready Mr Chaskalson?

**ADV CHASKALSON SC:** I am Chair.

**CHAIRPERSON:** Yes, okay. Do you want the witness to be sworn in?

**ADV CHASKALSON SC:** Let us put this – it's Dr David Fine.

Can we?

**CHAIRPERSON:** Yes. Okay please administer the oath affirmation.

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

**DR FINE:** David Robert Fine.

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

**DR FINE:** I don't.

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

**DR FINE:** I do.

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

**DR FINE:** So help me God.

**DR DAVID ROBERT FINE:** [duly sworn, states]

**CHAIRPERSON:** Thank you. You may be seated Dr Fine. Please continue Mr Chaskalson.

20 **ADV CHASKALSON SC:** Dr Fine can we start by confirming the correctness of your statement? Chair you will find that statement at page 189. And in fact there are two statements. There is a statement at page 189 of bundle 7 and also one at page 230.

**CHAIRPERSON:** Okay, just to confirm, we are still using

the same bundles that we were using with the previous witness?

**ADV CHASKALSON SC:** That's correct.

**CHAIRPERSON:** Okay, alright. And right now you are referring to bundle 7?

**ADV CHASKALSON SC:** That's correct Chair.

**CHAIRPERSON:** Yes, the one statement is at page 189 and the other one is on page?

**ADV CHASKALSON SC:** 230.

10 **CHAIRPERSON:** 2-3-0.

**ADV CHASKALSON SC:** And Dr Fine can you just confirm that the statement at pages 189 to 225 is your statement? And you confirm the correctness of it?

**DR FINE:** I do Chair. There are two corrections which I just need to, to point out if I could.

**CHAIRPERSON:** Yes.

**DR FINE:** On page 194, FOF07194, the black text. Under ...[intervenes]

**CHAIRPERSON:** In which paragraph?

20 **DR FINE:** Paragraph 20 the last sentence. It should say, in 2009 Mr Singh and not 2011 Mr Singh. And then the second correction, is on FOF07-210, on paragraph ...

**CHAIRPERSON:** In which paragraph first?

**DR FINE:** Paragraph 56.

**CHAIRPERSON:** 56.

**DR FINE:** The sentence should say, Regiment's replied by way of its letter of 22<sup>nd</sup> August 2014, not ...

**CHAIRPERSON:** Hang on one second. 56, Is it the opening part of 56? Or is it ...

**DR FINE:** It is the opening part of 56.

**CHAIRPERSON:** Right.

**DR FINE:** The first sentences should read, Regiments replied by way of its letter of 22 August and not 28 August.

**CHAIRPERSON:** Not 28.

10 **DR FINE:** Apologies for those corrections.

**CHAIRPERSON:** I could have helped if there can just be one paragraph a few sentences of supplementary affidavit to, to be put in to make the corrections. Otherwise they are not ...[indistinct].

**ADV CHASKALSON SC:** Thank you Chair. And then Dr Fine there is also a statement that you made to the South African Parliament. It starts at 230 and has – ends, well includes an annexure which is a chronology of the 10/64 procurement that ends at 245 I think.

20 **DR FINE:** That is correct.

**ADV CHASKALSON SC:** And can you confirm the correctness of, of that statement?

**DR FINE:** I can correct that, confirm that statement. There was one small error in that statement which I will correct at a later point during my testimony.

**ADV CHASKALSON SC:** Thank you. Well maybe correct it now because ...

**DR FINE:** Okay.

**ADV CHASKALSON SC:** We may not necessarily get there.

**DR FINE:** Okay.

**CHAIRPERSON:** Ja.

**DR FINE:** Let me do that. Apologies, it was – I actually had it in front of me. On page FOF-027-239.

**CHAIRPERSON:** That's page 239.

10 **DR FINE:** 239. The third line.

**CHAIRPERSON:** Third line of the top paragraph?

**DR FINE:** From the top paragraph.

**CHAIRPERSON:** Ja.

**DR FINE:** The sentence says, in addition Mr Saga and I met with Eric Wood on 5 March 2016. It should be 1 March 2016. It was incorrectly stated in my statement in parliament.

**CHAIRPERSON:** Okay, yes. That is the supplementary affidavit can deal with all of them. Okay.

20 **DR FINE:** Thank you Chair.

**ADV CHASKALSON SC:** Then Dr Fine, can you briefly describe ...

**CHAIRPERSON:** Oh I am sorry Mr Chaskalson, do you want me to formally admit them?

**ADV CHASKALSON SC:** Sorry, I do Chair. And again I

think I've lost track of the, of the annexure numbers. Can we ...[intervenes]

**CHAIRPERSON:** The first one has got VV7. I don't know if that's correct, exhibit VV7, that statement.

**ADV CHASKALSON SC:** Yes.

**CHAIRPERSON:** I don't know if that ...[indistinct].

**ADV CHASKALSON SC:** The second statement is an annexure to the first statement, so it does not need its own number.

10 **CHAIRPERSON:** Oh okay.

**ADV CHASKALSON SC:** And yes, so it can be admitted at VV7.

**CHAIRPERSON:** Okay. The statement of Dr David Robert Fine starting at page 189 is admitted to ...[indistinct] and its annexures and will be marked as exhibit VV7?

**ADV CHASKALSON SC:** VV7 Chair.

**CHAIRPERSON:** VV7. Thank you.

**ADV CHASKALSON SC:** Dr Fine can you begin by telling the Chair who you are and what your positions and  
20 responsibilities at McKinsey have been particularly in engagements with SOEs in South Africa?

**DR FINE:** Thank you Chair. My name is David Robert Fine, I am a South African citizen as you can hear from my accent. I started at McKinsey 25 years ago in the South African offices, the first local McKinsey hire in, in Africa. I

am currently the global leader of McKinsey's public sector, social sector and health systems practice which role I currently have in London.

And before that position I also served in the region as the head of the public sector, social sector and health sector for the region we call EMO which goes from Russia, all the way through the middle East to South Africa. In terms of Transnet and perhaps referring to a couple of points from paragraph 14 onwards, McKinsey does engage  
10 in the public sector and in states on enterprises extensively and typically a McKinsey team at any one of these clients consists of partners, senior partners, associate partners, project managers which we call engagement managers and other.

And we obviously do this work by bringing together the best skills and expertise we can for the appropriate project, from cities around the world and in 65 countries. Just to clarify for the Chair, I never worked with Eskom. So my testimony is predominantly focussed on Transnet  
20 with the exception of the termination of Trillion which I was directly involved with.

And perhaps just to give by way of a short background on, on Transnet, there were many partners and senior partners and colleagues who worked at Transnet. I was one of, of many. At least there were throughout the

period a consistent set 13 partners and six senior partners.  
And I have described those in my statement for you.

**ADV CHASKALSON SC:** And then Dr Fine, you talk about  
the – maybe let's start at the end rather than the beginning,  
because I do want to get this out of the way. I must  
apologise for that. But you make clear in your statement,  
maybe if you can go to pages 190 to 191, paragraphs eight  
to nine where you deal with the fact that you have had no  
contact with Salim Essa, Kuben Moodley and the like. Can  
10 you just make, read that into the record?

**DR FINE:** Yes. Thank you Chair.

“A couple of key points. I wanted to first of all  
confirm that I am not aware of any corruption that  
McKinsey has been part of. I have neither met nor  
had dealings with Mr Essa and Kuben Moodley,  
Clive Angel, Mark Pamensky, Stanley Shane and  
Clive Chipkin or any of the Guptas. I stated this in  
my parliamentary testimony. I was briefly  
introduced to Igbal Sharma at a party, was a  
20 function celebrating South Africa's 20<sup>th</sup> anniversary  
of its democracy. There were many people present.  
It was a brief discussion and I do not recall meeting  
him at any other time. The other thing which I  
thought I should confirm in the record Chair, is that  
I have no knowledge of any improper dealings



between Mr Saga and anyone of Levin Pillay, Eric Wood, Salim Essa, or Kuben Moodley and I was uninvolved, unaware of Mr Essa's involvement and Mr Moodley's involvement in Regiments and subsequently in Trillion until my investigations in 2016."

**ADV CHASKALSON SC:** Thank you Dr Fine. Can I then ask you to go to page 196 where you describe the various contracts that McKinsey was involved in at Transnet under  
10 your period, well in the period 2012 to 2016? And can I ask you to take the Chair very briefly through those contracts?

**DR FINE:** Okay so by way of context I first just want to explain that McKinsey had a long working relationship, both at Eskom and at Transnet which went back to 2004, 2005 time frame. McKinsey had originally worked on a program the Vulendlula(?) program during the time that that Ms Ramos, Mr Van Niekerk and Mr Wells were part of Transnet.

I was the lead partner at that time for negotiating  
20 the scope and arrangements. It was a large program. The professional fees were substantial over a three year period, of around 900 million rands. So it was substantial but there was clear governance and structures in place and a lot of valued had arrived. Subsequently we had much more moderate work which I think has been presented

before the Commission already.

And then in about 2009 the government changed its policy and it implemented what they called or described a developmental state when Mr Molefe came to Transnet, he then described what he called the market demand strategy, which was a difference from the past. An important distinction to understand was before Mr Molefe's and this developmental state, Transnet only invested in its capital projects if there was proven demand.

10           Mr Molefe's strategy said that Transnet should invest ahead of demand because South Africa had not benefitted from the commodity boom because it had constrained infrastructure. As a consequence the work McKinsey predominantly did in the early stages which I will talk about now, was focussed on projecting volumes and helping Transnet then align and allocate its capital accordingly so that it could invest in this capacity without necessarily having any issues further down the line.

              There were three projects between 2012 and 2014.  
20   And all of them were on a competitive basis. The first project which you see in 28.1 it is a combination of two projects, but they're essentially one theme. What was called delivering the market demand strategy and the results management office.

              The market demand strategy which was done with

Letsema(?) was an attempt to support executives to develop and clarify very specific plans which would allow them to meet the strategic objectives and their financial commitments that they have made. There was what was called a gold standard developed which ensured that each of the divisions was supported in putting their plans into a very structured process.

Of course in addition the plan is great, but it needs to be followed up. And so the second part of that project  
10 was around what was called the results management office and its objective was to track and measure whether or not the commitments that the various divisions had made would actually be effected.

A second part of this project which was very important is that it recommended three new functions should be created, because after Mr Van Niekerk left Transnet and there was no chief operating officer, there were three functions that needed to be created in our view. The first, there was not a proper planning function for  
20 finance, which we recommended.

The second as I have talked about is the - what was called the result management office to track and manage Transnet's initiatives. And the third and most important in my view was that all the projects, capital projects were dispersed in the organisation and so we recommended that

they should create something called the group capital integration and assurance function, which would then provide oversight on all the capital projects in Transnet, to ensure that they were properly delivered.

The second project I will rather talk about in subsequent discussion which is the locomotive 1064 tender which has particular relevance for the Commission. And I know that that the evidence leader would like to go there at some point in time. And then the third project which was  
10 called, describes what one, it was a – I am not even sure why it was described that way, but it was a bit in a context of SWAT and American colloquialism of a fast moving and very targeted effort.

