

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

14 JANUARY 2021

DAY 328



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 14 JANUARY 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson. Morning Chairperson.

CHAIRPERSON: I see there is no file here. Are you ready?

ADV SELEKA SC: I am ready Chairperson.

CHAIRPERSON: Okay go ahead.

10 **ADV SELEKA SC:** Thank you Chair. Chairperson to – today we have got three witnesses scheduled to testify. The first witness is Ms Matsietsi Mokholo. And Chair because there are three we will in due course if the Chairperson does agree on the time allocation for them.

CHAIRPERSON: Well luckily this witness should not be long.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Let us just start and we will see how it goes.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you. Chair I have – I believe she is ready to take the oath or the affirmation.

CHAIRPERSON: Okay. Okay maybe do you not want to just tell the public for their benefit where her evidence fits in. Where this witness' evidence fits in.

ADV SELEKA SC: Where it fits in now Chair.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Yes just so that they will follow her evidence.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Better.

ADV SELEKA SC: Yes I did not – it is because I did not hear the last word. Yes the Ms Mokholo is the former DGD of the Department of Public Enterprises. She has provided the commission with evidence that shows or affidavit in which she deals with her position at the time assisting Minister Lynne Brown in matters pertaining to the department and SOE's.

20 How she accompanied the Minister to a meeting called on the 11 March by Eskom. The board of Eskom at the time dealing with the suspensions. She would also – it features also in regard to the secondment of Mr Brian Molefe. It features in regard to the position and appointment of Mr Richard Seleke at the Department of Public Enterprises. And it features insofar as she was part of the war room that was established at Eskom.

So it – it is not an evidence in regard to the transactions which we have been busy with. Chairperson she had been called – we had hoped to lead her evidence last year but we ran out of space so she – it is mainly about the suspensions in that regard.

CHAIRPERSON: Her evidence will include what she knows about the postponement of the meeting of the 26 February.

ADV SELEKA SC: Yes.

CHAIRPERSON: 2015 is that right?

10 **ADV SELEKA SC:** the 26 February?

CHAIRPERSON: 26 February 2015 was she not the acting DG who got a call.

ADV SELEKA SC: Oh yes.

CHAIRPERSON: From the former President Mr Zuma to say the meeting of the board of Eskom which was scheduled for the 26 February should be postponed.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Or cancelled.

20 **ADV SELEKA SC:** Correct. You are absolutely correct Chair.

CHAIRPERSON: It is quite an important feature of her evidence.

ADV SELEKA SC: Yes. As the Chairperson was talking about it came to mind that she also talks about the call she received from the President at the time asked her to call

Mr Tsotsi in order to cancel that meeting.

CHAIRPERSON: Yes and of course she was with the Minister at the meeting of the board.

ADV SELEKA SC: Later.

CHAIRPERSON: That happened between the Minister and the board on the 11 March 2015.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Of course I have had a lot of evidence about the content of that meeting. She might just confirm
10 certain things but I have heard quite a lot of evidence on that and if her evidence is not different there might not be any need to spend too much time on it.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes thank you Chair that is – that helps us in guiding her – how to navigate her evidence.

CHAIRPERSON: Yes. Yes. Okay alright.

ADV SELEKA SC: She may take the...

CHAIRPERSON: You can administer the oath or
20 affirmation.

REGISTRAR: Please state your full names for the record.

MS MOKHOLO: Matsietsi Mohkolo.

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

MS MOKHOLO: No I do not.

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

CHAIRPERSON: I am sorry your voice is very soft please raise it Ms Mokholo.

MS MOKHOLO: Apologies Chair.

CHAIRPERSON: Hm. Start afresh.

REGISTRAR: Please state your full names for the record.

ADV SELEKA SC: Matsietsi Mokholo.

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

MS MOKHOLO: No I do not.

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

MS MOKHOLO: Yes I do.

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 MOKHOLO: So help me God.

20 **REGISTRAR:** Thank you.

ADV SELEKA SC: Thank you Chairperson. Chairperson the bundle we are using is Eskom Bundle 10 Exhibit U22.

CHAIRPERSON: Yes thank you.

ADV SELEKA SC: Ms Mokholo you will have the same bundle in front of you – Eskom Bundle 10 Exhibit U22.

Your affidavit is marked Exhibit U22 and it is found on page 420 of that bundle.

Now you know if you have been following the commission we referring to the pagination – the black pagination – top left hand corner. You are there?

MS MOKHOLO: Thank you I am there.

ADV SELEKA SC: Thank you. So that is the first page of the affidavit. I the undersigned Matsietsi Mokholo you confirm that to be your name? You confirm that to be your
10 name?

MS MOKHOLO: Yes it is my name Chairperson.

ADV SELEKA SC: Yes. The affidavit runs up to page 436.

MS MOKHOLO: Yes.

ADV SELEKA SC: On page 436 there is a signature of the deponent on 25 September 2020. Is that your signature?

MS MOKHOLO: It is my signature Chairperson.

ADV SELEKA SC: Thank you so you confirm the contents of your affidavit?

MS MOKHOLO: Yes I do.

20 **ADV SELEKA SC**: I know you have mentioned that you needed to make some corrections you want to raise that now?

MS MOKHOLO: Thank you. Chairperson just two minor edits. The first one it is found on paragraph 19.

ADV SELEKA SC: Chair that is on page 425.

CHAIRPERSON: Yes.

MS MOKHOLO: The last – the sentence of that paragraph Chairperson where it indicates that the allegations of the phone call he had received from me on the evening of the 25 February 2020 the date should be 2015.

CHAIRPERSON: Oh yes. Okay.

ADV SELEKA SC: Yes.

MS MOKHOLO: The next one Chairperson it is on paragraph 48 and that will be on page 431.

10 **CHAIRPERSON:** I am sorry what paragraph is that?

MS MOKHOLO: Paragraph 48. It is the correction of the PNG Committee members Ms Venete Klein instead of Ms Venter Klein Chairperson.

ADV SELEKA SC: Say again.

CHAIRPERSON: Will the technicians just adjust the aircon. It is just too noisy.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: But I will ask everybody to try and raise their voices. Yes so what paragraph 46 did you say 46?

20 **MS MOKHOLO:** 48 Chairperson.

CHAIRPERSON: 48 yes. What do you want to correct in that paragraph?

MS MOKHOLO: The name of the PNG Committee member Ms – it must be Ms Venete.

CHAIRPERSON: Oh.

MS MOKHOLO: Instead of Ms Venter Klein.

ADV SELEKA SC: Instead of Venter Chair.

MS MOKHOLO: Thank you.

CHAIRPERSON: Who was it?

ADV SELEKA SC: She – it reads Chair Venete.

MS MOKHOLO: Ms Venete

CHAIRPERSON: Is it B or V at the beginning?

ADV SELEKA SC: It is V.

MS MOKHOLO: V.

10 **ADV SELEKA SC:** V-e-n-e-t-e.

CHAIRPERSON: V.

MS MOKHOLO: Yes thank you Chairperson that will be all the edits.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Do you recall – do remember to have a small supplementary affidavit done to [00:10:08] these corrections.

ADV SELEKA SC: Thank you Chair.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Thank you Chairperson. Let me check with the Chairperson the – the other alternative Chair would be for her to initial our affidavits where she has made these corrections.

CHAIRPERSON: No she cannot initial it.

ADV SELEKA SC: Okay.

CHAIRPERSON: Now because this is an affidavit she did before a Commissioner of Oaths.

ADV SELEKA SC: That is right Chair.

CHAIRPERSON: She cannot change it – she cannot change anything on it.

ADV SELEKA SC: Ja.

CHAIRPERSON: Because that would be a different affidavit.

10 **ADV SELEKA SC:** We will do so.

CHAIRPERSON: That is why it is necessary to do a supplementary affidavit.

ADV SELEKA SC: Ja we will do a supplementary for her.

CHAIRPERSON: You see if we – if we leave it on the basis of the corrections she has done orally you have to make sure that everyone who reads the affidavit goes to the transcript.

ADV SELEKA SC: Correct.

20 **CHAIRPERSON:** In order to see the correction. But that is risky.

ADV SELEKA SC: Yes.

CHAIRPERSON: So it is better to have a supplementary affidavit that would be put in so that anyone who will have to see that supplementary affidavit in saying what corrections have been made.

ADV SELEKA SC: Ja and we can resend it to also.

CHAIRPERSON: Ja.

ADV SELEKA SC: To the parties.

CHAIRPERSON: She can do the supplementary affidavit later today or after today. Just one paragraph.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Saying I just want to – I have picked up that there were certain mistakes in the following paragraphs. These were the mistakes. The corrections
10 are the following. Ja.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: That is perfectly in order Chairperson. Then I may proceed. Ms Mokholo thank you for your assistance to the commission. Much of your evidence has been put to the witnesses who – some of the witnesses who came before the commission already.

So we will try to advise you on what was put to them and how they reacted to it.

20 Firstly just by way of introduction tell the Chairperson who you are and relative to your evidence to the commission what was your position at the time – where were you employed?

MS MOKHOLO: Thank you. Chairperson as indicated in my affidavit I am currently the Deputy Director General in

the Presidency and I am in the main responsible for corporate management. By qualification background I am a qualified lawyer and an admitted attorney. But when I joined the Department of Public Enterprises it was in 2007 as the Chief Director then who was responsible for legal counsel and governance.

And in my capacity as the Chief Director I reported then to the Deputy Director General the DDG who was the head of legal and she subsequently resigned and I started
10 acting in her position as the DDG from the 12 January 2011 until the position was advertised for which I successfully applied and was appointed as the DDG responsible for legal governance risk and transaction at the time from the 31 May 2011.

And I remained in that position until I was still contracted to act as the Chief Executive Officer at SA Express which is one of the entities within the portfolio of the Department of Public Enterprises.

And that acting was from December 2017 until
20 August 2018 where then I took a lateral transfer to – to the Presidency with effect from the 1 September 2018.

So I am still in that position currently. But during my tenure as the DDG at DPE I was also appointed as the acting Director General and I have acted in that position from time to time including the period between September

2014 and September 2015 during the tenure of Minister Brown and this is when the position of the DG became vacant when Mr Matona resigned to take a position as the CEO at Eskom.

So since my appointment as the DDG I have acted as the DG on various occasions in the Department during the tenure of both Minister Gigaba and Minister Brown.

So that would be the background.

ADV SELEKA SC: So your – yes your acting – you are
10 permanently appointed in the position of DDG from – you say from 31 May 2011?

MS MOKHOLO: Yes.

ADV SELEKA SC: 31 May 2011. You then have acting stints during the time of your permanent office as a DDG – acting stints as an acting DG.

MS MOKHOLO: Yes Chairperson.

ADV SELEKA SC: And that is after what you say Mr Matona had left the DPE.

MS MOKHOLO: Indeed Chairperson.

20 **ADV SELEKA SC:** That period of acting is between September 2014 to September 2015.

MS MOKHOLO: Yes Chairperson.

ADV SELEKA SC: So in March – in February, March, April 2015 you would have been acting as a DG?

MS MOKHOLO: Yes. Yes Chairperson.

ADV SELEKA SC: And who was the Minister during this time in 2015?

MS MOKHOLO: It was Minister Lynne Brown.

ADV SELEKA SC: Minister Lynne Brown. Yes now as I said your evidence has already been put before the witnesses. If this position was – when this position was vacant where – was there a time in which the department sought to fill that position? The one in which you were acting the DG position.

10 **MS MOKHOLO:** Yes Chairperson when I – Minister appointed me to – she indicated as well that she would like to fill the position in the department because this was also a standard that we were trying to uphold that we do not want a too long vacancies as similar in the SOE's. Because at that time a lot of SOE's were having vacancies so the principle was as a shareholder department we must uphold the principle that we do not want two vacancies that are extended for a long period of time or actings that are extended for a period of time. So there was an indication
20 and the intent to fill the position.

ADV SELEKA SC: So tell the Chairperson whether or not did you – was there an advertisement for the position during the time when you were acting? Did you apply for this position? Did you succeed if you applied?

CHAIRPERSON: Maybe before that can you confirm the

period during which you were acting DG? Was it only the month of September 2015?

MS MOKHOLO: Before then there were other – as I indicated Chairperson that I would act from time to time.

CHAIRPERSON: Yes.

MS MOKHOLO: Yes.

CHAIRPERSON: Yes but just before – just after Mr Matona had left for what period did you act as DG?