And its objective was to do three things. Firstly it needed to define what was called the platinum standard for how projects should be defined, managed and, and key decision in governance around those projects. Page, date, etcetera. The second was, it was the first attempt to actually bring all these dispret(?) projects together and try  
20 and work out how they were interconnected.

As an example, one of the issues that was identified through this project was that there were a number of projects happening in different divisions of Transnet, in freight rail, in engineering, in the ports, in the authority on manganese, but they were not actually brought together

under one individual what we called program.

It was an interesting process because at the end of this project we actually determined which nobody knew beforehand that the second biggest project in Transnet was actually the manganese project, which no one had been managing on an integrated manner. And the third objective was to begin the methodology of the defining the project portfolio, forcing the business to actually look at what the costs and benefits were of these different projects and  
10 through that identify opportunities for improvement.

And actually through that process there was about 45 billion rand in the capital portfolio that was identified as not necessary within a reasonable time frame that could be deferred or moved. So that was what I would call the phase between 2012 and 2014. And before the Single Source Awards which were discussed earlier.

**ADV CHASKALSON SC:** Can you then go to paragraph 33.1 and discuss the Single Source Awards?

**DR FINE:** Yes. I think it's very important though to give a  
20 little bit of context for the Single Source Awards because there questions around, around them. And the context is as follows very simply.

**CHAIRPERSON:** I'm sorry. One second Dr Fine. You said 53.1 Mr Chaskalson?

**ADV CHASKALSON SC:** No, no, 33.1. Page 200. 33.1.

**CHAIRPERSON:** Page 220?

**ADV CHASKALSON SC:** 200. That is it.

**CHAIRPERSON:** Okay, okay.

**DR FINE:** But Chair I am going to start at 30 and just give a few context points. I will do it briefly given the time constraints.

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

**DR FINE:** Which is ...[intervenes]

**CHAIRPERSON:** Ja, okay. Correct.

10 **DR FINE:** On page 198. So the context is important because in early 2014 four different factors came together to create a serious financial risk to Transnet. The first was that the external market environment changed dramatically. If people recall at that time, during the 2008 financial crisis, South Africa was actually not that affected for some period of time.

But domestic demands started to slow. The Chinese economy then went into a slowdown which was unusual and that dramatically affected export coal and  
20 steel from South Africa. And was combined with some external events which were more force, ...[indistinct] things, there was a flood, there was a problem with the Tiplat Majuba. So those were six of external issues. In addition Transnet was under performing on its volume and had done so consistently for a couple of years.

It was under performing in terms of delivering on its volume by as much as 12 percent versus its plans. The third issue is that there were serious capital project delays and excesses. And just to give you one example, in fact I'll give two. The national product pipeline was envisaged to start in 2008 and to be completed in 2010 for eight billion rand.

At this point in time it was 23,4 billion rand. And they were still asking for another five billion rand to  
10 complete it. The manganese project as I discussed already had significant issues, because they were projecting that they needed 21 million tons. Whereas the analysis that McKinsey conducted said there was no more than 18 or 17 or 16 million tons worth of potential demand for manganese. So there were serious issues.

But there was, there was serious capital issues. And then lastly Transnet conducted and concluded the locomotive acquisition. These five factors, the external issues, the slow down domestically, the lack of volume  
20 delivery by Transnet, the capital project delays and the local acquisition came together to essentially create a rapidly deteriorating financial position for Transnet.

And in fact at that point in time and I'm talking around February, March 2014, if you projected how Transnet's financials, it would have breached its cash

interest cover or is key loan governance. And in fact that could have triggered potentially issues in the South African debt markets because of the sovereign support that South Africa had provided and underwritten to Transnet.

So I just want to give that context because there are lots of questions at the time around, was there a sense of urgency. From my personal perspective at that time there was a real sense of urgency. So then coming to the specific projects that were awarded, I think it's also  
10 important as a last piece of context to say, these were not projects while, while they were awarded to McKinsey in a batch on the 9<sup>th</sup> of February.

They were desperate projects that had been discussed over multitude periods of time. For example, the pipeline had been discussed from 2008 with Transnet on the issues of pipelines. The manganese project arose out of SWAT 1. And so I just wanted to give that context, because there is an assumption that there was neither a sense of urgency, and that a lump of projects arrived but in  
20 reality these were desperate projects and because of the urgency Transnet chose to award them through their governance in one lot size.

So let me go through the various projects very briefly and my role and perhaps Chair when you read my statement, you will see my role was predominantly



focussed at the corporate centre and on capital because I had a problematic relationship with Mr Gama and was therefore unable to really work on any projects that were related to the rail system. So in 33.1 the first project was what we called SWAT 2 which was an extension of SWAT 1.

And it's objective was to reduce capital spending by a further 64 billion and a defer it, one of the objectives or outcomes of that project is that there was a big project in, in Durban at the time called the Durban Dig Out Port and  
10 what we showed was that through a variety of operational issues and by ...[indistinct] deepening, that project could be avoided completely.

On manganese, first of all an operational system was implemented, which essentially avoided the capital expenditure they needed to do. Because there were ways in which they could reconfigure their operating system without investing in capital. And there was a contract negotiation which you have heard about before, but in that a set of terms were introduced, which when manganese  
20 demand fell, improved Transnet position by 400 million rand.

On the national multi product pipeline, the MNPP, we helped them to implement new construction methods so that they could achieve their objectives in time. And to reduce their cost overruns or projected cost overruns I

should say, by five billion rand. What's important to also note on this one Chair, is we withdrew from that project.

And this is important because there are questions about whether McKinsey actually did exercise independent thought. And on this particular project as one example, and there were others, we felt because management kept changing priorities all the time which is very difficult when you are trying to accomplish capital projects, that we could no longer provide the advice and we withdrew on that  
10 project.

On the coal line, we had done extensive work in during Vulindlela on the coal line and demonstrated it had a lot of extra capacity. We worked with Transnet to, to improve that and in that financial year there was eight to nine million tons more coal delivered which translated into about 980 million rands, more operating profit from Transnet.

On Kumba iron ore, there was a mixed result. And the first was, there was an intention to negotiate prices, re-price the Kumba iron ore. This was an issue because  
20 the historical prices were not sufficient to be able to cover the costs of future investment. That did not materialise. They renegotiated iron ore.

However there was three to five million tons more, sorry seven million tons more of capacity identified through

operational improvement, which Transnet has subsequently captured. And then there were two other projects. One which was very small, it was called the Gasfield strategy in 33.6 Chair.

And that was really a projection on gas fuels and gas demand that was obviously the context of the pipeline and a lot of discussion at that time about the gas finds in Saldanha of the Mozambican coast and what the implications might be for Transnet. I think it was a very  
 10 short six week project. And then the last project which we worked on and which we withdrew from, was the general freight contract which was actually a Regiments contract.

They were the prime contractor. The rationale explained to us at the time is that at some point a supplier development partner needed to be capable enough to be a prime contractor and not a sub contractor. And then of course because we terminated our work with Regiments, our work on that projects ...[indistinct].

So that was the portfolio projects between what  
 20 2014 and 2016 when we ended our work with Regiments and subsequently as a consequence with Transnet.

**ADV CHASKALSON SC:** Dr Fine can you move then to your initial due diligence? Actually I do not need to address the initial due diligence of Regiments. Can you move to the deterioration and ultimate termination of the Regiments

relationship? It's a topic you address from page 212 of bundle 7.

**DR FINE:** Sorry Chair I wonder if I – there was one important issue I left out if I could and that relates to paragraph 36. Sorry 38 apologies, my eyes are deceiving me. I just wanted to reiterate that in 2019 McKinsey did enter into a discussion which I know Mr Mizale(?) referred to with Transnet on the historical review of all the projects we had done, it was a very detailed process.

10           It was run by Mr Silinga who was the group general counsel for Transnet at that time. We provided all our documentation. They checked during that period of time with all the colleagues who had been involved in the projects, if the benefits had been derived or not. And what we concluded at the end of that detailed process was that Transnet was satisfied that the projects performed by McKinsey except the iron ore project where the objectives were only partially met, they accepted that the projects had delivered value.

20           That there was an invoicing error which we agreed at that time we would pay interest on. And they agreed that the benefit Transnet received were well in excess of any of McKinsey's fees. It was approved arrangement with the executive committee. I understand when it went to the board it was not concluded, but it is memorialised in an

attachment, in an annexure for your records. Apology Chair, now we can move to your questions on Trillion.

**CHAIRPERSON:** Yes.

**DR FINE:** And Regiments.

**ADV CHASKALSON SC:** Well let's start with Regiments, yes. When you are talking about the breakdown of the Regiments relationship? From page 2 ...

**END OF RECORDING**

10

### **INQUIRY RESUMES**

20 **DR FINE:** Yes. So I think it's important to Chair to first reflect that the process of supply and development was not an easy journey with Letsema or necessarily with Regiments. When we began our journey with Letsema which ended up being a very, very successful supply development relationship, they became successful and

large and even competed with McKinsey.

There were times there were differences of opinion and issues. And so we had to sit down and resolve them. And one of the, the reasons that's important is that when it came to Regiments it wasn't like it was not without its issues. And so you know there were times when there were concerns and issues. And there were attempts to resolve them, which I think is reasonable in any relationship between two parties.

10           When the work began with Regiments, there was these complexities and we got people together and we had a facilitator who helped us work through these issues and then proceed. But in mid 2014, on the 24<sup>th</sup> of July there was an article and I am now referring to paragraph 54 in the Mail and Guardian, where Mr Nivan Pillay who was a shareholder in Regiments was named.

          And the allegation was there, was of some impropriety. We were deeply, deeply concerned about this. And so myself and another senior colleague of mine Mr  
20   Norbette Dorr, immediately escalated this matter to our global general counsel Ms G Malino who wrote to Regiments, calling for a response to these allegations. And whether or not, and in fact insisted on whether they were compliant with the relevant anti-corruption practices, both in South Africa and in other jurisdictions as well.

Regiments did reply by way of a letter which I have now corrected for you on the 22<sup>nd</sup> of August in which they actually said that the allegations were baseless. They put in place the right policies for the promotion of honest and ethical behaviour. They had a corporate governance framework.

And they suggested that Mr Pillay who was only an individual of Regiments and not Regiments itself, would be removed from the work with McKinsey. The letter is attached  
10 then in DF9. I did actually inquire with external people and I refer to that in my statement who said they didn't personally think there was an issue.

Mr Dorr and I did raise the issue with Mr Singh and Mr Peter at Transnet in a meeting where Mr Saga was present. And they said that they would seek the same assurances from Regiments. We had a problem ...

**ADV CHASKALSON SC:** Sorry Dr Fine, can I just clarify because once we go into that report, the report was based on asset restraint proceedings brought by the NPA. Is that  
20 not correct?

**DR FINE:** That's my recollection.

**ADV CHASKALSON SC:** And in the asset restraint proceedings the NPA had alleged that Mr Pillay had made a corrupt payment to the then MEC for housing in Gauteng, Mr Brian Hlongwa.

**DR FINE:** That's correct.

**ADV CHASKALSON SC:** So it, it went a little bit beyond the newspaper report. It was actually the NPA had sort of used this allegation as part of an application on the basis of which it successfully froze assets.

**DR FINE:** At the time, at that moment in time at least my recollection is also that the Mail and Guardian printed or reprinted the article or reissued the article with a very strong denial from Mr Pillay. It was also unclear whether  
10 Regiments health, it was a separate company and not part of Regiments capital was involved.

And the most difficult situation that we had, which I outline in 59 and was one of the key learning's was that when we looked at the consortium agreements between McKinsey and Regiments it did not permit a cancellation of that consortium agreement, absent and un-remedied breach.

And as I understood it from our lawyers at that time, the fact that Regiments was prepared to confirm in writing  
20 their compliance to certain issues, to remove themselves from Pillay from our work, constituted a remedy. And of course in addition we were currently under way with very urgent projects at Transnet, so it was a very difficult situation.

And one of the lessons we learned from that and



was implemented immediately subsequent to this issue, was actually having a breach clause in all our contracts with any supply, development partners. So it was complicated.

**ADV CHASKALSON SC:** Sir can I, can I ask if that situation arose today, you'd have a contractual remedy ...[indistinct].

**DR FINE:** If that arose today we would have contractual elements in place which would allow us for immediate termination without cause.

10 **ADV CHASKALSON SC:** Thanks.

**DR FINE:** And in fact was a direct consequence of that. And so at the time what was proposed then, accepted by McKinsey is that Mr Wood would assume Mr Pillay's role as the primary contact person with McKinsey. And Mr Saga would continue as him, as the primary contact between McKinsey and Regiments which had been in effect.

And to a certain extent actually the work improved and the quality of work improved and when issues arose, which they do in these things, they were resolved. And so  
20 during that period of time between 2014 and mid 2015 things actually were going very well and we felt that they were capable people doing good work.

**ADV CHASKALSON SC:** When did things start to break down?

**DR FINE:** So in late 2015 we started to get concerned.

We were concerned first of all because the quality of work by the Regiments personnel was deteriorating. It did not seem they were able to actually be the prime contractor on this general freight contract. We had to provide extra resources.

They had subcontracted the work to others for including Letsema and a company called A-company and so our colleagues were getting concerned that the ability to deliver what had been committed, was deteriorating. The  
10 second issue was that many of the leadership of Regiments who used to participate in the steering committees that happened every Friday did not represent South Africa's demographics.

And so we were naturally asking questions in McKinsey about how is it possible if we are in the supply development partner do we not see the transformation of the leadership team. And it was at this moment in time that we actually had a discussion about finding alternative supply development partners.

20 Mr Saga who was the primary liaison as I have said with Regiments said that Regiments was intending to split itself into two parts. It's financial advisory business where Mr Pillay and Mr Nyonye would continue. And a consulting business which was going to be called Trillian management consulting which would seek investments in building a pre-

eminent black owned South African consulting firm. We did have a discussion in McKinsey.

Given the issues that had been identified we decided we would pursue identifying a number of different potential partners of which Trillion might be one, but they, they would need to pass a proper due diligence process. And, and that was agreed. It unfortunately Chair then got a little more complicated. And what I said in parliament is, Regiments didn't have many chances.

10 But we concerned because on Friday the 11<sup>th</sup> of December when I arrived at a steering committee meeting at Transnet which normally consisted of ...

**CHAIRPERSON:** This is 2015?

**DR FINE:** 2015 Apologies. I am on line, paragraph 65. On Friday the 11<sup>th</sup> of December 2015 when I arrived for the steering committee which normally consisted of Transnet finance management, Regiments' leadership and McKinsey leadership, I on occasion asked where Mr Bobat was because he was normally a regular participant in all these  
20 discussions.

And on inquiring this with Mr Wood, he said that Mr Bobat had left to go and work for Minister Van Rooyen as a financial advisor. And I was quite taken aback. I, I had no ...

**CHAIRPERSON:** This was Mr Wood telling you that?

**DR FINE:** This was Mr Wood telling me that.

**CHAIRPERSON:** Yes.

**DR FINE:** I wasn't at that moment in time concerned around any of the state capture issues that we talk about today, but it just seemed unusual. The reason I was partly comfortable is I also knew that Regiments had worked closely in the finance industry.

They had relationships at treasury. And I had been told which I was not present at, that at their tenth anniversary party, Mr Nene was present. So I assumed they had relationship with the national treasury and this was in the normal course of events. But something was piquing my curiosity. And so on the ...

**CHAIRPERSON:** And I'm sorry. What you were told about, about Mr Nene you were told by Mr Wood as well?

**DR FINE:** I was told by Mr Saga who attended that ...

**CHAIRPERSON:** Yes.

**DR FINE:** Event.

**CHAIRPERSON:** And that would have been when? As far as you understood?

**DR FINE:** My recollection is it would have been around late 2015 time frame. So maybe within that period. Maybe October, September time frames.

**CHAIRPERSON:** Yes, okay.

**DR FINE:** I do have the date somewhere but I can't ...

**CHAIRPERSON:** Yes, okay.

**DR FINE:** Recall the exact ...[indistinct].

**CHAIRPERSON:** And it was the end of 2015.

**DR FINE:** I never attended so I don't ...

**CHAIRPERSON:** It was towards the end of 2015.

**DR FINE:** It was towards the end of 2015.

**CHAIRPERSON:** Okay.

**DR FINE:** But there clearly was something nagging in my conscience and if one read the social media at the time  
10 there was a lot of speculation. Particularly after Minister Van Rooyen left in the Twitter feeds etcetera around the association between Mr Van Rooyen and the Guptas.

And I had an occasion to be at a private function on the 23<sup>rd</sup> of January 2016, and to be present with a senior person in national treasury. And I asked the question about what was this experience with Mr Van Rooyen and his advisors. And at some point I just asked plainly if Mr Bobat was in any way connected to the Guptas.

It was at the end of the evening you know, we had  
20 all had a couple of drinks, but the answer was an affirmative. And that set off a very serious ...

**CHAIRPERSON:** The answer was?

**DR FINE:** Yes.

**CHAIRPERSON:** Okay, yes.

**DR FINE:** The answer was yes.

**CHAIRPERSON:** And the question had been whether Mr Bobat had been appointed as Mr Van Rooyen's advisor?

**DR FINE:** The question I asked, no was more explicit. I said, is Mr Bobat connected to the Guptas.

**CHAIRPERSON:** Oh okay, yes.

**DR FINE:** And the answer that I got back, was yes.

**CHAIRPERSON:** Yes.

**DR FINE:** And that worried me deeply.

**CHAIRPERSON:** And who was giving that answer?

10 **DR FINE:** It was a senior official of the national treasury who I ...

**CHAIRPERSON:** Yes.

**DR FINE:** Was with at the time.

**CHAIRPERSON:** Okay.

**DR FINE:** So shortly thereafter there was a partner meeting. I was in the Ukraine at the time, because of my responsibilities, but I was on the telephone to discuss the – what was happening with Eskom and the potential partnership with Trillion, etcetera.

20 And in that meeting I raised my concerns very strongly and clearly that we needed to get an external due diligence firm to now investigate fully Regiments and Trillion and understand what was going on. And this was actually agreed in that partner meeting. And in fact that was enacted on the 18<sup>th</sup> of February 2016 when that

mandate was awarded to conduct that.

Of course shortly afterwards on the 15<sup>th</sup> of February Africa Confidential published an article which stated at least with some flair full of confidence about the link between Mr Bobat and the Gupta family. And so immediately on that day and in consultation with my colleagues, my colleagues and I instructed Mr Saga on behalf of McKinsey to write to Mr Wood was still the, despite the separation between Trillion and Regiments, it  
10 had not been fully effected, so he was still the primary liaison to Regiments, to write to Mr Wood and seek clarification confirming Mr Bobat and what the relationship of Regiments was.

And so at that point in time as I say Mr Wood was still forming Trillion and it was Regiments, and it was a little bit of a grey zone. And that letter was sent. Despite that and before we even had confirmation on the 18<sup>th</sup> of February we had a meeting of the Transnet client service team, the partners.

20 And we raised these concerns and we decided immediately even before the due diligence was concluded that we would terminate our relationship with Regiments. We obviously understood the consequences where that we may end our work at Transnet but we felt very strongly that we needed to do that. And on the 22<sup>nd</sup> of February we had

a ...

**CHAIRPERSON:** One second. By the meeting of the 18<sup>th</sup> February ...

**DR FINE:** Sorry, who was?

**CHAIRPERSON:** By the meeting of the 18<sup>th</sup> of February had Mr Wood responded to the letter that you had written to him?

**DR FINE:** Not ...

**CHAIRPERSON:** The letter mentioned in paragraph 69?

10 **DR FINE:** No, he had not responded yet.

**CHAIRPERSON:** Ja. Did he ever respond?

**DR FINE:** Yes. I will get to that in a moment.

**CHAIRPERSON:** Oh okay, alright.

**DR FINE:** It's rather unusual response.

**CHAIRPERSON:** No that's fine. Okay.

**DR FINE:** And but, but I think at that point in time we just had enough. And what I said in parliament, it is not like Regiments had three strikes. There was the 2014 Regiments issue with Mr Pillay and this matter and we just  
20 decided it was time to end this.

So we communicated this to Mr Peter in a telephone call that I had with Mr Saga as well, that we would be issuing a letter. And on the 23<sup>rd</sup> of February we issued a letter which was very, very clear and when you have a moment, if you read it, it was also submitted to parliament



which is clear both in terms of our termination of Regiments and for what reasons. And very clear that we would not work with Trillion or consider them unless a very detailed due diligence was conducted.

**ADV CHASKALSON SC:** So can I just intervene at this point? Dr Fine because I do think it is important to emphasise Chair that this is the first recorded instance that we are aware of, of anyone terminating with Trillion or Regiments.

10 **CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** On probity grounds.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** So I have said it several times.

**CHAIRPERSON:** I think it's important, ja.

**DR FINE:** Thank you Chair. And I also want to state that there was clearly, there was a lot of speculation in our decision making, but we felt we had sufficient information to make a decision. We did get a response, interestingly on the 26<sup>th</sup> of February 2016. It was received actually from  
20 Bianca Goodson had signed the letter. It is on a Trillian letterhead which is interesting.

And it denies that Bobat has any relationship with Regiments, which was at odds with the social media search I had done on Bobat which still stated that he was part of Regiments at that point in time. And as you heard in the

evidence that was led this morning, it appears that Mr Bobat may not have been completely separated from Regiments at that time.

So that reconfirmed not only the decision but further raised my personal concerns and issues, given the fact that there were inconsistencies. We did then meet with Mr Ngonye and Mr Pillay. I was present with Mr Segar and that was on the 17<sup>th</sup> of March. The letter is memorialised as you will see attached. It looks like quite a  
10 nice, it reads very nicely.

We did want to end and terminate this in an amicable manner so that there weren't any second order consequences. And there were contractual issues that had to be worked out and so the tone of that letter as you read it, does come across as amicable and that was the intention not to have you know massive issues because Regiments was, was known at the time for being quite litigious.

And we were obviously concerned about that. What  
20 I did subsequent to that meeting on the 18<sup>th</sup> of March 2016, I initiated a comprehensive review of all McKinsey's work at Transnet, with Regiments. All of our work, which included how we were procured, whether the work that we delivered had impact. And a full review of, of a very highly reputable external legal firm.