MS MOKHOLO: It was for a year from the September 2014
10 to the end of September 2015.

CHAIRPERSON: Oh – oh by the way he left – it was in 2014 that he left the Department of Public Enterprises to go to Eskom that is Mr Matona.

MS MOKHOLO: Yes. So I started acting in September so that I can – he can do at least the month handover on critical matters that a DG would persist with and then he started his position in Eskom in October. So my acting was September 2014 to September 2015.

CHAIRPERSON: In September was he still DG but not
20 working maybe on leave or had he ceased to be DG – Mr Matona in September 2014?

MS MOKHOLO: He was still the DG. He was doing his handover to me.

CHAIRPERSON: Oh.

MS MOKHOLO: Yes.

CHAIRPERSON: Okay.

MS MOKHOLO: And preparing to take over.

CHAIRPERSON: Yes.

MS MOKHOLO: So he was serving like notice he had resigned.

CHAIRPERSON: Oh so he was not actually at work?

MS MOKHOLO: He was not actually at work.

CHAIRPERSON: Ja. So that is why you – somebody had to be appointed to act in his position.

10 **MS MOKHOLO:** Yes.

CHAIRPERSON: And then you acted from September 2014 until when?

MS MOKHOLO: Until September 2015.

CHAIRPERSON: Oh okay alright. No that is the clarity I wanted.

MS MOKHOLO: The tenure of twelve months.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** And then somebody else acted as DG in October and November 2015 and Mr Seleke was then appointed with effect from 1 December 2015?

MS MOKHOLO: 2015.

CHAIRPERSON: Okay. We make sure that we make a clear distinction between Seleke and Seleka.

MS MOKHOLO: Yes, yes Chairperson I have trained

myself on that yes.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Well I – I do not think there is anything wrong Mr Seleka for you to insist that you are Seleka not Seleke.

ADV SELEKA SC: Absolutely.

CHAIRPERSON: Because I also insist that I am Zondo I
10 am not Zonde. So both in the case of Seleka and Seleke
and Zonde and Zondo the difference just one alphabet.

ADV SELEKA SC: That is right Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: And it can make a huge difference too.

CHAIRPERSON: But it can make a big difference.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Please continue.

20 **ADV SELEKA SC:** And indeed Chair my recollection is that
Mr Matona was appointed as the CEO at Eskom effective 1
October 2014. Yes Ms Mokholo you were answering that
question about the advertisement for the post and whether
or not you applied for this position of DG.

MS MOKHOLO: Yes I had an interest in the position

Chairperson. I applied and...

CHAIRPERSON: Was it advertised?

MS MOKHOLO: It was advertised.

CHAIRPERSON: Okay. When was it advertised do you remember?

MS MOKHOLO: I think the first advert Chair should have been in – towards the end of the year but it was closing I think it was around February the following year – February 2015 it was – that should have been the first advert.

10 **CHAIRPERSON:** Oh okay alright.

MS MOKHOLO: Ja.

CHAIRPERSON: So you applied for the position?

MS MOKHOLO: Yes.

CHAIRPERSON: Okay.

MS MOKHOLO: Yes I did Chairperson.

CHAIRPERSON: Continue.

20 **MS MOKHOLO:** And then the – I had – when I was appointed acting DG I – we appointed another colleague to be the DDG to be responsible for the legal governance and risk and so the idea also was that I should not be conflicted in dealing with two positions. Because sometimes you can act as a DG and but still do your main responsibility from your original position. But in this case we deviated those two. Again because I did indicate it to the Minister my interest I would be applying for the

position so that then as the DDG legal you do not have to be advising at the same time your HR which would be then be ceased with the adverts and the [00:23:16] relating to the position. So for that reason there was somebody else who was the acting DDG for legal governance and risk. So I applied for the position the first time around. Then the advert closed and with time I did not even make a contact that much with HR so that [00:23:40].

CHAIRPERSON: I am sorry. The aircon continues to make
10 some noise but I must check. Is it quite hot? I think your junior nods because positively.

ADV SELEKA SC: Chair I do not feel particularly hot.

CHAIRPERSON: So maybe -

ADV SELEKA SC: As the last two days.

MS MOKHOLO: Let us see if there are other nods.

ADV SELEKA SC: The heat came from everywhere tell us changes.

CHAIRPERSON: Well you see you not getting a lot of support. Maybe switch it off for now. Let us see how it is
20 later on. And your junior must just ask you to indicate to me when she thinks it is becoming unbearable and then we will see what can be done. It is just that it makes it difficult for me to hear what the witness is saying as well as Mr Seleka. Okay alright. So I hope somebody has gone to adjust it. It may be they do not need to switch if off they

just need to adjust it. I am not sure exactly what needs to be done technically. But if they switch it off let us see and your junior will indicate.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Ja okay alright. I am sorry I interrupted you Ms Mokholo. Do you want to continue?

MS MOKHOLO: Yes thank you Chairperson. So yes and then I had applied for the position and I left it there. And later on then I received communication through HR
10 indicating that the position is going to re-advertised again and the reasons were that the

1. The first one was that the department did not follow the proper prescripts laid down by the Department of Public Service and Administration and Advertising of the position.
2. And the second one was that the – there was an issue relating to my qualifications. There was a course that one course that was outstanding that would definitely confirm an LLB to me. So I needed to do an oral of
20 some sort with the University of Durban Westville. So – and they indicated that because the position required that confirmation of the Post Graduate position the advert.

The position would have to be re-advertised. And then all the other candidates that had applied they must re-apply

again. So then it was advertised for the second time and then it was advertised.

CHAIRPERSON: That would have been around when in 2015 when it was re-advertised?

MS MOKHOLO: It would have been by – around March/April we can confirm the dates Chairperson.

CHAIRPERSON: Ja okay.

MS MOKHOLO: Yes, ja. So that was the second advert. Then we...

10 **CHAIRPERSON:** Before you proceed. What did you think of the reasons that were given for re-advertising the position when you were told about them?

MS MOKHOLO: Yes Chairperson as I say it was the first was relating to the outstanding course – a short course and then the one was the fact that the department did not comply with Public Service Administration in issuing the advert.

CHAIRPERSON: Were you told in what way the department had not complied?

20 **MS MOKHOLO:** No they did not indicate in what way. It was just that the department did not comply with the DPSE prescript in advertising the position.

CHAIRPERSON: Hm. And then the other one relating to you why – was what about a course? What was the position?

MS MOKHOLO: The position was that they – it would put – it puts me not as a qualified – I do not qualify even in the – the short round or even to be shortlisted in the position because of that course.

CHAIRPERSON: What was the position? What course was it? Was – did it – what were the requirements of the position in the first advertisement?

MS MOKHOLO: In the first advertisement ...

CHAIRPERSON: Minimum requirements.

10 **MS MOKHOLO:** Ja it did not require the Post Grad or the Masters as it was put in the latter qualifications or in the latter adverts. It was just a degree.

MS MOKHOLO: A Bachelors Degree.

MS MOKHOLO: A Bachelors Degree ten years' experience in the public service especially at SMS level. And a full understanding of the department. Its state owned entities within its portfolio. The understanding of the PFMA. The Companies Act. Just the way the department operate and the environment within which the SOE operates.

20 **CHAIRPERSON:** Yes. So at that stage what were your qualifications – academic qualifications?

MS MOKHOLO: They...

CHAIRPERSON: At a stage you applied in response to the first advertisement.

MS MOKHOLO: It was the B.Proc and – and LLB that

needed – that the oral – the oral which was subsequently given. But by the time when the advert was or the reasons were given to me it was B.Proc.

CHAIRPERSON: So – so you had a B.Proc.

MS MOKHOLO: Yes.

CHAIRPERSON: Which is a four year junior degree.

MS MOKHOLO: Yes.

CHAIRPERSON: You had study towards your LLB.

CHAIRPERSON: Yes.

10 **CHAIRPERSON:** But had not yet completed it.

MS MOKHOLO: Yes. It had one course left.

CHAIRPERSON: There was one subject left. Is that right?

MS MOKHOLO: Yes Chairperson.

CHAIRPERSON: Okay. The reason then that they gave with regard to your qualifications was what?

ADV SELEKA SC: Was that it - I would – it does not put me in the race, based on the fact that I – they did not comply with Public Service and Administration.

20 **CHAIRPERSON:** But did they say that the prescripts of the Department of Public Services and Administration required a senior degree or a certain degree for this position?

MS MOKHOLO: No, Chairperson. That is ...[intervenes]

CHAIRPERSON: That is not what they said.

MS MOKHOLO: No, that is not what they were saying. That is - the initial advert did not have that.

CHAIRPERSON: H'm.

MS MOKHOLO: And the second advert did not have that as well. I think it was – the position was advertised three times.

CHAIRPERSON: H'm.

MS MOKHOLO: So I think it was for the – on the third advert that the masters was put in as a requirement for the position.

CHAIRPERSON: Do you know who the other candidates
10 were who had applied in response to the first advertisement
or do you not know?

MS MOKHOLO: No, I do not know Chairperson.

CHAIRPERSON: Yes.

MS MOKHOLO: As I have indicated also. I – even the HR
Department – I made sure I did not make myself, not even to
ask questions relating to that.

CHAIRPERSON: Yes.

MS MOKHOLO: Yes, Chair.

CHAIRPERSON: Now. So this story, when you were being
20 told the reasons why the position would be re-advertised.
The story about your qualifications exactly what about this
outstanding course? Just repeat that. I am trying to follow.
Maybe advert that had been – the job advert said you must
have a bachelor's degree.

MS MOKHOLO: Yes.

CHAIRPERSON: That is the minimum in terms of academic qualifications. And it required you to have at least ten years' service in the Public Service at senior management level.

MS MOKHOLO: Yes.

CHAIRPERSON: Is that right?

MS MOKHOLO: Yes.

CHAIRPERSON: So what were they saying?

MS MOKHOLO: It came across Chairperson to say, they cannot proceed because the DPSA requirement was that,
10 that initial advert in the first place was defective, basically.

CHAIRPERSON: And who told you this?

MS MOKHOLO: The HR ...[intervenes]

CHAIRPERSON: Who at HR?

MS MOKHOLO: It was ...[intervenes]

CHAIRPERSON: Can you remember?

MS MOKHOLO: It was Ms Henriëtta Strauss.

CHAIRPERSON: H'm?

MS MOKHOLO: Ms Henriëtta Strauss.

CHAIRPERSON: Yes.

20 **MS MOKHOLO:** Yes.

CHAIRPERSON: And then, in any event, the position was then re-advertised.

MS MOKHOLO: Yes.

CHAIRPERSON: And were the minimum requirements for the position in – as stipulated in the second advert, the same

as the minimum requirements for the position as had been stipulated in the first advert?

MS MOKHOLO: Yes, Chairperson. The first and the second advert, they were almost similar. There would have been minor but it was – there was no material differences between the first and the second. Hence, I still remained in the race. I only withdrew with the third advert because with the third advert, definitely, I did not qualify or – for the position.

CHAIRPERSON: Okay. I am not sure that I am following.

- 10 Try and remember what the minimum requirements of the position for GT or DPE were as contained in the first advert. And you have already told me what those were.

As far as academy qualifications were concerned, you said that it required a bachelor's degree. It did not require the candidate to have a senior degree or a master's degree. Okay. And then there were other minimum requirements.

As far as the second advert is concerned. Did it have the same minimum academic requirements that it called for with regard to those who wanted to apply?

- 20 **MS MOKHOLO**: Yes, Chairperson it had the same. There would have been changes. I just cannot recall exactly what would have been different but it had – in the main it was still the same.

CHAIRPERSON: H'm.

MS MOKHOLO: It was the third advert that then had

...[intervenes]

CHAIRPERSON: Oh, there was a third advert?

MS MOKHOLO: There was a third advert.

CHAIRPERSON: Oh.

MS MOKHOLO: When the advert, that is – then I withdrew because I then indicated to HR that I was not qualified on the basis of the new advert of the position.

CHAIRPERSON: Now, you said the first advert, the closing date for applications was sometime in March 2015 or
10 February. Is that right?

MS MOKHOLO: Yes.

CHAIRPERSON: They started that?

MS MOKHOLO: Yes.

CHAIRPERSON: And then the second advert was issued around April/March, April. You are not sure but somewhere there.

MS MOKHOLO: Yes.

CHAIRPERSON: Ja.

MS MOKHOLO: And the closing date was also around the
20 middle of the year. And then there was a third advert and which then had closed slightly after the – I think it was July/August. Something like that.