I did hand that over to our legal and risk colleagues. And it was now legal and compliance matter. But I did follow up consistently with those colleagues to confirm that if they found any wrong doing it was reported to the relevant authorities.

The intention of that review was to cover everything from – well I wasn't a forensic auditor at the time, but what I subsequently learned it was a comprehensive review which would have included email reviews, diary searches, 10 included interviews of all the people, reviews of all the contracts, etcetera. And that was in March 2016. I also informed the Minister of finance that we had concerns with working with Regiments.

And so we had a meeting with the national treasury on the 31<sup>st</sup> of May 2016. I was joined by my colleague Mr Jorge De Vaux(?) who was the Africa Office Manager and responsible for all the Africa offices and Ms Nonfumela Magwenshu(?). And at the meeting were the director general, Vuzile and the chief procurement officer Schalk 20 Human and the minutes of that meeting are annexed for your perusal.

We were very clearly asked, did we receive the work. Were we induced or was it a requirement that we would do the work if – would we get the work if we didn't work with Regiments. And we said we absolutely not, we

were never forced in any way to do that.

And were asked directly if we had evidence that Regiments was connected to the Guptas. And at that point in time we did not. And we stated as such.

**ADV CHASKALSON SC:** You spoke about termination with Regiments. Can you talk about termination with Trillion?

**DR FINE:** Yes. By matter of context and as I've explained, we were looking for new supply development partners. We were going to look at a number of them. And one of the  
10 recommendations from Mr Saga had been we should consider Trillion. And Mr Woods business.

However I had asked multiple times, well who is Trillion and who are these people that are going to be part – because it is Mr Wood, he's a nice white guy, creating a black consultancy who are these owners, these black owners that he's going to be building this, this firm with and there was no answer forthcoming.

So eventually on my insistence and on behalf of McKinsey I together with Mr Saga attended a meeting with  
20 Mr Eric Wood. It was held at Tussers, Melrose Arch on the 1<sup>st</sup> of March. I had asked him directly who were the owners. The only person he had offered previously was somebody called Max Jusep.

I had asked people if anyone had heard of a Max Jusep and nobody knew a Max Jusep. So I was curious

who these other colleagues he was going to have around him. And I asked flatly who they were. And Mr Wood offered some names as you see them in paragraph 78. He offered up Advocate Linda Makathini, Ms Jemimani, Mark Chipkin, Clim Angel and again a Mr Max Jusep.

I was very concerned after he mentioned those names. There was, there were rumours circulating on social media that Mr Mani in some ways was connected to the Guptas. So this raised my concerns. And so I  
10 immediately called up the external firm that was doing the due diligence and asked them to include their names, these names as part of their due diligence so that we could review them.

I then because of my own personal concerns Chair started to investigate matters a little bit on my own. I looked through the CIPC database over a weekend to try and find Trillions and there were numerous of these Trillions and I went through each single one of them looking at the directors and googling the directors to see  
20 who they might be.

And what I found in one of them was a Mr Salim Essa. And in another was a Mr Eric Wood. And the CIPC data searches are actually annexed for you. But that obviously made a direct connection now between Trillion and Mr Essa. Secondly, with my rather naïve investigative

skills I went on face book which I am a member on, and I looked up a Salim Essa and the page came up and lo and behold on the page was a Mr Max Jusep.

So I took a picture of that which is annexed for you as well, which concerned me. In fact I provided and forwarded this particular face book picture to Mr Saga directly and he never responded to it. The third thing is, I looked up Mr Max Jusep on all my social media platforms I was member of, and in Linkdn I found a Mr Max Jusep.

10 I do not know if it is the same Max Jusep, but in the Max Jusep was a Mr Vikas Sagar. And so – and that's also attached in the annexures. And so I was deeply, deeply worried. I immediately provided this to McKinsey's legal counsel and the external firm that we were using, the two external firms.

As a consequence I had clearly for myself, whether this was immediate and direct evidence or not, convinced myself that Trillion in some ways was directly connected to Mr Essa and as a consequence to the Guptas. There was  
20 a meeting on the 14<sup>th</sup> of March which my colleague Mr Mizalla(?) chaired.

I attended in my capacity as leader of the public sector in the Ema region as I explained earlier. The due diligence report was offered including the inputs that I had provided, which showed this link.

I made a very strong recommendation that we should terminate and McKinsey terminated that relationship which is memorialised in the correspondence that you'll see in the annexures and obviously also bares Mr Mizalla's signature.

**ADV CHASKALSON SC:** Thanks Mr Fine, we're a little bit short of time. So I think what I would want to do is leave reflections and lessons learned and maybe just refer the Chair to your statement to parliament at page 239 to 241.

10 **ADV CHASKALSON SC:** But maybe talk about the 1064 locomotive project, because that is a particular interest to us. So can I ask you to go page 221 of your statement?

**DR FINE:** Yes, and in order to avoid the lessons learned Chair perhaps just to say that Mr Mizalla lead that process. Personally it was an excellent process. I participated in it and I think that the process and procedures that were recommended would absolutely avoid these kinds of issues from occurring again.

**CHAIRPERSON:** You said we should go to 220?

20 **ADV CHASKALSON SC:** 221 Chair.

**CHAIRPERSON:** 221.

**ADV CHASKALSON SC:** It is where we will deal with the 1064.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** And can you take us through your

statement from paragraph 92.

**CHAIRPERSON:** Mr Chaskalson, just in case – I do not remember whether you, you asked him to confirm that the contents are correct, so that they are under oath even if we do not touch on them. Did you ...[indistinct]?

**ADV CHASKALSON SC:** We have. Both, both, this statement and ...

**CHAIRPERSON:** The other one.

**ADV CHASKALSON SC:** The parliamentary statement.

10 **CHAIRPERSON:** Okay, no that is fine.

**ADV CHASKALSON SC:** Thank you.

**DR FINE:** And Chair for your comfort there, parliamentary statement was also given under oath, formal oath.

**CHAIRPERSON:** Ja. Ja, okay, alright. Yes you may continue.

**ADV CHASKALSON SC:** So Mr Fine can you go to page 221?

**DR FINE:** Yes.

**ADV CHASKALSON SC:** Paragraph 92.

20 **DR FINE:** Yes.

**ADV CHASKALSON SC:** Which takes you in, we are leaving aside the procure – the appointment to the 22 – to the 1064 ...

**DR FINE:** Correct.

**ADV CHASKALSON SC:** Contract and the juggling of the or



the removal of Letsema and Nedbank. But there you talk about what your role as McKinsey embraced in relation to that appointment.

**DR FINE:** Yes.

**ADV CHASKALSON SC:** And the two phases.

**DR FINE:** So Chair let me first start by saying that I was not directly involved in this project. I – except for being involved in the discussion on the withdrawal predominantly. The reason was as I explained before that projects related  
10 to freight rail were not projects which I could easily participate in.

And so what I give you are the key facts. But also in preparation for parliament and obviously because of the issues that have been in the press, I read that business case extremely carefully, applied my mind to it to try and understand what had actually happened. And so you know the reflections aside from the withdrawal which I can talk about from my own personal experience, I am giving you McKinsey's view.

20        There were a couple of key points I just want to stress upfront. McKinsey predominantly was involved in the business case and that business case did confirm Transnet's numbers of 38,6 billion including and to be precise including foreign exchanged and including escalations.

I was not aware what the 38,6 would have had at that point in time, but subsequently and having reviewed the business case I was concerned there.

**ADV CHASKALSON SC:** So just to tie that back to some evidence we have had from Mr Ramo Sabudi(?), built into that 38,6 billion price, was the cost of forex hedging?

**DR FINE:** Absolutely, it is built in what was called the funding costs, but the hedging costs and the escalations, both the Rand escalations and the Dollar based  
10 escalations were included and in my parliamentary statement and annexure I refer specifically to the elements in the business case where that is actually explicitly stated.

The second thing I just want to confirm before I go through the paragraphs is that McKinsey did withdraw from his project before the award was given. So at the time it was 38.6 the award was given at a number which was greater and...[intervene]

**ADV CHASKALSON SC:** Sorry can I just clarify that at  
20 the point that McKinsey withdrew which is 4 February 2014 the price at which McKinsey withdrew was still 38.6?

**DR FINE:** Including...[intervene]

**ADV CHASKALSON SC:** Including inflationary cost and Rands and Dollars.

**DR FINE:** Yes, correct Chair. So now let me just go

through the project to help you understand the process. So the first part – the project was divided into two phases the first was what was called the business validation phase.

There had been numerous issues that had been raised as I understand it by the board and the public enterprises that the quality of business case was not sufficient in order for approval. For example, it did not include what the benefits to South Africa would be as a  
 10 consequence phase one was a process by which McKinsey was verifying the assumptions within the business case Transnet had developed and improving the quality that would have been looking at issues like the volume projections, the kinds of locomotives they needed for those commodities we had experts etcetera, etcetera in order to do that. That was concluded in about April 2013 and then within a short period of time Transnet was...[intervene]

**CHAIRPERSON:** I am sorry I am going to take you back just for a second. McKinsey withdrew in February of which  
 20 year?

**DR FINE:** 2014 I am coming to the withdrawal.

**CHAIRPERSON:** Okay I was making a note here I just wanted to make sure.

**DR FINE:** Thank you Chair.

**CHAIRPERSON:** I got the right, okay continue.

**DR FINE:** So I am in 2013 so McKinsey concludes the business case work in April 2013 and Transnet was then supposed to do two things. One get the relevant Board and DP approvals to proceed to issue a tender which was the second part which was to prequalify bidders.

That was supposed to be concluded by September 2013 but that dragged on and so what happened was the phase two which is where the procurement process was supposed to happen instead of it starting in September, 10 October 2013 started in January 2014. The key issues there that I just want to highlight is that Transnet indicated to us that this had to be concluded in an extremely short timeframe.

Apparently in the way in which the tender was issued although this is not my recollection the project needed to be concluded, the awards had to be concluded in a certain timeframe otherwise they had to reissue the tender which would cause further delays and so within a very tight timeframe of six weeks they expected us to 20 provide this procurement advise.

We were concerned about this, this is a very large transaction, a very complicated transaction and the timeframe was very, very short. So we wrote to Transnet to say we had these concerns we might consider doing it but we would immediately need access to the following set

of information.

I think that letter was sent on the 31<sup>st</sup> of January, the information was not forthcoming and we had a very active discussion within McKinsey on what to do and we decided that we would withdraw our portion of the work on this locomotive procurement event because there was no way in the timeframe we were going to be able to add value. Some of the factors which were involved included issues like they had already agreed for providers. They  
 10 had already agreed best and final offers so it was very difficult to negotiate and make adjustments. They had agreed many of the specifications so it is very difficult in a short timeframe and as well once things have already been agreed to add value.

**ADV CHASKALSON SC:** Can I just take you to your withdrawn memo for February which is at page 731 because I want to make a very specific point there.

**DR FINE:** One moment, yes 721 or 731?

**ADV CHASKALSON SC:** Sorry the point that I want to  
 20 make is at 731 it is in the middle of the withdrawal memo. You just said that they had already agreed prices but the point that is made at the first bullet point of your withdrawals memo at 731. You have got 731?

**DR FINE:** About to get there, apology.

**ADV CHASKALSON SC:** Is that the prices of the best and

final offer you say current pricing proposals are already below business case benchmark levels.

**DR FINE:** So Chair this is a very important consideration for the Commission and in the workmen's report there is a memo which is not part of my submission but I can provide but it is available in the Commission's records which is the memo from I think it is the 22<sup>nd</sup> of May if my memory is correct from Mr Molefe to the Board to explain the increase in price from 38.6 to 54 and if my recollection is correct at  
10 least based on press articles this was probably supported by Regiments in terms of the preparation of that memo. What is important and what I shared with the Commission previously with advocate Pretorius and Mr Swarts and I think this was in about October 2018 was that when you look at that memo it starts off at the best and final offer for a locomotive of around R30billion when you add all the locomotives together.

I think that was the McKinsey business case number I think their number was about R29billion. That is if you  
20 take the number of locomotives and you multiply by the price you get in their case to R29billion if my memory serves me correctly and in McKinsey original business case or review case it was about R30billion.

Then what happens is on top of that in order to justify the increase in what they call the ETC to R54billion

is a whole lot of adjustments. It includes the issue of Forex which we have talked about before. It talks about the fact that...[intervene]

**ADV CHASKALSON SC:** Sorry you have lived this and I have sort of lived it for a couple of years but I think the key point there is that you then add a Forex cost which is already incorporated in the original business cost. So you double charging, is that correct?

**DR FINE:** Well let me just for precisions so that we do not  
10 – so if you took the McKinsey business case number and you added the Forex and the escalation you get to 38.6.

**ADV CHASKALSON SC:** Yes.

**DR FINE:** If you take the R29billion that is in that memo and you add the Forex escalation, the Forex, the escalations they then talk about changes because of timeframes they add changes and specifications a whole lot of factors that are extraneous to the price of the locomotive the best and final offer you get to 58.4 and I provided these calculations to the Commission where we  
20 compare our calculations from that business case those memo calculations and then MNS, Fundudzi etcetera I am happy to provide it again.

But in essence what this memorandum is telling you is that the escalations were not in what I would call a price of a locomotive or the anticipated price of a locomotive.

The escalations are in terms of a whole lot of extraneous factors which in many cases are impossible to explain. In fact, they are not explainable.

**ADV CHASKALSON SC:** Can I ask just because we not going to see you again can I ask that you furnish a supplementary affidavit just covering that memorandum and going through it we should really have canvassed it with you today because it is such a critical point.

**DR FINE:** I am happy to do so Chair.

10 **ADV CHASKALSON SC:** So...[intervene]

**DR FINE:** It may be a brief supplementary statement with some calculations.

**CHAIRPERSON:** Just repeat that?

**DR FINE:** I said I am happy to do so Chair it may be a brief supplementary statement.

**CHAIRPERSON:** Oh ja okay.

**ADV CHASKALSON SC:** So you withdraw on 4 February 2014.

**DR FINE:** Correct.

20 **ADV CHASKALSON SC:** And this escalation to R54million certainly there is an escalation to R52million that the BADC approves already in March and by sometime in March Transnet is issuing press statements that it has now concluded its biggest procurement ever for these locomotives at R50billion, were you aware of those press



statements?

**DR FINE:** So just to confirm that our dates are the same my recollection is that on the 4<sup>th</sup> of February we withdrew on the 17<sup>th</sup> of March the press statement is issued by Transnet saying that they have acquired locomotives for R50billion but sorry on the 4<sup>th</sup> of March, the 4<sup>th</sup> of February 2014 we withdraw from the project.

On the 21<sup>st</sup> of February I was asked to sign the locomotive contract and having questions on that my  
10 recollection is that there had been a negotiation process happening between Transnet and McKinsey in 2013 between their legal people and our legal people and a Mr Ashwin Salagar. The contract had not been signed we have obviously withdrawn from our work that needed to be finalised and so on the 21<sup>st</sup> of February I signed that contract it was witnessed by our general counsel and I dated it on the date of the 21<sup>st</sup> of February when I signed it. On the 17<sup>th</sup> of March the Transnet issues...[intervene]

**ADV CHASKALSON SC:** Sorry Mr Fine can I take you  
20 back a little bit because you withdrew on the 4<sup>th</sup> also on the 4<sup>th</sup> are you aware of a document in which Eric Wood purports on behalf of Regiments to amend a contract which has not yet been signed by McKinsey in relation to the 1064 locomotives.

**DR FINE:** I am not aware of that but I am aware of a

document which I think it was in Mr Mohammed's statement which shows that Regiments was negotiating to assume control of this contract in January 2014 when McKinsey had not even yet withdrawn.

So I was very concerned when I saw that because obviously that implied that there was a set of conversations happening with Regiments that were unbeknown to McKinsey who were still the owners of the contract and had still not yet made the decision to  
10 withdraw from that work. So I am not aware of the document you referred to but I am aware of Mr Mohammed's statement.

**ADV CHASKALSON SC:** Can I refer you to an annexure to Mr Mieszala's statement at page 58 to 59 of the bundle it is actually McKinsey's response to the Fundudzi report.

**DR FINE:** I do not have that documentation with me but  
Chair I would be happy to...[intervene]

**ADV CHASKALSON SC:** There should be a copy – if you look for...[intervene]

20 **DR FINE:** Ah behind me.

**ADV CHASKALSON SC:** In fact it will be in the same file as yours. It is in the same file as yours.

**CHAIRPERSON:** The one in front of you I guess.

**ADV CHASKALSON SC:** Bundle 7.

**CHAIRPERSON:** No, no on your desk.

**ADV CHASKALSON SC:** Sorry Dr Fine just to your left.

**DR FINE:** This bundle says Bundle 7.

**ADV CHASKALSON SC:** Yes that is good.

**DR FINE:** Exhibit BV6 Mieszala, is that correct?

**ADV CHASKALSON SC:** That should be good yes. If you go to page 58 of that document.

**CHAIRPERSON:** Is it Bundle 7?

**ADV CHASKALSON SC:** Bundle 7, Chair.

**CHAIRPERSON:** Oh okay, you said he must go to what  
10 page?

**ADV CHASKALSON SC:** 58.

**DR FINE:** 58.

**ADV CHASKALSON SC:** And we should have had the actual document to show you but you will see there this is a response of McKinsey to one of the two the Fundudzi report, and if you look under paragraph [c] Inaccurate Recounting of parties to relevant contracts:

20 “In the draft report there was significant confusion about who was party to certain contract addendums. While some such areas were corrected in the report several of these areas regrettably remain. Most notably the report fails to accurately note that an addendum to the 1064 advisory services contract was signed in February 2014 by Transnet through Anoj Singh and Regiments through Eric Wood in his

capacity as a Regiments director. Contrary to the description in the report McKinsey was not a party to this addendum and had no involvement in it. Mr Wood has never been a McKinsey employee and his signature does not in any way purport to be on behalf of McKinsey.”

The report says the following about the parties to this addendum. Addendum to McKinsey agreement dated February 2014:

10            “We determined that Transnet and McKinsey represented by Singh and Wood concluded an addendum on 4 February 2014 referred to as the third addendum in respect of 1064 advisory services, Annexure D24. It determined that Wood was a representative of Regiments, not McKinsey at the time of signing the addendum. We further determined that McKinsey’s name was cancelled out and replaced by Regiments name next to Wood’s signature. According to the addendum the

20            signature warranted that Wood was duly authorised to sign the third addendum Singh and Wood initialled their signatures next to the said cancellation. Based on the said findings Wood signed McKinsey’s addendum whilst he was a Regiments representative.”

Were you aware of that document, does it ring a bell?

**DR FINE:** It does not ring a bell.

**ADV CHASKALSON SC:** Okay well we will then introduce the document another way, but there is another document that I would like to refer you to, and if you stay in the same bundle and go to page 758.

**CHAIRPERSON:** 678?

**ADV CHASKALSON SC:** 758.

**CHAIRPERSON:** 758.

10 **DR FINE:** Yes Chair.

**ADV CHASKALSON SC:** And this is a document dated 16 April 2014, it is signed by Vickas Sagar and it purports retrospectively to cede all of McKinsey's rights under the 1064 locomotives appointment from which McKinsey on 4 February it purports to cede those on 5 February to Regiments, are you aware of this document?

**DR FINE:** Chair I have become aware of this document, as I was preparing both for this Commission and previously I honestly when I read this letter I don't understand it, I am  
20 not a lawyer but when I read this letter it is a confusing letter. I can only say the following, McKinsey withdraws from the work because it doesn't believe it can add value. There is a memorandum which I have annexed for you where – which Transnet has an internal document on the 16<sup>th</sup> of April where they have actually decided and they

memorialised what happened after McKinsey's withdrawal from a technical perspective.

They still needed to conclude their negotiation, that still required certain pieces of work to be concluded, first they needed a negotiating team, second they needed lawyers to conclude the contracts and thirdly the work which was originally envisaged which was the funding strategy still needed to be completed.

So as McKinsey removes itself from the work and as  
10 the prime contractor of course this work has to continue because it is urgent, it has to be concluded, so it is not a huge concern to me that let me call it the contract is transferred to somebody else.

Having said that – and by the way sorry to illustrate, Transnet assumes the role of the negotiating team and it deploys Mr Gama, Mr Vallyhoo, Mr Singh and Mr Peter to be the primary negotiators of this contract. My recollection is this negotiation actually happens at Weber Wentzel's offices, it is recorded and actually in the  
20 17<sup>th</sup> of April press release there is extensive descriptions around how much corporate governance and internal audit controls they put around this to make sure there was nothing wrong with it.

I cannot however explain this particular letter, I haven't seen – I wasn't part of drafting the letter and it

doesn't – it is not entirely obvious to me for example there's statements in here that say that the work related to and in respect of the mandate was conducted by Regiments Capital and not McKinsey Incorporated is the last line in that letter. I don't understand what that honestly means and I was not part of drafting or part of that process.

**ADV CHASKALSON SC:** But what we do have is we have Regiments in January trying to take the place of McKinsey, before McKinsey has even decided to withdraw. We then  
 10 have – I mean you haven't seen it but we have a strange document where Wood purports to amend the agreement on the day that Regiment withdraws which – sorry that McKinsey withdraws which is 5 February, sorry 4 February, 4 February, and then we have an *expo poste facto* letter from Sagar saying that with effect from 5 February everything was ceded to Regiments.

**DR FINE:** So Chair the only thing I can say is that I think it is important that people like Mr Wood and Mr Singh and Mr Sagar should come and account for the many issues  
 20 that I think have been identified as part of the evidence that you have collected and that you have led. I cannot explain all these elements because I wasn't part of them. I – you know when the 50billion number was announced first I wasn't sure what was in the 38.6billion at that time because I was not privy to that whole process.

Secondly because McKinsey had withdrawn we weren't privy to what was included in the 50billion and in these kinds of contracts all sorts of things can be included. First of all the timeframe changed, a number of bidders changed, it could have included maintenance and services which can be up to 30, 20/30% of a contract award, so there are many, many factors that could have been included in the 50billion which was not obvious to me at that time.

10 **ADV CHASKALSON SC:** When did you find out what was included in the 50billion or the 54billion?