CHAIRPERSON: Somewhere around July, mid-year?

MS MOKHOLO: Yes.

CHAIRPERSON: That is the third advert?

MS MOKHOLO: Yes.

CHAIRPERSON: Now, what – how different were the minimum requirements specified in the third advert compared to the minimum requirements specified in these first and second adverts?

MS MOKHOLO: The third advert had – on qualifications it added – the first two they said post-graduate – something like an added advantage.

CHAIRPERSON: Would be a recommendation?

10 **MS MOKHOLO:** Yes.

CHAIRPERSON: Or would be recommended?

MS MOKHOLO: Yes, it would be an added. It was the first advert. It said it would be an added advantage if you have. But in the third one, it was a mandatory requirement. So a master's or any other.

CHAIRPERSON: Now the first one and the second one. What did they say – what do they say, a second degree or did they say a senior degree would be an added advantage? Or, did they say a master's degree would be an added

20 advantage?

MS MOKHOLO: They said... Yes, the post-grade would be an added advantage.

CHAIRPERSON: Oh, a post-graduate degree?

MS MOKHOLO: Yes. Ja.

CHAIRPERSON: Okay.

MS MOKHOLO: Ja.

CHAIRPERSON: Which could mean it could be an honours.

MS MOKHOLO: Honours, yes.

CHAIRPERSON: Or LLB.

MS MOKHOLO: Yes.

CHAIRPERSON: Or whatever. Okay. And then the third one?

MS MOKHOLO: Yes. Ja, the third one was very – was – that is the one that was prescriptive in terms of making it
10 mandatory, not an added advantage.

CHAIRPERSON: Did it say post-graduate degree or did it say master's degree?

MS MOKHOLO: I cannot recall Chairperson whether it is post-graduate or master's but I think it was Masters.

CHAIRPERSON: But we have the advert – the third – all the adverts here by any chance?

ADV SELEKA SC: No, Chair we do not have it presently.

CHAIRPERSON: Oh.

ADV SELEKA SC: And I am just passing a note to my
20 investigators to check

CHAIRPERSON: Ja. Ja, I think it will be important to get all three of those advertisements. But you are saying that in the third advert, the position of – and you cannot remember whether it said a senior degree or second degree or post-graduate qualification or a master's was compulsory. Or are

you able to remember whether it said a master's?

MS MOKHOLO: It had post-graduate and I think there was also a master's there. A post-graduate or a master's was – it was a mandate – it was mandatory compared to the previous one but the word post-graduate was there...

CHAIRPERSON: So is your evidence, therefore, the following? I just want to make sure I get this clearly. It is just a pity that we do not have the adverts but I am sure we will get them.

10 **ADV SELEKA SC**: Yes.

CHAIRPERSON: That whereas the first and second adverts said a post-graduate qualification or degree would be an added advantage, the third advert said one of two things and you cannot remember which one. Either it said a post-graduate degree is compulsory or it said a master's degree is compulsory.

MS MOKHOLO: Yes, Chairperson.

CHAIRPERSON: You just cannot remember which one it said?

20 **MS MOKHOLO**: Yes, I cannot remember which one was it, ja.

CHAIRPERSON: And then, because on your LLB, you had one post outstanding. You then did not meet the requirements?

MS MOKHOLO: Yes, Chairperson.

CHAIRPERSON: And that is why you decided to withdraw?

MS MOKHOLO: [No audible reply]

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Ms Mokholo, in the first time around when you were told that the DPSA requirements have not been met, were you told in what respect?

MS MOKHOLO: No, Chairperson. As I said, it just said the – that advert did not meet the standard of the DPSA. But it
10 would be reissued and all the candidates that had previously applied, they can still apply. And indeed, in the advert it said that you can still apply if you had applied before. Ja.

CHAIRPERSON: What we will need Mr Seleka, if this has not been done already.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: We need to obtain all the three adverts, number one. Number two, we need to obtain the Public Service prescripts relating to the position of DG.

ADV SELEKA SC: Yes, Chair.

20 **CHAIRPERSON:** I do recall that in the Department of Labour, somebody who was appointed as DG, even though he did not have a degree - and there was a query – and this is something that has been here in the Commission, a query.

Because it was said the – in terms of the Public Service, the – I mean the requirements for the position of DG is that,

at least he should have a bachelor's degree.

Now I want to know also. So to the extent that the advert, third advert may have said you – candidates should have a master's degree. I think that will be very strange.

I would like to have that compared with other government departments, whether it was a requirement for DG's and other government departments.

ADV SELEKA SC: H'm. Yes.

CHAIRPERSON: Or whether this department specifically
10 decided that for this position they wanted somebody with a master's degree. So we will need to have that comparison.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But I must also ask Ms Mokholo. Mr Matona, that is now the previous DG, do you know whether, when he was appointed as DG, he had a master's degree?

MS MOKHOLO: Chairperson, maybe we need to explain how ...[intervenes]

CHAIRPERSON: Or rather, I should be saying. Whether -
20 how holding a master's degree was a requirement.

MS MOKHOLO: Yes, Chair. Mr Matona's case was slightly different because his appointment into the department was a lateral transfer from the Department of Trade and Industry then. So he was already a DG in another department.

So the Public Service Act and Regulations, they do allow

that you can transfer laterally. So he transferred laterally to the department.

But I do know that it does – I am not sure of his qualifications in terms of masters but I know ...[intervenes]

CHAIRPERSON: Ja. Anyway, we have got his affidavit and CV. But that might not tell us what ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...the requirement for the position was ...[intervenes]

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: ...when he got appointed or transferred. But I would have thought, also, that to the extent that different departments might have different minimum requirements for the position of DG.

I would imagine that you cannot transfer somebody from one department who meets the requirements of that department into a position in another department which has got different requirements. You cannot just transfer. They will have to meet the requirements for the position to which
20 they are transferred.

MS MOKHOLO: Correct Chairperson. It is the same as transferring a DDG to another department. I transferred from the Department of Public Enterprises as a DDG, meeting the requirements of a DDG... *[Speaker's voice trails off – unclear.]*

CHAIRPERSON: Yes, ja, ja.

MS MOKHOLO: [Indistinct] *[Speaker's voice trails off – unclear.]*

CHAIRPERSON: Okay alright. Even after the third advert, you never got to know who the other candidates were for the position?

MS MOKHOLO: No, Chairperson. I only got to know the successful candidate.

CHAIRPERSON: Okay alright.

10 **ADV SELEKA SC:**

CHAIRPERSON:

ADV SELEKA SC: Thank you, Chair. Did you have any conversation with the minister, Minister Lynne Brown, during this time of your application for this position?

MS MOKHOLO: Not during the process. As I said that it was also to delineate, because it would have created conflict. But it was before. When I was still acting. When she indicated that she would want to fill the position, she – then we did have a conversation.

20 **ADV SELEKA SC:** Okay that is... So the third time around the advert is issues, it requires a master's or a post-grade. You cannot recall. Can you recall what was the end result in the second – the third time around?

MS MOKHOLO: So. Yes, I withdrew from the position but then also then indicated to the ...[intervenes]

ADV SELEKA SC: You mean, you withdrew from the application?

MS MOKHOLO: From the application, yes.

ADV SELEKA SC: Yes.

MS MOKHOLO: But still retained the acting. So on the basis of – after the advert, the minister indicated to me that she realised – she was informed by Legal that I had withdrawn. And then I explained that ...[intervenes]

CHAIRPERSON: Yes, please look this side when you
10 ...[intervenes]

ADV SELEKA SC: Yes.

MS MOKHOLO: My apologies Chairperson.

CHAIRPERSON: H'm?

MS MOKHOLO: Yes, she – she said she learnt after the closing date that I withdrew my application. I indicated that but I would like to still remain as acting so that I can prepare the handover and for the coming DG.

And this conversation, we were having in line(?) when minister was indicated to me that she would like to rotate the
20 acting within the department to bring another colleague to act.

So I indicated that giving the fact that the minister intends to fill the position as early as November/December. There is no point to bring somebody to step in for a month or two.

I might as well continue so that it gives me enough time, because I falling out of the race but I am still active. Give me enough time to prepare and handover the post for the incoming DG. Rather than I prepare the post and there is somebody who acts for two months, they still have to prepare a report. Or the new DG can have two handover reports.

So that is the conversation that I had then with the minister.

10 **ADV SELEKA SC:** Yes, but can you tell the Chairperson, what was the outcome of the third process to look for a person to fill the DG's position?

MS MOKHOLO: Yes, we were informed through the news flash that the recruitment process has been completed and there is a new DG that will be joining the department as of the 1st of December, Mr Richard Mogokare Seleke.

CHAIRPERSON: What did the minister say when you suggested that there should not be another acting appointment for – in the position of DG for one or two
20 months before the DG, new DG came in, that you should continue so that you can properly prepare a handover report?

MS MOKHOLO: She indicated that she understood my reasons but she still felt that deportations to another DDG would serve the department good. And there were many

challenges the department was facing. I was under pressure in terms of work and therefore she still believes that there must be somebody else that *[Speaker's voice trails off – unclear.]*

CHAIRPERSON: Okay. And he did – she appointed somebody else?

MS MOKHOLO: Yes, she appointed another colleague, a DDG to act for those two months.

CHAIRPERSON: For October and November 2015?

10 **MS MOKHOLO:** Yes. The intend – because the process was so advanced. The intend was just that the colleague, the DDG colleague would just act for a month. Hence the letter that was sent, because we normally sent the letters to all the other – to the other departments. We also sent letters to the state-owned companies within the portfolio to inform them that there would be an acting DDG.

Even when I was appointed, the cluster was informed. The SOE's were informed. So in this case as well. The minister had to inform them that there would be another DDG
20 that would be acting.

So that letter was only for a month to say the DDG would act as acting for the month of October. My understanding was that the intend was that the process was so advanced that the new DG could even start in November.

But I think in the process of going to going and then

dealing with other matters, could not be November. Hence, the DDG colleague acted for two months. It was October and November. And the new DG started.. *[Speaker's voice trails off – unclear.]*

ADV SELEKA SC: Yes. Thank you, Chair. So the person who is appointed to act in this position you have been acting is another colleague of yours within your office?

MS MOKHOLO: Yes.

ADV SELEKA SC: Within the department?

10 **MS MOKHOLO:** Within the department.

ADV SELEKA SC: So the suggestion that you remain acting until the next person formally appointed, was not taken?

MS MOKHOLO: Yes, the minister did not oblige me on the request and then we agreed that I will start... *[Speaker's voice trails off – unclear.]*

ADV SELEKA SC: So then there is the acting – I mean an acting person again for two months, you say. And we have put your evidence to the other parties that Mr Seleke then gets to be appointed as the DG with effect from
20 1 December 2015.

MS MOKHOLO: Correct Chairperson.

ADV SELEKA SC: I think you had also... When does he get to be introduced to you after his appointment? Sorry, when I say you, I mean the officials in the department.

MS MOKHOLO: Yes. We – he joined on the 1st and on that

first week, he only met with the Executive Committee to the department, the Exco just to introduce himself to Exco.

Then he was formally introduced by the minister to the entire department mid-December. He was at the year-end function of the department which was held at Denel. So that is when minister – it was just before the 16th of December, because normally by then, most people take on leave.

So the – in terms of the calendar of activities, it was agreed that the introduction of the DG to the entire
10 department must happen before the mid-December.

So he was introduced to the department around that period in 2015 or also and 14 or so of December at the year-end function.

ADV SELEKA SC: This is December 2015?

MS MOKHOLO: December 2015.

ADV SELEKA SC: Do you know whether Mr Seleke had a master's degree?

MS MOKHOLO: The ...[intervenes]

ADV SELEKA SC: If you do not know, you do not know.

20 **MS MOKHOLO:** Yes.

ADV SELEKA SC: Whether you know.

MS MOKHOLO: At the year-end function, the minister did elude to that when she – she read the short bio of the DG and then indicated that he is also a seasoned – a senior official in the department in possession of a master's degree

and... *[Speaker's voice trails off – unclear.]*

CHAIRPERSON: Sorry, you swallowed your words towards the end of your last sentence. Just repeat that answer, please and face this side. I do not know whether you need to bring the mic a little closer to you or you... Ja. H'm?

MS MOKHOLO: Thank you, Chairperson. I was saying that the minister, when she introduced the DG, she had – she read the short bio of the DG and indicated that indeed he was in possession of a master's degree and is also a
10 seasoned public official who has been also a DG at a provincial level.