**DR FINE:** So Chair my preparation for Parliament because there had been so much in the news I applied myself to reading their business case in a great amount of details and trying to understand and distil what were the key recommendations. The key recommendations which are in my submission are very clear, they talk about the 38.6 including escalations and including foreign exchange. They are very clear in saying that Transnet would negotiate  
20 a flexible arrangement because volumes go up and down and it is a very sensitive driver of the overall costs.

It does say you need 1064 locomotives but it says you may need them in five years, you may need them in seven, you may need them in nine years and you should therefore have this flexibility built in and there are a



number of recommendations that are in there and that is the timeframe at which I applied myself to the business case issue and obviously identified the severe discrepancies between what I would call the 38.6 number and the 54.

Now you could say why – what figure that – what figure that was that when I first read the business case, and in the executive summary there is a line at the end that says 38.6billion excluding all these factors and yet  
 10 when I read the business case it was very clear that the business case included all those factors, and that obviously triggered by curiosity and my investigations into the matter.

**ADV CHASKALSON SC:** Did you or anybody else at McKinsey interrogate the 50 or 54billion figure back in 2014?

**DR FINE:** Not that I can recall but prior to my appearance in Parliament I did call a number of ex-McKinsey colleagues who were part of that project to try and  
 20 understand that specific line in the business case and none of them could recall that particular line and how it was introduced.

**CHAIRPERSON:** Were you able when you applied your mind to that business case or was it a subsequent memorandum that added that line, were you able to come

to any conclusion based on whatever enquiries you may have made on what the chances are that the author knew that these other costs were included in the business case but may have deliberately decided to write their memo on the basis of – or business case memo on the basis that that had not been included or is that something that you could not determine when you applied your mind?

**DR FINE:** I could not determine that Chair, but it is – I am absolutely certain and I refer to it in my Parliamentary  
 10 statement and annexure where to find it in the business case, that the effects of inflation and foreign exchange were absolutely included in the number so that even if – even if let me call it that was an error a board member or executive of Transnet who had applied themselves or for that matter an official in the public enterprises who applied themselves and probably read that document should have been under no illusion whatsoever, it is very clear that those factors are included.

I would also say that what is unusual about the May  
 20 2014 memo to the Board which explains escalation is the basis for all the escalations is that particular line in the business case, but I have to leave it to you to find the evidence to determine that ...[intervenes]

**CHAIRPERSON:** Yes, but I would imagine that certainly when this became an issue whether this clause had been

included or had not been included whoever had written that line would have gone back to starting the previous documentation and the business case and should then have been able to see that these had been included or would you not be able to say that?

**MR FINE:** Chair all the people that I spoke to had already left McKinsey and so the access to the information and what they were part of had been lost and this was in November 2017 when I spoke to them and obviously the  
10 work was conducted in let's call it between January and April 2013, so it is a long period of time and there weren't the records that were present.

**CHAIRPERSON:** Ja, okay.

**ADV CHASKALSON SC:** Can I take you to what you said about this in your statement to Parliament. Can you go to page 259 of Bundle 7.

**DR FINE:** Yes Chair.

**ADV CHASKALSON SC:** So the last paragraph on that page when we heard about the 54billion price change  
20 ...[intervenes]

**DR FINE:** Yes.

**ADV CHASKALSON SC:** We did ask questions as to why the number and timeframe was different and the answer we got back from Mr Singh and Mr Peter I think – I think it was Mr Peter at the time, was that they had a different view on

the inflation and on the hedging and on the contractual terms and therefore they negotiated a different arrangement.

**CHAIRPERSON:** Sorry, you are reading from whereabouts, at page 259?

**ADV CHASKALSON SC:** The very last paragraph on the page Chair.

**CHAIRPERSON:** Oh, okay.

**ADV CHASKALSON SC:** Does that ring a bell?

10 **DR FINE:** It rings a bell.

**ADV CHASKALSON SC:** Who is the we you are talking about and when does this happen?

**DR FINE:** So my – well it is not my recollection because I went back and I reviewed the documentation that was available to me, and what I have is the following sequence of events Chair. So the – and Transnet announces that a R50billion locomotive transaction on the 17<sup>th</sup> of March 2014, Vickas Sagar has a meeting with Mr Singh on the 24<sup>th</sup> of March 2014, he has this meeting alone and he  
20 reports back to McKinsey that you know there is a need for this capital re-base lining process to happen because of the variety of these urgent financial issues and the locomotive transaction.

On the Friday the 28<sup>th</sup> of March I have ...[intervenes]

**ADV CHASKALSON SC:** Sorry, can I just stop you there, is that Sagar report to McKinsey documented anywhere, after the meeting with Singh?

**DR FINE:** In an email yes.

**ADV CHASKALSON SC:** Okay, it would be good if we could get a copy of that email.

**DR FINE:** Then my understanding is that in one of these Friday Steering Committee meetings that we had shortly after that, because there was this regular meeting to  
10 ensure governance of the projects, that the issues were ventilated and discussed, including you know the urgency around the financial – you know at least that is to the best of recollection. And of course the number the R50 billion would have been factored into that. So when I say we which is to your question it would have been to we as in a group of people sitting around a table and saying in the context of this transaction there are serious issues and when the question and I honestly the – you know now we are talking about a substantial period of time even between when I  
20 wrote this Parliamentary statement but to the best of my recollection when we asked well this – how does this fit and how does this work? This was the answer that was provided at the time. I did not have any reason to doubt it. As I said I did not even at that time know what was included in the 38.6 number.

**ADV CHASKALSON SC:** But there would have been people around the table.

**DR FINE:** There would have been people.

**ADV CHASKALSON SC:** Who did know what was included in the 38.6 both from Transnet's side and from McKinsey's side.

**DR FINE:** There may have been people around the table I cannot recall who would have been in that meeting but certainly you know there – the constituent members of the  
10 client service team including Mr Sagar potentially Mr Door, myself and others but honestly I am now starting to try and recall something from a very, very long period of time ago where you know my recollection is the key issue was the financial distress and not specifically the debate – a debate and discussion on the R50 billion.

The second thing that is important is McKinsey would not have had access to the details of that because we had withdrawn from the project. And so we had no transparency into how that R50 billion would have been determined at  
20 least that is to the best of my recollection Chair.

**ADV CHASKALSON SC:** But what I understand from your Parliamentary statement is that the issue of the escalation from 38 to 54 billion which is a figure you used there was discussed with and you say Singh or Peter around that time and an explanation was given?

**DR FINE:** So Chair to the best of my recollection when the question was asked about the 50 billion in a very superficial manner the answer that was provided was this is due to a variety of escalations and factors which could have also included things like changing specifications etcetera.

To the best of my recollection there was no level of – it was not specified and as I have said already there are many, many factors that could have been included including maintenance and services contracts and all kinds of things  
10 which could easily for example if you – a maintenance contract on a locomotive that you buy as a service could be 20% of the purchase price or 20 to 30% and so to the best of my recollection this did not trigger an immediate issue or concern for me.

**ADV CHASKALSON SC:** What you told Parliament was something slightly different and I think it is quite important that we go back to what you told Parliament because it was at least closer in time.

First you say when we heard about the 54 billion  
20 price change so it is 54 billion we did ask questions to why the number and timeframe was different and the answer we got back from Mr Singh and Mr Peter – I think it was Mr Peter at the time was that they had a different view on the inflation and on the hedging. So it is back to inflation and hedging and on the contractor therefore they negotiated a

different arrangement.

Would you accept that what you told Parliament is likely to be more accurate because it was at least two years closer to the event?

**DR FINE:** It is likely to have been more accurate.

**ADV CHASKALSON SC:** Because it does seem to me that something very worrying went down in that month of – from the 5 February or the six weeks from the 5 February to the end of March 2014. I am not suggesting that McKinsey was  
10 responsible for it. You left at a point at which you could not add value to a business case of 38.6 billion and six weeks later 38.6 billion had become 54 billion maybe the value could not be added but it seems that value could have been destroyed. Do you have a comment on that?

**DR FINE:** So as I said Chair it is hard to determine what was in that number. I think the more worrying issue for me when I read this now is when Nedbank withdraw as our consortia member in fact they informed Transnet and for McKinsey because they wanted to be involved in the  
20 downstream funding of the locomotives. They describe that as a potential conflict of interest and therefore they needed to withdraw from the consortia.

I think the question that I am left with which is actually leads back to the question of the funding process is that Regiments when you look subsequently for what they



have been paid for and what is in the public domain did exactly what Nedbank said was a conflict of interest which was to be part of the whole funding – fundraising and funding process.

I cannot answer the question about exactly how the 50 and how it was you know uniquely described at that time except to say that having analysed it it is clear that the arguments that are presented in May are incorrect. And I can absolutely say that if Nedbank had a conflict of interest  
 10 and withdrew from our consortia and Regiments assumed that role and then proceeded subsequent to February 4 to continue to do exactly what Nedbank and Transnet had said was a conflict of interest and where by the way a lot of the issues also reside in the swops and derivatives etcetera that is where the commission reply themselves and that is – but I think there are other people who should talk to that.

**ADV CHASKALSON SC:** We certainly will.

**DR FINE:** And I have noticed you have.

**ADV CHASKALSON SC:** But it – what was your  
 20 understanding of the role and when I say – or first let me ask about – you were not hands on in relation to this contract as I understand it.

**DR FINE:** I was not involved in any way with the contract except for the discussion on the termination meaning – not the termination the withdrawal of McKinsey's work on the 4

February.

**ADV CHASKALSON SC:** Right. So we would have to speak to somebody else at McKinsey to find out what McKinsey understood the role of Regiments to be after Regiments apparently stepped in to take session of the contract from which McKinsey had withdrawn.

**DR FINE:** And my understanding which I put in my statement Chair is that there were essentially these three pieces of work in phase 2 which was supposed to be concluded during  
10 the procurement phase. There was the negotiation, there was the funding strategy and there was the legal support.

When you read the subsequent memos that have been made publicly available it is clear that Transnet assumed the role of procurement in place of McKinsey. Regiments continued to provide its funding advice – the funding strategy and Weber Wentzel continued to provide the legal advice.

How it was determined that Regiments instead of Webber Wentzel for example should have had the contract  
20 moved to them or transferred to them I cannot answer because I was not part of that set of discussions or determinations.

**ADV CHASKALSON SC:** But Regiments also appear to have been involved in helping the board motivate and explain the escalation from 38 to 54.

**DR FINE:** I think Regiments seems to have been very involved in negotiating a contract outside McKinsey's purview in being involved in a whole lot of other conversations but I think is for Regiments to come and explain.

**ADV CHASKALSON SC:** Yes but earlier you testified about a memorandum on which Regiments apparently assisted Brian Molefe to justify the 50 – the increase to 54.

**DR FINE:** Correct and that is a memo of May 2014.

10 **ADV CHASKALSON SC:** And when did you find out about Regiments role in that memo?

**DR FINE:** Oh only when the Werksmans Report was published and released.

**ADV CHASKALSON SC:** Okay.

**DR FINE:** It was probably in 2018 if my memory serves me correctly.

**ADV CHASKALSON SC:** I am just acutely aware of time at this point. Can I – can we maybe leave this topic and just go to the issue of sole source procurement and can we go back  
20 to your – to your statement and page 198?