CHAIRPERSON: H'm. Okay.

MS MOKHOLO: Ja.

ADV SELEKA SC: The Commission has heard evidence in regard to an email address of infoportal1@zoho.com. And at the initial stages of those who testified before the Commission.

Their version was that that email address belongs to Mr Richard Seleke and some emails had been exchanged with
20 that email address prior to December 2015.

And yet it was said to be his email address as the DG at the department, at your department, DPS... DP
...[intervenes]

MS MOKHOLO: DPE.

ADV SELEKA SC: DPE. Do you have any comment on

that?

MS MOKHOLO: Chairperson, the email address in the department, there is a specific email that is used for a DG. So the DG would have – for example, I would have an email as the DG matsietsimokholo@dpe.gov.za.

But there would be an email, an additional email address that can be used to send correspondence to the DG and it is managed by the DG's office and it is definitely not the infoportal or the zoho. That email is dg@dpe.

10 **CHAIRPERSON**: Ja.

MS MOKHOLO: So that will be the email address that should be used.

CHAIRPERSON: Of course, you are talking about an official email address. You are not talking about a personal email address that might belong to a particular DG?

MS MOKHOLO: Yes. Then there would also – all the DG's *has sent(?)* Mr Matona with myself as well and even with Mr Seleke, there would be private emails, because sometimes our server is down. We needed to communicate
20 with the minister 24/7 actually.

So even at home, you would need to be able to have. So we would be allowed personal addresses that we would apply permission with the IT Department of the department that we can use. Mister...

As I have said, Mr Matona had one, Mr Seleke had one

but it was not that infoportal/zoho. Mr Seleke actually used a different private email.

CHAIRPERSON: Did you say that you would need to apply to somebody in the department to have – for permission to use your personal email address for work purposes?

MS MOKHOLO: Yes, Chairperson for security reasons. So I would – for my private email, the iCloud email that I would use, I needed to get permission from the IT to say, so that it can be loaded because it was – to be private but I would still
10 receive work related information.

CHAIRPERSON: Yes.

MS MOKHOLO: So I would – it is a requirement. At least(?), our IT informed us it is a requirement and it is something that SITA encourages.

I know even in the presidency that I had to project that request through our IT that my private iCloud email address can be used for official business in the event my email is down or... *[Speaker's voice trails off – unclear.]*

CHAIRPERSON: Was it the policy of the Department of
20 Public Enterprises that for any employee or official of the Department of Public Enterprises to use his or her personal or private email address for work purposes, they would need to apply to the IT Department or whatever or section?

They could not just use their private email addresses for work purposes without that arrangement having been made

with the IT Section?

MS MOKHOLO: Yes, Chairperson you would have to inform IT.

CHAIRPERSON: Yes.

MS MOKHOLO: Because remember, he has to load it for you.

CHAIRPERSON: Yes.

MS MOKHOLO: So you would have to inform the IT.

MS MOKHOLO: Yes. You would not just use it. Then... I
10 specifically remember because there was a form, at least
that I was given. You just complete and you indicate and
then you give the reason.

CHAIRPERSON: H'm, h'm.

MS MOKHOLO: The same, as I am saying, in the – if I am
to correlate that with what happens currently in the
presidency. It is the same thing, that you even apply for
what we call remote access because you need it to be – you
are outside the server.

So you needed to be brought in because you have been
20 receiving information that relates to the department. So
there is a form that you just complete and then you apply for
this person to be given that kind of remote access.

CHAIRPERSON: Was this policy a written policy or it was
not written but was known? In other words, is there a
document that one could find which had this policy?

MS MOKHOLO: I think, Chairperson, it was more of a standard operating procedure, it is something that we knew that when you – even when you are a new employee, when you receive those forms you would be told that if you were to use a private, what would the rules and norms if you use your private email. So it will not be prohibited but you would be told what would be the steps to be followed if you want to use a private email. Definitely it was something that is known, ja.

10 **CHAIRPERSON:** Are you, in other words, saying you do not know if it was a written policy or a written rule but you would know that it was known that this what was expected?

MS MOKHOLO: Ja, Chairperson, I would not say there is a document that it is written specifically with a, b, c, d law but you would know that if you joined the dept, you were given the department email address and then you would indicate that is it possible for me to use my private email and then you would be told what are the conditions and circumstances under which that could happen and that also
20 applied to tools like iPad, there was a process and you would not just put everything on your iPad that is work-related. So I had to take my iPad in and request that this is my private email bought by my own money but I use it for work so can I – can it be used and then – because there is a serial – they will ask you for a number or here is

the number of iPad or something like that. So there were those kind of practices that we would know.

CHAIRPERSON: What is your – what was your understanding at the time of how well-known this requirement was among employees and officials of the department?

MS MOKHOLO: If I am to use the level of – this SMS level from let us say director, Chief Director, DDG and DG, I would say it was well-known because most of us use
10 gadgets. There is even colleagues who received emails, official emails on their phones and you needed to go to IT, needs the phone, for them to put their email – could be a DPE email but on your phone, there was a procedure for that as well.

So it was not something that you would just do and IT would have to be brought in and for them to do that, they would sign some forms. When I – I was doing the exits from DPE, there was a form that I was given. When you hand over your access card, you hand over your
20 access and they would ask you if you were using an external email address, were you on the network of the department, the server and everything.

So I would if from Director, Chief Director, DDG, DG, it was a well-known because we used smart phones most of the time for work-related circumstances.

CHAIRPERSON: With regard to people at secretary level or PAs, what is your thinking, do you think it might have been less known among them or not?

MS MOKHOLO: It will be different. For those, for example, that would work in my office, when I was the Acting DG, they would know that when they send an email especially after if hours or sometimes it is during the day but because we are inundated with meetings they would then copy my iCloud and I then they went send even a
10 message, a Whatsapp, please check urgent email and it is also copied on your iCloud so that even if I leave Eskom's meeting very late I do not have to come to the office, I go straight home, I can still access that email.

So the PA's office managers that worked with SMS members they would also know because they would know they would have access to those emails, our emails, we will give them our private emails so that they know where to send.

The office of the administrator would have my
20 private emails so that if there is something urgent that they needed to bring to my attention, where there is holidays and then they know where to get hold of me, they can always send.

CHAIRPERSON: The PA to the minister, would you expect her to know, to have known such or not?

MS MOKHOLO: Definitely, Chairperson, yes.

CHAIRPERSON: She would have known that requirement.
Okay, alright.

ADV SELEKA SC: And what about the DG and the DDG?
Would they know each other's private email addresses?

MS MOKHOLO: Yes, Chairperson, as I indicated I knew
Mr Matona's private email, I know Mr Seleke's private
email because I would send things after I was – that
matters that are urgent and then I would also send them
10 Whatsapps, say please check your email, there is an
urgent matter. So I would know their particular [inaudible
– speaking simultaneously]

ADV SELEKA SC: Do you know that it was
infoportal1@zoho?

MS MOKHOLO: It was not.

ADV SELEKA SC: It was not that email address. Do you
know where Mr Seleke came from prior to his appointment
at DPE? Where was he employed In other words before
coming there?

20 **MS MOKHOLO:** Before coming as a DG?

ADV SELEKA SC: Yes, as a DG at DPE.

MS MOKHOLO: Employment, I know he was a board
member at the point at Transnet because he was part of
the batch that we appointed in December 2014 when we did
the Transnet and the Eskom board appointments.

ADV SELEKA SC: At Transnet 2014? Okay. Tell the Chairperson, if there is a protocol because, you see, the evidence that was presented in regard to this info portal email dealt with the Chairperson of the board at Eskom interacting directly, if you listened to his evidence, interacting directly with the DG. If you could tell the Chairperson during your acting stint, how did you interact with the SOEs? How did you interact – ja, let me say SOEs, whether at board level or executive level, what was
10 the chain of interaction between the two entities?

MS MOKHOLO: So, Chairperson, we had – DPE in the main because it is a department that had unlike other departments that would also have a policy role, regulatory role, we always had one mandate of shareholder function, so we were not like Department of Transport that will also have regulators, that will also have the function of developing policy, ours was a shareholder management function.

So we had over the years to try to perfect that
20 because we were teaching the department as going to be the centre of excellence when it comes to shareholder management. So we had what you call a communication protocol between the department and SOE. The Chairperson corresponds and interacts in the main with the minister because the minister is there, executive authority

and then the Chairperson of the board is the head of what is called the accounting authority, which is the board, so then the communication would be between Minister and the Chairperson.

On exceptional cases then the Minister can give you an instruction to call the Chairperson but I not write to the Chairperson. Letters are to be prepared, it is the Minister that will sign off on those letters.

And then, as the DG, the DG will interact with the
10 CEO and the rest of us, the DDGs will communicate with other executives or prescribed officers within the SOE. It is a protocol that finds itself in a way partly from the PFMA but we had to keep perfect it because the PFMA was not dealing with the shareholder issues in the main, it was more financial management issues.

So we perfected that as a tool in the department and we will communicate that through the – when we do board inductions we would indicate. There was always slide that we would put in there that deals with the
20 delegation of roles between the Minister, even Minister step-in rights, intervention rights vis-à-vis the board and then how the board must interact with the executives so that the board does not become an executive and management as well.

So there was that protocol in terms of

communication between the Minister and the Chair, the CEO and the DG and the other executives, with the other officials as well.

ADV SELEKA SC: Yes, so the Chairperson of the board – currently the communication protocol will interact directly with the Minister.

MS MOKHOLO: Yes, Chairperson.

ADV SELEKA SC: Correct?

MS MOKHOLO: Yes.

10 **ADV SELEKA SC:** That is the Chairperson of the board. The CEO of the SOEs would then be engaging directly with the DGs – the DG. Just speak for the Chairperson to hear?

MS MOKHOLO: Yes, Chairperson.

ADV SELEKA SC: Thank you. And at DDG level you will deal with other executives.

MS MOKHOLO: Yes, at DDG level you will deal with your - what will be your prescribed officers because the CEO and the CFO are ex-officio members of the board, so in most cases those are the ones that would deal with the
20 state owned – deal with the DG or at times with the Minister, those specific meeting but then at our level we will deal with other. Only in exceptional cases that I indicated that the Minister can indicate, can request that must he call the Chairperson who – but it was not really a norm, always the Minister that communicates the [inaudible

– speaking simultaneously]

ADV SELEKA SC: Yes. But also in this case what we have is that the Chairperson would say I am communicating with the DG. Would that be the norm?

MS MOKHOLO: I would not be a norm, Chairperson, it would have to be under exceptional circumstances and cases as I indicated. One of the forums that we used to also ensure there is communication protocol we establish what we call the Chairperson’s forum. In those
10 Chairperson’s forum, they will be led by the Minister but it will be the Chairperson of each and so – and their CEO and in those meetings it will be to encourage those kind of protocols as well.

One of the reasons why we wanted to do this was also to address the concern that was coming from a lot of CEOs where they felt that the Chairpersons will also be coming through executive and also the concerns that sometimes the ministers – that other Chairpersons will complain that the ministers are becoming executives,
20 Minister communicates directly with the CEO and the CEO does not feed back to the Chairperson, therefore the Chairperson is not aware of things that are happening.

So we wanted them to try to correct that and craft this communication through the Chairperson’s forum and then we will encourage this kind of a protocol.

ADV SELEKA SC: During your acting ...[intervenes]

CHAIRPERSON: I think we must take the tea adjournment.

ADV SELEKA SC: Tea adjournment, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Okay, thank you.

CHAIRPERSON: We will take the tea adjournment. It is quarter past, we will resume and half past eleven.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you, Chairperson. Ms Mokholo, you are still under oath. Just before the lunch adjournment – I mean, the tea adjournment, I was asking you about – you were, rather, testifying about the protocol and the communications between the DPE and the various SOEs. Now let me be direct in regard to how you dealt with the SOEs. During your tenure as an acting DG, that year September 2014 to September 2015 did you have any email
20 exchanges sent to you directly from Eskom Chairperson?

MS MOKHOLO: No, Chairperson.

ADV SELEKA SC: Be it Mr Tsotsi or Dr Ngubane?

MS MOKHOLO: From their official...?

ADV SELEKA SC: No, not from their official, from the private email address to your private email address.

MS MOKHOLO: No, Chairperson, I have not had that kind of interaction with them.

ADV SELEKA SC: Did they approach in regard to Eskom is seeking to provide – it has been approached by a supplier or various suppliers and it is concluding contracts with them and asked for your view in regard to the awarding of those contracts?

MS MOKHOLO: No, Chairperson.

ADV SELEKA SC: Did you have to deal with them in
10 regard to which newspaper houses, Sunday Times or City Press, you name them, that they could deal with or not deal with.

MS MOKHOLO: No, Chairperson.

ADV SELEKA SC: And that is the position to the end of your acting as the Acting DG.

MS MOKHOLO: Yes, for the whole total 12 months, no, ja.

ADV SELEKA SC: In the beginning of 2015, February 2015 – and we have put this – rather, we have heard from
20 Mr Tsotsi that you made a telephone call to him. You made a telephone call on the eve of a meeting that the board of Eskom had to have on the 26 February 2015. Could you in a nutshell just relate to the Chairperson how did that call come about?

MS MOKHOLO: Thank you, Chairperson, so ...[intervenes]

CHAIRPERSON: I am sorry, before you proceed.

ADV SELEKA SC: The noise again.

CHAIRPERSON: Mr Seleka, I suspect that your junior took the opportunity during the tea break to make representations to the technicians.

ADV SELEKA SC: I think they [indistinct] 3.13.

CHAIRPERSON: But is it still fine? Is it tolerable? If they can – okay, alright, but do say when it is too much for you. Okay, alright.

10 **ADV SELEKA SC:** She never feels the heat, Chair.

CHAIRPERSON: Yes, Ms Mokholo, you can continue, I interrupted you while you were giving evidence.

MS MOKHOLO: Thank you, Chairperson. Yes, Chairperson, so as the DG or as the Acting DG, it is a norm especially when parliament is in session that you would work between two offices, you would work between the Cape Town office and we would work within the Pretoria office.

20 On this occasion, it was around the 25 February 2015. I was in Cape Town working from our Plein office in Cape Town and when I am in Cape Town I tended to work until late in the office because then there is no family to rush home to so I spent more time in the office.

So I had left the office late that evening and the Minister – I remember the Minister was travelling out of the

country. I think it was with Denel, I cannot remember the exact country they were travelling to but it was for an HO. So I remember that vividly because during that time I would also, you know, make mental note and also notes of things that I would have to keep a record of so that on Minister's return I can be able to provide update on events that took place in her absence.

As I say in my affidavit, I had returned to the hotel where I was staying at the Strand hotel and it was around
10 eight, so after eight. Then I received a call, it was from a landline number 021 and again I remember vividly that because I received it on my mobile and my first reaction was probably something that I have forgotten in the office or I did not log properly because I left the office late or something that the security in the office they wanted to bring to my attention.

So when I answered the call there was a male voice on the other side of the line which greeted me and then they wanted to confirm my details whether they are
20 speaking to me as the Acting DG in the department and then I confirmed those and then they asked me to hold on for the ...[intervenes]

CHAIRPERSON: I am sorry, just repeat exactly, as far you can recall, what the voice on the other end of the line said. Did it say something – is it Ms Mokholo or whatever?

Just say exactly what the other person said and what you said in response. I want the content of that conversation.

MS MOKHOLO: Okay, Chair.

CHAIRPERSON: As it happened, as far as you can remember.

MS MOKHOLO: Yes, Chairperson, as I indicated it was a male voice and he asked if – are you Matsietsi Mokholo? To which responded in the affirmative, yes. The Acting DG in the DPE? And I said yes. Then the person – I cannot
10 recall whether they gave me their name and then they said please hold on for the President.

So, without thinking, Mr Chairperson, I then said to the caller which President? And the male voice then replied, he said President Zuma. And then I then apologised and I say oh, thank you, and then they put me on hold.

A few seconds later it was the President on the other line, Mr Zuma. He greeted me in Zulu, so the conversation that I would have with him, that I would
20 narrate now, was a combination or a mixture of Zulu and English but he greeted me in Zulu, *sawubona ntokazaan*, which means hello, or good evening young lady, and I said – we exchanged pleasantries with the President and then he then informed me that I have been trying to get hold of your Minister and your Deputy Minister but I have not been

successful and I indicated that yes, Mr President, the Minister is not available, she is travelling. And then the President then said so you are the Acting DG? I said yes, Mr President. He said so you are in charge. And then he went on then to say there is a board meeting tomorrow at Eskom to which then I replied that Mr President, I would not be aware of the meeting because we do not normally know the board meetings and indeed we do not get the calendar of board meetings, in the calendar of activities.

10 If I may then explain, Chairperson, that the norm is that at the beginning of the year every time we do what you call a calendar of activities in the department with the SOEs so that we can know if they have events that they would want the Minister to attend, to do opening remarks or address a particular – so that then at least we can then plan Minister's activity.

 But in that calendar of activities we do not get board meetings at all, so I indicated that to the President because I wanted to explain that we do not get involved in
20 board meetings so I would not be aware that there is a board meeting the following day.

 Then to which the President responded that he was not asking, he was actually informing me that there was a meeting the following day at Eskom and because he is unable to reach the Minister and the Deputy Minister and I

am the Acting DG, he would like me to call the Chairperson and ask him to postpone the meeting until the Minister is back.

So then I said to the President I suspect, Mr President, that the Chairperson would want reasons for this postponement. Then the President said no, just inform the Chairperson that he must postpone the meeting and await further instructions from his shareholder minister. So then that was the end of the call with the President.

10 **CHAIRPERSON:** Did you say that he was asking you, that is Mr Zuma, he was asking you to communicate with the Chairperson of the Eskom board and ask him to postpone the meeting that was scheduled for the following day or was he saying you must do that but he also was going to speak to the Chairperson of the board. Is it both or he was asking you to call the Chairperson of the board and ask him to – I do not know whether you said cancel the meeting or postpone the meeting.

MS MOKHOLO: He - he did not inform that he was going
20 to call the Chairperson himself.

CHAIRPERSON: He did not inform you that.

MS MOKHOLO: He did not inform me that.

CHAIRPERSON: Oh, oaky.

MS MOKHOLO: He told me to place the call. As a matter of fact, as I say that, the conversation was in both Zulu

and English. On this part he said [indistinct – speaking in Zulu].

CHAIRPERSON: Oh, okay.

MS MOKHOLO: Yes.

CHAIRPERSON: Okay.

MS MOKHOLO: And then that is when I asked that...

CHAIRPERSON: Yes, okay.

MS MOKHOLO: But I suspect he is going to ask for the reasons for the postponement.

10 **CHAIRPERSON:** yes.

MS MOKHOLO: He said no, no, no, tell him to await further instructions from the Minister.

CHAIRPERSON: Just repeat that, what did he say when you said the Chairperson I suspect might ask for reasons?

MS MOKHOLO: He said no, just inform the Chairperson that he must wait for further instructions, reasons from the minister.

CHAIRPERSON: From the shareholder minister.

MS MOKHOLO: From the shareholder minister.

20 **CHAIRPERSON:** Yes, okay. Just say in English the Zulu part that you just said because you know what it means.

MS MOKHOLO: Yes.

CHAIRPERSON: Regarding – you said he said?

MS MOKHOLO: He said – in English it will mean inform the Chairperson that he must postpone the meeting and I

await further instructions from his shareholder minister.

CHAIRPERSON: Yes, well the – I do not know if this might be important. On the Zulu version I think you say he used: You must *xela*.

MS MOKHOLO: Yes.

CHAIRPERSON: Which would be you must ask the Chairperson, but I do not know whether on the English version you are saying he asked you to inform the Chairperson to cancel the meeting. Obviously – well, I do
10 not know whether isiZulu is your – how well you know it, whether it was your understanding of what he said in Zulu, that he was saying you must inform the Chairperson to cancel the meeting or postpone the meeting or whether your understanding was that he was asking you to ask the Chairperson to postpone the meeting.

MS MOKHOLO: Chair, it was clear that he was saying inform him in a sense that the meeting should not proceed.

CHAIRPERSON: Yes.

MS MOKHOLO: Ja, the meeting should not proceed.

20 **CHAIRPERSON:** Yes.

MS MOKHOLO: Because if he was able to locate the minister, that is what the minister would have been informed.

CHAIRPERSON: Yes.

MS MOKHOLO: So he was – my understanding was that it

was really an instruction to say – to tell or inform the Chairperson, not that the meeting should not proceed but await further reasons from the – take instructions from the shareholder.

CHAIRPERSON: Yes. It may be that the Zulu part that you said he used, it may be that that part in isiZulu meant he was asking you to ask the Chairperson to postpone. It may be that in the end it might make no difference at a practical level whether it was a request or an instruction
10 but to the extent that there might some significance in whether he was giving an instruction that the meeting be postponed or it was a request. There might be those differences. But the long and short of it is whether it was an instruction or a request, the idea was that the meeting – the Chairperson should postpone or cancel the meeting. Was it cancel or postpone.

MS MOKHOLO: It was postpone because the conversation in me particular, Chairperson, asking for the reasons was that I suspected the Chairperson would want
20 reasons for the postponement.

CHAIRPERSON: Yes, yes. In any event, he was saying until further instructions from the shareholder minister.

MS MOKHOLO: Yes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you, Chair. So we have heard

Mr Tsotsi's evidence that you did call him, you did convey the message of the President to him. Can you recall what you said to him? Maybe is it something the same along the lines you have just explained to the Chairperson? If it is then we do not have to traverse it again.

MS MOKHOLO: But I think it is important, Chairperson, maybe to explain that I did not – and it links to what the Chairperson was asking, whether the President then informed me or told me that he would be also going to call
10 Mr Tsotsi. Immediately after that I did not call the Chairperson immediately and first thing that I did, I tried calling the minister understanding that - you know, our understanding was that even if she is out, travelling abroad, but if there are emergencies I can always get in touch with her. She did not pick up and then I followed by a text message. She did not respond. So there was a time lapse between when I received a call and before I placed a call to the Chairperson.

But I also thought of – because the President in the
20 conversation indicated that he also tried the Deputy Minister. So I was mulling in my head whether I should also give the Deputy Minister a call but I thought that was going to be an exercise in futility because – and the reason is that in the department we had delegation of authority between the minister and the Deputy Minister. In the

seven SOEs that are within the portfolio of DPE, the Minister had delegated the responsibility of the three SOEs to the Deputy Minister and those SOEs, it was Alexkor, Denel and SAFCOL. So I thought of even if I give the Deputy Minister a call, he is not going to assist much because his delegation did not extend to Eskom-related matters. Although those delegations they are limited in nature because they are still – they do not absolve ministers from the full accountability in the those SOEs
10 that are delegated because there will still be matters like your PFMA applications that will require the executive authority being the Minister. But in this one, in my head I was trying to think whether should I give the Deputy Minister a call to check with him if I should place – and how I should approach this call to the Chairperson.

Why I was reluctant about the call directly again to the Chairperson was just at the beginning of that month we had just done an induction to the board, as the department, so Eskom will do its induction as an SOE to the new board
20 and we will do our own induction as the DPE department.

In our induction, it is like I have referred it to you earlier on, that talks about the delineation. We had made it very clear that there is a step-in right, matters that the Minister can step in into, but they have triggers. So in my head I was trying to think if I am going to call this

Chairperson that I have just inducted them few weeks ago and breach this governance gap myself, so – and I was already thinking the conversation I was going to have with Mr Tsotsi.

So I was – that is why there was time lag, I did not call the Chairperson immediately and I did not even call ...[intervenes]

CHAIRPERSON: But, of course, even in terms of your own induction to the board you did not have to worry about
10 that because that induction also said that the interaction should be between the Chairperson and the minister was a general rule to which there were exceptions.

MS MOKHOLO: Yes.

CHAIRPERSON: So you did not have to worry about that. This was an exception, the Minister was not there.

MS MOKHOLO: The conversation was going to be in relating to the message itself, that the meeting should not take place because this is a board meeting, it is not a shareholder, it was not like a shareholder intervention
20 matter that would have ...[intervenes]

CHAIRPERSON: No, no, to the extent that you were concerned about the content of the message, that I understand, I was simply saying I do not understand why you would have been concerned about you giving the Chairperson a call in the context of the induction where

you told the board members that the minister communicates with the Chairperson and the DG communicates with the CEO and so on because it was accepted that there can be exceptional circumstances where something different happens.

MS MOKHOLO: Yes, indeed, Chairperson, it was more in the messaging of – the message that I am conveying.

CHAIRPERSON: Yes, yes.