**CHAIRPERSON:** Bundle 7?

**ADV CHASKALSON SC:** Bundle 7.

**CHAIRPERSON:** 198? What – the page is 198?

**ADV CHASKALSON SC:** Yes – yes.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** And let us start with swat 1 on – at the top of 198 paragraph 28.3. Now as I understand it swat 1 was confined to the McKinsey/Regiments Letsema consortium on 19 October 2012, does that ring a bell to you?

**DR FINE:** So Chair my understanding of swat 1 is different. Swat 1 was originally issued as a tender open tender which McKinsey applied for and actually won. It was a competitive tender.

**ADV CHASKALSON SC:** Can I just stop you there. I mean  
10 McKinsey did win but the terms of the award were a joint award to McKinsey and Deloitte is that not correct?

**DR FINE:** Chair if I can finish and I agree with where the evidence leader is going. My understanding at the time is that Transnet determined that McKinsey had won but wanted to award it to McKinsey and Deloitte and was looking for McKinsey to cooperate with Deloitte.

At that time we had severe concerns about working in that manner because we had had an experience where intellectual property from McKinsey had ended up with other  
20 advisers and in particular with Deloitte. And so we informed Transnet that we were not comfortable with that arrangement.

My understanding is as a consequence Transnet withdrew the award and then issued it as a confinement to McKinsey and I can only assume that this is on the basis

that we had legitimately won something and that the way in which they wanted to construct was not acceptable.

At least that is my recollection of events at that time.

**ADV CHASKALSON SC:** Okay well – what we have seen in the meantime is that before the award of this tender an email had been sent from Eric Wood to Salim Essa indicating that this specific tender was one in which Salim Essa was going to place Regiments with McKinsey at Transnet. That email I think was in a full month before the confinement award to  
10 McKinsey and it was in September.

But that is the first confinement award to McKinsey at Transnet over this period, that is correct is it not?

**DR FINE:** That is my recollection and because of these specific circumstances.

**ADV CHASKALSON SC:** Now we go down and ...

**DR FINE:** Sorry I am not sure where we going down to.

**ADV CHASKALSON SC:** Sorry to page 201 paragraph 33.1.

**DR FINE:** Okay. Yup.

**ADV CHASKALSON SC:** This is swat 2. That confinement  
20 as I understand it – that was also an award by confinement in October 2013.

**DR FINE:** Correct.

**ADV CHASKALSON SC:** If we go down again we get to NNPP we get to the four – the four awards that you have discussed.

**DR FINE:** Correct.

**ADV CHASKALSON SC:** NNPP, confinement, the final memorandums 3 April 2014. Coal line the confinement 1 April 2014. A gas fuel strategy you did not bid with. It was a competitive tender but you did not bid with Regiments you bid without Regiments.

**DR FINE:** Correct.

**ADV CHASKALSON SC:** The – sorry we have slipped – we had NNPP, coal line, Kumba iron ore.

10 **DR FINE:** Correct.

**ADV CHASKALSON SC:** Another confinement.

**DR FINE:** Correct.

**ADV CHASKALSON SC:** And manganese also another confinement. I think manganese may have come a page earlier.

**DR FINE:** Correct.

**ADV CHASKALSON SC:** All around end of March beginning of April 2014. Then we have GFB which you have discussed already and that was another confinement except this time  
20 Regiments was identified as the – as the primary party and McKinsey was the sub-contractor.

So on my reckoning what we have got is seven confined contracts all of them awarded to by confinement to McKinsey and Regiments in a period of less than eighteen months.

Now you have offered some explanation for that – that scenario but can I ask you have you ever previously or subsequently in a South African context come across as many contracts awarded by confinement to the same consortium in an eighteen month period?

**DR FINE:** Chair as I explained earlier the basis of confinement is not McKinsey's determination. This is Transnet's determination.

And I want to start on that basis and my  
10 understanding is that Transnet had proper governance processes in place and that these contracts were signed off by the procurement governance. In addition in our review with Transnet which we conducted we asked them if they had found any irregularities and in our external review with our external legal advisors ...

**CHAIRPERSON:** Yes but bear in mind the question Dr Fine.

**DR FINE:** The question is...

**CHAIRPERSON:** The question is a factual one.

**DR FINE:** Correct.

20 **CHAIRPERSON:** Whether you have come across in an instances where so many contracts are awarded on confinement to the same consortium in the South African context.

**DR FINE:** Well if I think about the Vulindlela work that McKinsey did at Transnet there was a RFP process that was

run. I do not remember it being an open public tender so that was confined in some process and McKinsey ended up concluding a very important contract and I think which was approved by the board. So I could argue that between that period of time that there were multiple projects happening simultaneously between 2005 and 2009. I am not aware to answer the question specially though.

**CHAIRPERSON:** Ja I think the question was even much more narrower within an eighteen – eighteen month period

10 Mr Chaskalson?

**ADV CHASKALSON SC:** Eighteen months.

**CHAIRPERSON:** Ja so it – the period – the question was whether within the South African context you had ever come across a scenario where an entity gives the consortium so many contracts on confinement factually?

**ADV CHASKALSON SC:** Can I take it a step further because it is not just confinement it is actually confinement and sole source.

**CHAIRPERSON:** Okay.

20 **ADV CHASKALSON SC:** Because sometimes you can have a confinement arrangement.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** Where there is – are one or two competing.

**CHAIRPERSON:** Ja.



**ADV CHASKALSON SC:** Extra parties but this was confinement award to a single consortium and each time.

**DR FINE:** I am not aware in the South African context but I have seen this happen elsewhere.

**CHAIRPERSON:** Yes okay.

**ADV CHASKALSON SC:** You see I want to put to you and I appreciate we are looking at this all with the benefit of hindsight knowing what went wrong inside Transnet. That this is such an extraordinary sequence of events that this  
10 may well have been – this ought to have been perceived as some sort of warning sign at the time. Seven contracts by confinement same consortium eighteen months. Do you have a response to that?

**DR FINE:** Yes Chair I do as I have said I think there was a serious financial risk that Transnet was facing and it seemed urgent and serious to me and my colleagues and we work with clients around the world on serious and urgent matters and in some cases they do confine matters. Having said that as Mr Mieszala has discussed and of course one of the key  
20 learnings was did we get the requisite assurances from Transnet in writing that the way in which they had actually gone about this had included all the requisite approvals etcetera. As I said it is not – while you may find it unusual it is not McKinsey's determination whether or not McKinsey's help is needed nor that McKinsey – it is Transnet's

determination and as I said this was urgent.

The important timing I just want to emphasise because I think – I think that there are two other factors which I think matter here. The first is that the financial year for Transnet starts in February – oh sorry in April 2014 and ends in May 2015.

Many of these let me call it awards are awarded in April 2014. The reason for that was that so that the benefits could arrive within that year so that the financial issues  
10 could have been resolved. That is part 1.

The second is it was not obvious to me at that time that these projects in some ways were all interconnected in the way in which it has been described.

They came from different and desperate discussions. A pipeline had been discussed since 2008 and had been a continuous discussion.

Manganese became an issue because it was identified through during Swat 1. Swat 2 was a natural extension of Swat 1 because the implementation of Swat 1  
20 needed to happen and Transnet did not have the technical skills and they needed us to help them build the technical skills.

The coal line was of unique condition because of the financial – so I can hear the – the scepticism in the question and I understand the scepticism I am just saying at that

moment in time because of the urgency the fact that these projects did not seem connected in any way they were desperate they were just awarded in a similar timeframe that these benefits needed to be derived by Transnet within that financial year that for me and my colleagues this seemed like a reasonable issue.

One could argue like we have with other clients that this was not just separate projects. That this was what I would call one program to solve one particular issue and  
 10 then other clients that happens frequently where you have a program which has multiple projects just like Vulindlela.

So I hear with the benefit of hindsight the scepticism, I have read the documentation and being following the commission's work but at that time for me and for my colleagues this was not let me call it completely unnatural discussion to be having with a client in an urgent situation who needed a service provider who understood the organisation very, very well at the requisite capabilities and could get going immediately.

20 **ADV CHASKALSON SC:** Let me just quickly move to another topic. And again you were not involved but can I take you to exchanges around those four contracts and in particular Regiments Supply Development budgets for those four contracts NNPP, Coal Line, Kumba and what is the last one, Manganese.

Can you go to page 457?

**CHAIRPERSON:** Page 457?

**ADV CHASKALSON SC:** Sorry 457 of Annexure 8 not Annexure 7 sorry. So sorry of Bundle 8 – Bundle 8.

**CHAIRPERSON:** Yes. Denel good day Mr Chaskalson.

**ADV CHASKALSON SC:** It has Chair.

**CHAIRPERSON:** 457.

**ADV CHASKALSON SC:** Maybe start at 459.

10 **DR FINE:** I just need to find exactly – there may be – I may be lost. I am looking under Tab W – VV7.

**CHAIRPERSON:** I am sorry Mr Chaskalson it is necessary just for the record to identify what that document is.

**ADV CHASKALSON SC:** So what this is is a – if we go back to an email chain that starts – there is a long email chain that starts at 449 which exchanges backwards and forwards between people at Regiments and people at McKinsey in relation to putting together the supply development budgets for those four contracts NNPP, coal line, manganese and iron ore.

20 It seems that the key person on the Regiments side was Indheran Pillay - Indheran Pillay and on the McKinsey's side was Ashton Sologol. And in the course of that exchange the spread sheets or the tabs that we see – the spread sheet with the four tabs that we see from page 459 are sent from Regiments to McKinsey. This is Regiments saying to

McKinsey we are putting together our – you want us to put together the bids or these four contracts and what our supply development obligations are going to be. This is what our spend is going to be.

**DR FINE:** Sorry Chair I may need some help to find the documentation.

**ADV CHASKALSON SC:** Oh sorry you may go...

**DR FINE:** Because when I look in the tabs I have 459 there is no resemblance to what you have.

10 **ADV CHASKALSON SC:** Is it 08459 or 17459?

**DR FINE:** 07.

**ADV CHASKALSON SC:** Oh sorry go 08 it is probably that file to your left there.

**CHAIRPERSON:** Well I am at Bundle 7 as well.

**ADV CHASKALSON SC:** Oh then I am terribly sorry it is Bundle 8 – Bundle 8.

**DR FINE:** Bundle 8.

**CHAIRPERSON:** Okay.

20 **DR FINE:** Yes Chair I am familiar with these emails they were provided to McKinsey a few weeks ago. I had not seen them prior to that.

**CHAIRPERSON:** And it is 457 Bundle 8.

**ADV CHASKALSON SC:** Now if – unfortunately the tabs have not been printed out so we do not know which is which contract but it is the four contracts. If we – if we go to 459

we see the first of the four contracts. And this is Regiments proposed supply development partners. And there is a list of them. Two of them are Homix and Albertime. Homix is going to get...

**ADV CHASKALSON SC:** Mr Chaskalson let me just make sure I am on the right page. I am at 459 Bundle 8 and what I see looks like distribution of fees or something like that.

**ADV CHASKALSON SC:** That is correct. A spread sheet Chair.

10 **CHAIRPERSON:** Ja a spread sheet ja.

**ADV CHASKALSON SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** So – so Chair if you go down the first setting involved is a supply development partner.

**CHAIRPERSON:** Yes I can see that.

**ADV CHASKALSON SC:** And the – there are a list of entities listed underneath that the fourth is Homix.

**CHAIRPERSON:** Yes.

20 **ADV CHASKALSON SC:** Who apparently are in the job creation, preservation, new skills development and IPR category of supply development?

**CHAIRPERSON:** Hm.

**ADV CHASKALSON SC:** And for whom Regiments will subcontract services from Homix for the project and provide them with skills development opportunities and process and

methodology IPR that they can use in future assignments.

Then we have Albertime job creation, preservation, new skills development, IPR, sub-contract services from Albertime for the project and provide them with skills development, opportunity process and methodology IPR that they can use in future assignments.

And then there are values that are given there. Regiments is going to pay Homix 2.771 million and Albertime 2.77 – 2.722 million.

10        If we go down a page to 460 we see the second contract and the same arrangement. Homix and Albertime are again supply development partners. This time Homix will get 10.858 million – Albertime will get 2.068.

Next page a better deal for Homix. This time they are going to get 32.069 million. Albertime will get 3.993 million.

And on the last page Homix is going to get 33.6 – 364 million – Albertime 4.085 million.

20        Now if you add up all of these numbers Homix and Albertime between them on these budgets are going to get in the region of R100 million.

Now I appreciate you were not involved in this but you have previously testified that Homix and Albertime performed no services in relation to any of the contracts where McKinsey worked with Regiments. You recall that?

**DR FINE:** I have – I have – I said that in Parliament yes.

**ADV CHASKALSON SC:** Yes. Now you were not to know this because you were not party to these proposals but should someone not at McKinsey have been a little bit alarmed that R100 million was being budgeted for people who later just did not turn up on the project.

**DR FINE:** So Chair maybe just to explain the context of Albertime and Homix in my testimony in Parliament. While I was preparing for Parliament there is a very short duration of  
10 about eleven days and I was reading the documentation that McKinsey had submitted in some of the proposals I came across Homix and Albertime and a couple of the proposals which are now referred to accordingly.

I was obviously shocked and surprised and I disclosed this in Parliament because by that stage the word Homix was certainly well known because of the issue of the Neotel contract which had been in the newspaper.

**ADV CHASKALSON SC:** Sorry can I just put a date on that because I want my point to be very clear. When this – when  
20 these documents were exchanged I am not suggesting that anyone should have seen Homix and Albertime was a red flag because it was a good year before Deloitte had raised the issue about Homix on the Neotel financials. So nobody knew that Homix was a – essentially a laundry facility for Essa and the Gupta's but my point is that, you have got a



series of budgets from Regiments that are allocating a hundred million rands to two entities. And those two entities just never appear on the contracts. Oh, sorry. Never appear on the projects. That is what I put to you, should have been a warning sign being picked up by somebody.

**DR FINE:** I think it is a fair question to ask Chair. I can say that the people I spoke to in preparation for my parliamentary testimony because I picked up the phone to ask some colleagues, for example on the coal line in particular, et cetera, where these – have they ever come  
10 across any colleagues and they said no.

They did say – they did talk about a company consulting which is on the list here. I cannot answer the questions that I am being asked because I was neither part of these questions or not.

I think it is a fair question to ask. It is, and this is pure speculation, entirely possible that the way in which this was described, was that these were sub-contractors to Regiments.

20 The people involved did not understand exactly what the basis of this was. And it is also a proposal and it was not necessarily what was going to be connected but I am now speculating which I think is unhelpful.

**ADV CHASKALSON SC:** Okay. Doctor, we have gone a hell of a long or a greater deal longer than we planned to go.

So I think at this point, I do not have any further questions.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** Well, maybe I have got one question.

**CHAIRPERSON:** H'm?

**ADV CHASKALSON SC:** Sorry. [laughs] You have heard and you have seen the evidence that the Commission has uncovered in relation to Vicus Segar. Are you satisfied that McKinsey now has systems in place that would go a long  
10 way to preventing a partner from being able to do what Vicus Segar appears to have been able to do in that period of 2014 to 2016?

**DR FINE:** So I am not going to cover what Mr Mieszala covered because I think he has talked about the process and procedures which I think would capture a substantial number of the issues.

I think in the case of Mr Segar, there are – it is more complicated. Firstly, he was a very liked person and a person who did competent work.

20 Secondly. So there was a degree of trust in him as an individual. You know, if he was doing things on a frolic of his own, it is very difficult for McKinsey's systems and processes to immediately to identify those issues.

I will say the following from a personal reflection – perspective and I thought a lot about it. Mr Segar had a

propensity to have individual meetings on an ad-hoc basis with Mr Wood and Mr Singh.

This was an issue that Mr Dawn and I actually raised with him explicitly and said we are concerned about this because we were not sure what was being discussed.

And by the way, we felt that Mr Sing was a very young Chief Financial Officer who also needed coaching and advise on how to lead his team. His style and approach with his team was no helpful. It was not going to help him to be  
10 successful over time.

Mr Segar always said, however, that Mr Singh's operating model was ad-hoc. That he would suddenly call meetings and they would attend them.

And so while we had a very explicit discussion with Mr Segar and he said that we needed to trust him, with the benefit of hindsight, as an individual partner – and this is what I tell my colleagues all the time – I would not have allowed that to continue.

And I would have been insisted that this was not – this  
20 ad-hoc behaviour with these individuals is not an accepted professional practice and not bringing in the best expertise to the client.

To your question, however, Chair. I think we have processes and procedures in place which are much, much tighter now including, for example, on the sole source issues

to really raise them, identify them and have the kinds of debates and difficult questions which I have been subjected to today, so that we do not enter into those issues.

And I think those kind of systems will identify part of that system but if an individual in our own capacity is using their private email account in order to do – have discussions and arrange deals which – I understand the question and I think it is a very valid question. I am just not sure whether an individual, who is not well-intended, with the processes and  
10 procedures, ultimately resolve those kinds of issues.

And you can see I am reflecting on the question. It is a very difficult question. I would say, in addition, and to the question that was posed to Mr Mieszala earlier. And I do differentiate personally. It is my own personal perspective. Different, probably, to my colleagues' perspective at McKinsey.

When I think of, let me call it the context of the single source arrangements and the magnitude at that time, for me it did not trigger issues.

20 When I think about the massive Eskom project and the kinds of emails that you have referred to going backwards and forwards earlier, very, very large numbers, substantial numbers. Then I think that there do have to be processes.

And I think the question was asked to Mr Mieszala to reflect on, on how the government's framework in McKinsey

then identifies that you suddenly have very large contract discussions taking place and an intervention is required.

I personally think we have come a long way on that but I think it is a journey and I am giving you my own personal reflections, obviously, with the benefit of hindsight.

**ADV CHASKALSON SC:** Thanks very much.

**CHAIRPERSON:** Thank you very much Dr Fine. Can I take it that there is no re-examination?

**RE-EXAMINATION BY ADV VAN ZYL SC:** Thank you, Chair.

10 No re-examination.

**CHAIRPERSON:** Okay thank you.

**DR FINE:** Chair, I wonder if I could just say one or two very brief things at the end?

**CHAIRPERSON:** Ja.

**DR FINE:** Because... I will be very brief. I know the time. But I was reflecting today after the announcements yesterday of the Commission.

**CHAIRPERSON:** Yes.

20 **DR FINE:** And Amilcar Cabral stated: Tell no lies and play no easy victory. It is a beautiful quote. And you know, giving testimony today, I have really tried to be – and to parliament – open and truthful. It is a difficult journey because there is pain involved.

And on the matter of no easy victories. Since the announcement was made, there has been both positive

responses and critical responses which is completely expected.

But I just want to reinforce again that McKinsey did this not because of guilt. They did not do this because of guilt. And not for an easy victory. We did it because it was the right thing to do.

And you know, the road to State Capture started with small steps. The road out of State Capture is also a hard road but also requires small steps. And I think that the steps  
10 that McKinsey took in parliament and took with the Commission are steps that I am proud of. I am proud of them.

I think that we should be encouraged. I hear the criticism but we should be encouraged because if McKinsey is encouraged then other companies will also be encourage to all come on the path with these small steps like the ones that have been agreed with you in order to rectitude South Africa.

So I just wanted to leave that as thought for you Chair  
20 and perhaps for people in South Africa to consider as we progress on these small steps to remedy the situation.

**CHAIRPERSON:** No, no. That is fine. I think that, certainly from the point of view of the evidence leaders and Mr Chaskalson would confirm this and certainly, it is my expectation that while we, on the one hand, give credit

where it is due, at the same time, we must ask the questions that we are required to ask as part of our work.

There must not be a situation where it may appear as if because McKinsey has agreed to pay – to repay some money, questions that need to be asked are not asked. So that is very important. Okay.

**DR FINE**: And here us from the support. Thank you.

**CHAIRPERSON**: Ja, ja. Okay thank you very much Dr Fine for coming to give evidence. I heard Mr Chaskalson said, we  
10 will not see you back here again. So I take that it is unlikely you would come back or you would give evidence but of course if something unexpected happens, I am sure that would be raised but thank you very much. You are now excused.

**DR FINE**: Thank you Chair.

**CHAIRPERSON**: Mr Chaskalson, what do you propose? Well, let me say because we have to stop now unfortunately. Let me say that if in regard to the witness who is still outstanding. If there is room for me to hear his evidence  
20 tomorrow at some stage, that can be explored.

But I now also say, if there is room and it is convenient to everybody for me to sit at some stage on Saturday, I can sit and hear his evidence.

I had postponed witnesses that were going to give evidence on Monday and Tuesday to January. But for

purposes of finishing this part, I can make myself available on Monday at some stage if that would suit everybody. Failing that, we may have to then explore other dates.

**ADV CHASKALSON SC:** Chair, I think I must speak to Dr Weiss' legal team and just see if we can...

**CHAIRPERSON:** Oh, yes.

**ADV CHASKALSON SC:** My strong preference would be for tomorrow just so that we can – it gets done.

**CHAIRPERSON:** Yes, okay.

10 **ADV CHASKALSON SC:** But ...[intervenes]

**CHAIRPERSON:** Are they available?

**ADV CHASKALSON SC:** Can we maybe just have a brief discussion with each other and then come – report to you when we ...[intervenes]

**CHAIRPERSON:** Yes. Well, we can adjourn and we can do one of two things. We can adjourn and you can talk for two minutes and see me in chambers or you can communicate with me sometime this evening as to the outcome of your discussion. Which one do you prefer?

20 **ADV CHASKALSON SC:** Chair, it may involve getting hold of Dr Weiss in Germany.

**CHAIRPERSON:** Oh, okay.

**ADV CHASKALSON SC:** So I think, let me ...[intervenes]

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Let me get in touch with you



...[intervenes]

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** ...once we can find out from this side.

**CHAIRPERSON:** That is fine. It remains for me to thank everyone for their cooperation for us to be able to sit until this time to try and finish the work of the Commission. We appreciate it very much. Thank you. Thank you, Mr Chaskalson and your team and the staff and the legal  
10 teams and Dr Fine.

We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 11 DECEMBER 2020**