MS MOKHOLO: Against those governance that we had
10 said to them that – because that was the board, it is a board meeting, it had nothing to do with the meeting of the department, it was something that was within the purview of the board.

CHAIRPERSON: Yes.

MS MOKHOLO: So that is the dilemma that I had and hence I wanted to have a conversation, I was hoping that if I was successful to get hold of the minister, it would be the conversation I would have with the Minister so that then the Minister can then be able, if I was successful, to get
20 hold of her. The minister can then impress upon the President the difficulty of the shareholder telling the board to postpone a board meeting, how – what – how it then puts against our own system.

CHAIRPERSON: Yes, in terms of governance.

MS MOKHOLO: Yes.

CHAIRPERSON: Okay, but ultimately you called the Chairperson.

MS MOKHOLO: Yes, I called the Chairperson and then I indicated to the Chairperson - we exchanged greetings as well and I referred it to him, I mean, [indistinct] 22.33 to say [indistinct – speaking African language] the Chairperson, that is how I always referred to him.

Then I indicated to him that I am aware that you are having – you have a meeting tomorrow and then the
10 Chairperson indicated yes. And then I said to him can you please move your meeting and then the Chairperson said – his response was immediate to me that no and then he asked why I must? I indicated that the Minister would call and give your reasons but the Chairperson was very persistent in wanting the reasons. He actually stated to me that, Mati, remember this meeting has already been
20 already here. As I said, it was in the evening. So and then I indicated to the Chairperson that no – at the end, because he was adamant, he wanted to understand why he must move or postpone the meeting then I said to him, Chairperson, this is very difficult, the President has requested that the meeting be postponed. And then that

was the end of the call with Mr Tsotsi.

CHAIRPERSON: So is it fair to say you did not want to tell him that the President had anything to do with his request unless you were pushed to a corner?

MS MOKHOLO: Yes, Chair, that is the first statement. Actually, I do state in my affidavit that my intent was not to mention that the President had requested.

CHAIRPERSON: Yes, yes, but ultimately you told him that.

10 **MS MOKHOLO:** Yes.

CHAIRPERSON: The President – did you say the President had called you and this request was coming from him?

MS MOKHOLO: Was coming from him but the President indicated that Minister will provide the reasons.

CHAIRPERSON: Reasons, ja.

MS MOKHOLO: I did inform Mr Tsotsi that the President indicated that the meeting be postponed but Minister will provide the reasons.

20 **CHAIRPERSON:** Once you had told the Chairperson that it is the President who had made – who had called to make this request, what was his response?

MS MOKHOLO: He just said okay and then we ended the call.

CHAIRPERSON: Ja and that is how the conversation

ended.

MS MOKHOLO: Ja, it ended.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Did you have the opportunity to tell the Minister about that call from the President and what you conveyed to Mr Tsotsi?

MS MOKHOLO: Yes, Chairperson. As I indicated earlier on that these – it is a norm that when minister returns then I would do a report, a feedback of some sort of matters
10 that would have transpired during her absence, so indeed I had an opportunity again, you know, Cape Town office, I then briefed the minister this – the first issue on the item on my list of issues to discuss with her was this call from the President and I informed the minister that I had received this call and the President had requested that the meeting be postponed and I also told Minister what I have done and had a brief conversation with the minister, the same governance that – to say, Minister, even tried to call you, I even sent a message. I was even saying to her I
20 was sweating because it was my first time receiving a call from the President so I wanted to make sure that I do the right thing and then the minister engaged on the other matters that were on the report but on the issue of the call, she just said sharp and just said “Eish, Matsi” and we did not have a conversation about that.

CHAIRPERSON: Just repeat that, Mr Mokholo? What was the minister's reaction, what did the minister say?

MS MOKHOLO: She just shrugged and said "Eish, Matsi." And we did not have a conversation. So I would not know even whether she had the reasons from the President, whether she had a conversation with the Chairperson and that is where we left it, the conversation with her.

CHAIRPERSON: But I do not hear as in part of what you are saying, did she say you should not have had that
10 conversation with the President or did she say the two of you, that is yourself and the minister, did not have this conversation about the President having called?

MS MOKHOLO: I reported but her response was "Eish, Matsi" and then we did not have any other conversation, it was not like – so what transpired after did – Minister, did you speak to the Chairperson? Did you speak to the President? And so I would be lying if I say, Chairperson, there was a conversation, we did not finish the conversation.

20 **CHAIRPERSON:** So what was your understanding of what her attitude was towards the fact that the President had called and asked that the board meeting be postponed, what was your understanding of what her attitude was to this development?

MS MOKHOLO: Chair, this led me to believe that – in my

mind that either she knew what had transpired in her absence of that she had had already had that conversation either with the Chairperson or with the President.

CHAIRPERSON: You did not get the impression that she was wishing this development had not happened?

MS MOKHOLO: She – what I – was very clear was that it was not a conversation that she was going to have with me.

CHAIRPERSON: Oh, ja. Okay, alright.

10 **MS MOKHOLO:** Yes.

CHAIRPERSON: That is fair enough. So you had a difficult time when the President called and made his request and you had a difficult time when you had to report to the Minister about this call?

MS MOKHOLO: Yes, Chair, and I had a difficult time subsequent to that and maybe at the end, Chairperson, I would like to do – just few – make a few remarks because it has been a call that I have been asked in so many quarters to explain.

20 **CHAIRPERSON:** About that call?

MS MOKHOLO: Yes.

CHAIRPERSON: Is that so?

MS MOKHOLO: And ...[intervenes]

CHAIRPERSON: Okay, alright. Well, if you choose to say something about that and other matters at the end then

that is fine. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Ma'am Ms Mokholo, how long after you know from a day's time point of view, your call with the President did you have this opportunity to report to the Minister?

MS MOKHOLO: Immediately on her return from Dubai which was few days.

ADV SELEKA SC: A few days after?

MS MOKHOLO: A few days after. Yes.

10 **CHAIRPERSON:** Of course did you hear either on the 26th or after that the board meeting was postponed?

MS MOKHOLO: Yes, it is subsequent I learnt that ...

CHAIRPERSON: Oh alright.

MS MOKHOLO: And I subsequently learnt that the President called the Chairperson.

CHAIRPERSON: The Chairperson.

MS MOKHOLO: Because even in my conversation the Chairperson did not mention that, that he had already received the call from, from the President. Ja.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Thank you Chair. And we understand from the evidence already presented to the Commission, that the board had a meeting on the 9th of March, after the meeting of the 26th had been cancelled or postponed. And it had this meeting as a reaction to the meetings Mr Tsotsi

had with the President and others, at the President's residence in Durban, official residence in Durban.

So the meeting of the 9th take place and the Board is told about what the President has asked Mr Tsotsi to do and the Board itself to do. That meeting was short lived because no decisions were made. And the Board wanted to meet with the Minister.

They were able to secure a meeting with the Minister two days later on the 11th of March 2015. The
10 Minister did attend the meeting of the Board. You have indicated or stated in your affidavit that you attended with the Minister. Could you explain to the Chairperson how you got invited to that meeting?

MS MOKHOLO: So Chairperson I was contacted by Ms Kim Davids who was the Minister's personal assistant. Because I had firstly I received the call directly from the Minister requesting me to attend the meeting at Eskom with her.

So I then contacted Ms Davids to establish the
20 purpose of the meeting, because normally there would be an agenda for, for the meeting. And also because I always wanted to go into this meeting prepared and to know what is going to be discussed.

Because normally when you attend a meeting with the Minister, you are also there not only as an aid to have,

but also to, also provide support and advise on, on matters. So I wanted to know what was going to be discussed.

So Ms Davids informed me that the meeting was going to be with the, the Board Sub-Committee of the people and, and governance. And so they are going to give some report to the Minister. And I then proceeded then to attend the meeting with the Minister the following day.

10 **ADV SELEKA SC:** So just to understand, you are told that this meeting that is going to take place on the 11th of March 2015, is going to be with the Sub-Committee? The Board Sub-Committee? Not the Board?

MS MOKHOLO: Not the full board.

ADV SELEKA SC: They do not say to you it is the Board?

MS MOKHOLO: Yes. No.

ADV SELEKA SC: Okay, proceed.

MS MOKHOLO: And I think Chairperson it may be it is important that why the, if it is the Sub-Committee of the
20 Board, similar to the protocol I spoke about that the Minister will always interact with the Chairperson and if there are matters that the report is going to be made, the Chairperson can bring one or two board members, for example if we are going to discuss issues that risk the finances, there could be the Chairperson of the audit or

Audit and Risk Committee.

So there would be those. I was not really surprised when it was the meeting of the – when she, Ms Davids said it is the meeting of the PNG. Because we do meet with the sub-committees of the board when they give reports on their, their activities of the committees.

ADV SELEKA SC: So are you saying those meetings will be, will include the Minister? If a meeting with a sub-committee it will include the Minister?

10 **MS MOKHOLO:** Yes. There would be meetings where the Minister can be invited. For example as I am saying, there will be a meeting of the Audit and Risk Committee, they wanted to give a report.

Will receive annual, quarterly reports, so maybe we want to, they want to give a quarterly report on the work of the Audit and Risk Committee. Yes, and those meetings they can have. So the Chairperson he can bring other members of the committees of the board that ...

20 **ADV SELEKA SC:** Please remember to face the Chairperson.

MS MOKHOLO: Yes.

ADV SELEKA SC: Ja, just carry on. I think I will ask you other questions as we go along. You are informed about this meeting, so you are invited to it. You are told by Kim Davids is that the Minister's PA?

MS MOKHOLO: PA, yes.

ADV SELEKA SC: Okay. Is she telling you on the day of the meeting or the day before?

MS MOKHOLO: The evening when I called. Immediately after receiving the call when I asked her, is there documentation, is there an agenda. Is there something that I can read to prepare for the meeting. And then she indicated that no, it is the meeting with the PNG Committee.

10 **ADV SELEKA SC:** Okay, so you are communicating with her the evening before?

MS MOKHOLO: Yes.

ADV SELEKA SC: Take us to the day. You go, the next day you go to the meeting?

MS MOKHOLO: Yes so the ...

ADV SELEKA SC: Do you go with the Minister or you meet with the Minister at Eskom?

MS MOKHOLO: I drove. We drove separately. We met at Eskom.

20 **ADV SELEKA SC:** Was the Minister expecting you from your observation of her?

MS MOKHOLO: Yes.

ADV SELEKA SC: Okay. Take us into the meeting.

MS MOKHOLO: So we get to Eskom. We are ushered to the board room and then I notice as we enter that, it is the

full board that is present. Not only the members of the PNG, including the executives. In this case it was Mr Mathona(?) and Ms Zulu Molefe as the ex-officio members of the board and so then we, we entered the board room. Then I sat next to the Minister.

And then the Minister began actually we were sitting to address the meeting that there are bugs in the, in the room. And that this, the boardroom should be swept before the meeting could begin. In this case she was referring to that there could be surveillance devices which would then allow other parties access to what is being discussed and what is transpiring at the meeting.

So the Minister was assured, I cannot recall exactly who I think headed, it was the CEO, or assured the Minister that the room was clear and there were no bugs. And, and then we proceed, Eskom proceeded by then to and then standard norm to call some, one of the executives to do the safety drill and evacuation procedure and date it at and then the meeting began.

ADV SELEKA SC: We understand from the evidence that prior to the Minister and the board's dealing with the issues for which the Minister was called, that the executives were excused. Do you recall anything?

MS MOKHOLO: Yes. So Chairperson so firstly maybe the beginning, the Minister started by talking to a few issues of

the war-room and the challenges that we are facing, the war-room at that point in time. Because I was also a member of, of the Eskom war-room for which I was the convener of the Eskom war-room on behalf of the department, working together with the Presidency.

And so some of the issues that were then being discussed related to the issue of switching off the non-paying municipalities that were not servicing Eskom, their Eskom account. The issues of the director's liabilities.

10 There was issues relating to the mishandling of load shedding by Eskom and its executive and the sabotaging of Eskom Power Stations.

So there were a lot of matters that were sitting that, that the Minister started addressing also from her own speaking notes. So then I realised that the way this, the ready operational issues if I may say that ...

ADV SELEKA SC: So just saying Ms Mokholo, just before that I was asking the question, you have heard from the evidence that before the Minister and the board discussed
20 the issues for which the Minister was called for. That the executives were excused. Can you recall whether that took place?

MS MOKHOLO: Not immediately. They were not excused immediately.

ADV SELEKA SC: Okay.

MS MOKHOLO: Yes.

ADV SELEKA SC: I see.

MS MOKHOLO: Yes, hence I was saying there were a lot of operational matters. Minister started first by addressing the war-room.

ADV SELEKA SC: Oh I see.

MS MOKHOLO: And issues. So we did, we did not shoot straight to have the executives excused. So it is a later, at a later stage that then the executives were asked to be
10 excused. And then Minister proceeded.

ADV SELEKA SC: Yes. So at what stage? Are you at that stage now or not yet?

MS MOKHOLO: It was at the stage – so as the Minister was, once Minister has engaged on the war-room challenges, the results, that is when the executives were asked to be, to be excused.

ADV SELEKA SC: Can you recall who is asking them to be excused? Or who asked them?

MS MOKHOLO: Minister asked that the executives be
20 excused.

ADV SELEKA SC: Okay. So what was further discussed then in their absence?

MS MOKHOLO: Then there was the discussion that the executives they would, they would, there would be made to do a deep dive into Eskom. And so it may be necessary for

the executives to be asked to step aside and there were a number of – there were a few terms that were used Mr Chairperson.

Though stepping aside, take, guarding leave, suspensions, so it was a mixture of terminologies that were, that were being used. And there was also a discussion around if the executives are to step aside, who would act in their position.

And I cannot recall exactly at that particular point
10 which board member was talking, but there was a discussion that took place while we were still there with the Minister.

ADV SELEKA SC: Was there a clear indication as to the executives that would be required to step aside or be suspended? Or take this forced leave? Well in your recollection?

MS MOKHOLO: Ja. No, not the names of the people but there was a discussion around the, the challenges that Eskom was faced with during that time because of load
20 shedding and, and the fact that there were concerns also coming from the war-room that Eskom is not furnishing adequate information and the reliability of that information.

And the state of the power station at that point in time, the issues relating to Eskom finances and the fact that we, we had just actually sort of wrecked(?), we were

working on a letter that we had received from Eskom indicating that there may be requiring further equity injections. So but we did not discuss that, the names of the people in particular.

ADV SELEKA SC: Well I think that evidence is been established before the Chairperson. It is interesting that you say the Minister mentioned issues of mishandling of load shedding and sabotaging of power stations. Did you understand what she meant about that?

10 **MS MOKHOLO:** To the extent that I was part of the war-room, I understood that because of load shedding as there was a view coming from certain quotas that this load shedding could be orchestrated and so it – there is a sabotage taking place at Eskom.

So it is manufactured, it is not as purely by the state of the infrastructure or operational for instance. So to the extent that there had been those kinds of discussions previously, I read sabotage to mean something like that.

20 **ADV SELEKA SC:** And then she is now communicating with the board about this?

MS MOKHOLO: Yes.

ADV SELEKA SC: And the board is engaging with her on this? Do you recall whether the boards or at least some members are because most of them are new, there is two

that have been there before. Do you recall whether there is confirmation that, yes we also suspect the sabotage or that we know there is sabotage?

MS MOKHOLO: It – I would not say there was a yes or no, but there was the loadings and then there was concurrence in terms of some of the other discussions for example to say, some of the board members indicating that yes Minister we are aware. And there is a credibility issue on us as the board, if these matters are not being handled
10 swiftly.

And, and also gave the results of the concerns that they are some of the board members indicated they are having with the quality of the reports that would come from the, from the executives.

And Chairperson maybe it is important also to mention that this meeting came at the back of the war-room meeting that we had a few days ago and Eskom had actually made a presentation in the war-room at IMC and where the CEO was indicating the plans that they are
20 putting in place.

How to deal with load shedding, how to deal with all the finance and, and all of that. So my view sitting there, I was really of the view that if we in the war-room had been made and we had received that presentation, at some point to the board should have been also briefed on the same

information, because this was the presentation that was made at the ANC level.

ADV SELEKA SC: Well, you know, now that you have mentioned this that you – the meeting came against the backdrop of a meeting you had a few days before of the war-room, the Minister’s version seems to convey in her affidavit which you have been provided with, seems to convey the impression that on that day, on the 11th of March 2015, she was in fact coming from the war-room
10 meeting which she was unpleasant about. And she had to go to this meeting of Eskom.

MS MOKHOLO: It would not have been Chairperson on the same day. It would not have been on the 11th. So if you allow me Chairperson just to maybe to in a few sentences to explain how the war-room worked. The war-room was made of three layers if I may say.

You had the technical level which was made of us, the Technocrats. Then you had what we called the strategic level, which would be the ministers. So the
20 ministers in this case would be the Minister of Public Enterprises and the Minister of Energy, policy departments that are relevant.

National Treasury and others. Then the third layer would be the inter-ministerial committee which was chaired by the then Deputy President. And so what would happen

is that at the technical level we would sit with the Eskom executives to prepare for the two tiers, prepare for the strategic level and the IMC.

And then we would then make comments on the Eskom presentation, how it should be strengthened. Issues that may come from the ministers as we go to the next level. And then, the ministers once they have been briefed as well, they would make their own comments in preparation now of the IMC, which will be checked by the
10 Deputy President.

So the technical meetings, we held them every Friday morning with no fail, seven o'clock at the Union Building, every Friday. And then those, there would be the precursors to the meeting of the ministers and then the meeting of the ministers would then lead into the meeting of the IMC.

The IMC that we had behind this meeting of the 11th of March was the IMC that we had had the week before, I think it was in Cape Town on Tuesday. Because I
20 remember it was in Cape Town at the boardroom of the Deputy President there. So it would not have been Chair on the same day, the war-room.

ADV SELEKA SC: Yes. Well you will recall from her affidavit, the Minister is saying Chairperson, just to read from her affidavit. On 11 March 2015, 11 March 2015 was

a Wednesday she says.

“I had attended another frustrating war-room meeting. From there my team being the then Acting DG of the Department of Public Enterprises and other officials and I dashed to Eskom board meeting which was already in progress.”

That is the Acting Director General that would be you?

MS MOKHOLO: Yes it will be me Chair.

10 **ADV SELEKA SC:** And she say, and other officials. Were there other officials with you in that meeting?

MS MOKHOLO: No. The meeting of the 11th?

ADV SELEKA SC: The meeting on the 11th of March?

MS MOKHOLO: No, no. I was the only official for the department that particular day.

ADV SELEKA SC: So you are saying there would not have been a war-room meeting on that day?

MS MOKHOLO: No. Chairperson it would not have, there would not have been a war-room. The meeting of the 11th
20 was in the morning. So we would not ...

CHAIRPERSON: Ja it would have been around nine o'clock.

MS MOKHOLO: Yes.

CHAIRPERSON: If I am not mistaken.

MS MOKHOLO: Yes. So if we had the war-room, war-

rooms there would be, there would have been at lunch of that – yes. And as I said, my – the request for me to attend the meeting, I received it from the Minister the night before about the meeting. So there would not have been a war-room. I think probably it is the confusion of the dates.

ADV SELEKA SC: Yes.

CHAIRPERSON: When reference was made to a meeting of the war-room, would that mean all the three layers that you talked about of the war-room? In other words if she
10 said she had been at a war-room meeting, would she be talking about all these three layers?

The technocrats, the strategic leadership and the committee that was lead by the Deputy President? Or could she talk about having been to a war-room meeting, even if she was speaking simply about a meeting of those who were at strategic level, namely the ministers?

MS MOKHOLO: If there would have been a war-room then it would have been a strategic one. But I would have attended that war-room meeting with her as I said that I
20 was the co-convener of the war-room for the department, so.

CHAIRPERSON: Yes. If it was a meeting of the whole war-room you would have attended there as well? If it was a meeting of the whole war-room, all three layers. Is it not? You would have been expected to be there as well.

MS MOKHOLO: On all the three layers I would attend.

CHAIRPERSON: Yes.

MS MOKHOLO: Ja.

CHAIRPERSON: If it was a meeting only of those who were at strategic level, namely the ministers, would you ordinarily have accompanied the minister to such a meeting or not necessarily?

MS MOKHOLO: I would also still be part of that because ...

10 **CHAIRPERSON:** You will be part of that.

MS MOKHOLO: Yes, because at the technical level ...

CHAIRPERSON: Ja.

MS MOKHOLO: It is us who are presenting to the Minister.

CHAIRPERSON: She would depend on you for check and support?

MS MOKHOLO: Yes.

CHAIRPERSON: Ja.

MS MOKHOLO: So the technical team, the entire technical team is us, we are presenting to the ministers.

20 **CHAIRPERSON:** The ministers.

MS MOKHOLO: Together with Eskom.

CHAIRPERSON: Oh.

MS MOKHOLO: And then the ministers would take that presentation, if they endorse the contents or will make a – and it will go to the next tier.

CHAIRPERSON: Okay.

MS MOKHOLO: So both, the first tier minister would not take part of it because it is only us, at the technical level, the officials. But at the strategic and the IMC, both meetings I would be.

CHAIRPERSON: So is your evidence that since you did not, since you know that you didn't attend any war-room meeting that morning, the Minister is probably mistaken about having been to a war-room, or war-room meeting
10 before going to the Eskom board meeting?

MS MOKHOLO: Yes Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you Chair. Insofar Ms Mokholo you say the Minister talked about the issues that the war-room and Eskom, not furnishing correct information. Are you able to say anything about that because you are the co-convener of the war-room you say at Eskom?

You attend as you have just said all the meetings of the three tiers of the war-room. You would be, you would
20 have been at the core of the functionings of the war-room. What do you, what do you say about that comment?

MS MOKHOLO: Yes Chairperson, there were areas of concerns and there were times indeed where members of the war-room complained about the quality of information that was coming from Eskom. For example there would be,

Eskom would indicate that there would be no load shedding, and all of a sudden you are informed that we are going to into stage 2, went into stage 3.

There was a time Eskom would indicate that they have sufficient money for diesel and in two days time you receive a letter from Eskom that says, we are running out of money. There would be a time when that Eskom would give assurance that there is still enough supply of coal and then in a day, few days' time you are told that there is
10 issues or challenges relating to coal.

So there were incidences and times when indeed they, the information we would, as members of the war-room and then the technical level would have concerns about the information. But the essence of the Friday meetings was precisely to give those at the technical level, so that we are then able to get the status quo of Eskom, because it was based on the five point plan.

So we would do a dashboard of looking at the issues precisely so that then we can try to address this
20 whole issue that there is no, there is lack of information. And then we can assist Eskom executives in time, prior going to the strategic meeting and going to the IMC on the issues of information.

CHAIRPERSON: Before you and the Minister went to the Eskom meeting on the 11th, had the two of you not had

have any prior meeting to talk about what was going to be discussed at the Eskom meeting?

MS MOKHOLO: At this meeting of the 11th?

CHAIRPERSON: I am talking about the meeting of the Minister with the board of Eskom on the 11th, on the morning of the 11th of March 2015. The question is whether prior to the two of you attending that meeting, you had not the two of you had a meeting to discuss what was to be discussed at the meeting with the board?

10 **MS MOKHOLO:** No Chairperson. We did not have that opportunity. As I indicated, I was informed by the Minister of the meeting the night before the 11th. And when I inquired from the PA, from the PA, what would be the issues to be discussed or the agenda, it was we were going to receive a report from the PNG.

So there was no conversation or the opportunity then to have a conversation with the Minister about the meeting of the 11th.

CHAIRPERSON: Okay. Let us go, let's go to the actual
20 meeting at Eskom, between the Minister and the board. Evidence has been lead that the Minister identified all areas, or put for use at Eskom that needed to be subjected to an inquiry. There, is that, is that your recollection as well?

MS MOKHOLO: Yes Chairperson it will be my recollection

in – I tried to have my hand written notes also attached to my affidavit because I was trying to take notes as the issues were, were being discussed.

CHAIRPERSON: Yes.

MS MOKHOLO: Yes. So ...

CHAIRPERSON: Have you got your notes? Do you know by there? Are they the ones at page 442, black numbers 442?

MS MOKHOLO: Yes Chairperson, that will be those ones.

10 **CHAIRPERSON:** Oh okay.

MS MOKHOLO: Yes.

CHAIRPERSON: Are you – but what are you saying to the question that I have just asked? Is that your recollection as well or do you need to look at your notes?

MS MOKHOLO: Yes. That will be my recollection as well and also looking at my notes Chairperson, because as I say, it was not a structured meeting from my point of view. It is a meeting that I was just, that I used in my affidavit, the word ambushed that I went in so as Minister was
20 talking I was making notes of what was coming.

And as the board members were talking I was making notes. But insofar as the areas, yes there was a issues that I would say that the evidence that was lead, it is, it is correct that Minister mentioned those areas in addition to the investigation by, by ...[indistinct – word cut-off] which

has the concerns that has now led to this deep dive and then the issue of the stepping aside of the executives or garden[?] leave, or suspensions and the areas that would need to – that the Board would need to pay, focus on.

CHAIRPERSON: The areas that were to be investigated were four, is that correct?

MS MOKHOLO: Chairperson in my notes I wrote a whole lot, so they could be covered, I would not say specifically I was writing ...[intervenes]

10 **CHAIRPERSON:** You would not recall.

MS MOKHOLO: These four areas ...[intervenes]

CHAIRPERSON: Yes, okay.

MS MOKHOLO: But I was just making notes as the Minister was giving her address.

CHAIRPERSON: Okay, yes, well there was evidence that the Minister said to the Board that she could not instruct the Board what to do or what decisions to make and there was evidence before this Commission to the effect that although the Minister said that it was quite clear or it was
20 – one could read between the lines that the Minister wanted the relevant executives to be suspended.

Would you say that is a fair understanding of the interaction between the Minister and the Board on that occasion?

MS MOKHOLO: Yes, Chairperson and in my affidavit I do

allude to that as well to say hence the words that were used was that the executives they should be put – they should take garden[?] leave, they should step aside, be suspended. So the understanding was that yes something must happen during the deep dive but they should not be there.

Whether they step aside and what – those are the issues that the Board would have to deal with. Whether they are being suspended or they take garden leave to
10 allow the deep dive.

CHAIRPERSON: Okay, Mr Seleka.

ADV SELEKA SC: Thank you Chair, in so far Ms Mokholo as you say that you were attending all the meetings of the war room whichever level or tier I was. Can you recall how often the Minister Lynn Brown attended the meetings where either the Ministers were required to attend or where she was required to attend?

MS MOKHOLO: Frequently Chairperson, the Eskom war room was the main focus of what cabinet had given the
20 department as a mandate.

So hence the Minister was the Chairperson of this strategic team and then I would be the co-convener together with the presidency because the meetings were taken place in the presidency and to give it even implies hence the decision was taken that the deputy President

would lead and then the IMC. So the Minister would attend frequently because it was part of her core function as the shareholder Minister responsible for DPE. So she would attend the meetings frequently.

ADV SELEKA SC: So she was a regular attendee.

MS MOKHOLO: Yes.

ADV SELEKA SC: Would you say that or she attended every meeting or some meetings?

MS MOKHOLO: Some meetings it would not be there
10 would be times when she is not able to attend but it would be on a regular basis as I say given that it was our mandate as the department.

ADV SELEKA SC: Now looking at the contents of what was being discussed with the Minister which you have set out operational issues of Eskom. Is that normally what would the Board do discuss operational issues with the Minister the shareholder representative?

MS MOKHOLO: No Chairperson in the meeting proceeded
I listened and when I realised that some of indeed some of
20 these issues are matters that actually the Board could deliberate on and then decide and make a proper resolution and report it to the Minister you do not need shareholder when you discussion that kind of detail.

I noted that and I made a note to a Minister indicating that factor that the issues that are being

discussed in this meeting are way to operational. So both of us should not be in the meeting, I made that note to the Minister to that effect as a matter to say maybe let us excuse ourselves we need to leave because that are being discussed are way to operational for us. Even the suspension for executives it is a matter that the Board must deal with and then just come to the shareholder because Minister anyway does not appoint executives.

Ministers powers of appointment is limited to the
10 official members of the Board which is the CEO and the CFO and even in those circumstances and in the past and even given the other experience how we dealt with other SOE's the Board would be the one that go through the process and then they would pass a resolution, they would table it to the Minister and then Minister Lynn can deliberate on. So I did indicate that to the Minister in the meeting.

ADV SELEKA SC: And what was the Minister's reaction to you?

20 **MS MOKHOLO:** The first note that I handed to the Minister, the Minister looked at it, read it and noted to me as I handed it over because she was on the podium and then but she continued to proceed and engage with the Board on the trajectory of the war room issues, again that there must be an investigation or a deep diving to all of

those issues including the affairs of Eskom and the executives. So as the conversation ensued I made a second note to the Minister but then the conversation continued. It was later now I then raised my hand to request an opportunity to speak engagements were going on and I was afforded that opportunity then I addressed the Minister and the Board.

I indicated that I do not think its proper for us to be sitting and matters that are really operational that the Board must be dealing with that the Board must be sit with and what the Board must do they must deliberate on their own, make their own report, give it to the Minister and then the Minister can then engage us as her officials to say how do we approach the issues.

But it is no way that we could be sitting and discussing operational matters and then at that point then the Minister indicated that it is correct and that is right the Board must deliberate on all the issues that I have raised however I would hang around and I would await feedback from the Chair.

CHAIRPERSON: Would it be a fair comment given the operational nature of the matters that the Minister was discussing with the Board as you have said, would it be fair comment to say when the Minister said that after leaving the Board the meeting she would hang around that

in effect she was meaning that she would still be around to give guidance or advise in case the Board needed to talk to him about some of this issues

MS MOKHOLO: Well Chair it would be fair, however it would be also difficult in a sense that given the magnitude of the issues you would want to give that Board time to deliberate and then they must do a proper report to her because on the basis of what the Board has been presenting to the Minister then she would be able to act.

10 So when I raised that point in the meeting I was not expecting that we would get that report on the same day. It was – now that we had what the Board is saying what Minister had put it to the Board. They can deliberate look at all the ramifications, make a proper report and then only then Minister can have something in writing to say the Board deliberate this is where the issues they looked into, these were the pros and cons of every decision that they are thinking and then only on that then she can act.

20 When we left that meeting with the Minister the Chairperson walked us out and we did brief at the coffee station, Eskom has some it is like a holding room of some sort where we get the Ministers as it.

 We went there myself and the Chairperson and the Minister to debrief even in that debrief I indicated to the Chairperson that the Minister must get a report, I said

Minister you need to get a report it was all on the basis of a report the Minister should then be able to see what were the issues that the Board were conversing and where it come to and issues.

CHAIRPERSON: But having said all of that you do say it would be fair comment to say that what I have said.

MS MOKHOLO: Yes, I am saying Chairperson it would be called fair when you are saying when you looking at the magnitude of the issues but the fact that the Minister would
10 sit at Eskom wait for the report itself that is why I am saying for me it would not be, it does not sound reasonable because you still have to allow that same Board to deal with it.

CHAIRPERSON: Ja, but the bottom line is it goes back to what your concern was as the meeting was going on namely that the Minister was involving herself in operational issues that was your concern, is it not?

MS MOKHOLO: Yes.

CHAIRPERSON: That is why you kept on notes to say
20 let's leave and she was not disagreeing with you that you should leave because I think you say in your affidavit she was nodding that these are not the types of issues that you know should be discussed in your presence, in the Ministers presence she should not be participating in that.

But obviously when she said she would hang around

for some time if that hanging around was meant to enable further interaction between herself and the Board it could only have been intended to be an interaction between herself and the Board on the issues that had been discussed at the meeting.

MS MOKHOLO: Yes.

CHAIRPERSON: It could not have been something else, ja.

MS MOKHOLO: Yes.

10 **CHAIRPERSON:** Okay, Mr Seleka.

ADV SELEKA SC: Thank you Chair and the Minister said she will hang around tell us what happens, what does the Minister do after that where do you go after that as you leave the meeting?

MS MOKHOLO: Yes, after those few minutes debriefing...[intervene]

CHAIRPERSON: Or maybe before that I am sorry Mr Seleka. At the meeting between the Minister and the Board when the issue of the suspensions of the executives
20 was discussed they use different terms interchanging the suspension or step aside or special leave when it was discussed where names of the affected executives mentioned.

MS MOKHOLO: No Chairperson.

CHAIRPERSON: The names were not mentioned?

MS MOKHOLO: Names were not mentioned.

CHAIRPERSON: But it was understood that the officials who would need to step aside or to be suspended were the executives who were head of the particular portfolios that were going to be subjected to an enquiry.

MS MOKHOLO: Yes.

CHAIRPERSON: Okay.

MS MOKHOLO: And those were the same people that were part of our team at the technical level in the war
10 room.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you Chair. So the question was the Minister says I will hang around to the Board and if you need further discussion I am around. What exactly happens as you leave the Board meeting, where do you go?

MS MOKHOLO: So I left the holding room I went back to the office, I left Minister at Eskom – at some point actually when we were in the holding room there was whether
20 Minister will still stay physically at Eskom or she will go by to the next centre around but she will be around but I left her at Eskom.

ADV SELEKA SC: So you left the Minister at Eskom?

MS MOKHOLO: Yes.

ADV SELEKA SC: So she actually literally hanged around

at Eskom?

MS MOKHOLO: Yes, Chairperson.

CHAIRPERSON: You were not prepared to do that?

MS MOKHOLO: No Chairperson there was a lot of things acting.

ADV SELEKA SC: Now Ms Mokholo is this also the way the Minister was invited to the meeting, you and the Minister. Is that the normal way in which the Minister would be invited to a Board meeting?

10 **MS MOKHOLO:** No, Chairperson there is two main types of Board meetings that the Minister would engage with the SOE's on. The first one is obviously the annual general meeting the prescribed meeting in terms of the company's act we've covered within detail in terms of explaining it in the MOI's with all the State owned companies and actually the process that is – you know we've choreographed that parties to the T in the department.

The second meeting so the first meeting of the annual general meeting were all the strategic issues no
20 having discussed this particular intent. Ministers plan with the SOE for the year and matters that she would have observed in the year and what the Board could do in the new year or if there is changes of the Board that is where those changes would be allowed so it's a serious meeting.

The second one that is also provided for is a

statutory meeting is the special general meeting. This is to cater from those meetings that are not your annual general meeting but you could have urgent matters that we need to bring to Ministers attention and he cannot wait for the annual general meeting. For example, the Board wanted to they were concerns relating to one of their own and they were one of the Board members to be removed. That could fall under general meeting because then they would have to be a process of resolutions and all of that. If there is a
10 serious matter that relates to the conduct of one of the executives or there is a serious operational matter that has serious implications to the entity and even to government that could not wait for the annual general meeting and those would fall under the general special meeting.

So if it is a special general meeting there is a procedure for those there would be a request coming from the company secretary if the meeting is triggers by the company. If it is triggers by us it would be us preparing and resolution for the Minister the Board the shareholder
20 resolution calling for a special general meeting.

In terms of the Companies Act then the special general meeting you must in the resolution give the agenda on the issues that are going to be discussed. So those are the two meetings where Ministers engages the full Board.

The other meetings that could happen then the

Minister will engage as I indicated earlier on that there is a matter on a financial matter that the Chairperson wants to bring to the attention of the Minister they will bring the CEO and the CFO and maybe one Board member and maybe the Chairperson audit and risk or the Chairperson of social and ethics.

So those would be those kind of meetings that are being requested. So this particular one on the 11th it I very difficult for me – I could not put it as an annual general
10 meeting, it did not meet the requirement, it was not a special general meeting because it was not triggered by from my side or from our side as a department Minister wanting to discuss certain things with the Board. It was not triggered by the company secretary requesting through the SGM. So it was one of those meetings.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chair. Ja just quickly and will move on to the next point I see that from paragraph 48.

20 **CHAIRPERSON:** We are at seven minutes to one.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: I take it that we are at the end.

ADV SELEKA SC: At a near – we are nearing the end Chair, thank you Chair. Page 431 just quickly on that I will read from the affidavit that you say that PNG member, PNG

committee member you have corrected the name to be Veneta, Ms Veneta Klein began by giving a report that on the work that was mandated to the sub-committee that there needs to be an investigation around the face of Eskom and she proceeded with details.

As discussions were proceeding I sent a Minister second note which has stated we should leave and so you go into that. So you recall Ms Veneta Klein addressing the meeting about the investigation?

10 **MS MOKHOLO:** Yes, Chairperson yes before and hence I said earlier I was not perturbed when Ms Davis said they were meeting the PNG. There were a lot of matters that this committee they were dealing with around the executives not only this executives that were in the war room but other executives of prescribed officers in Eskom that they were dealing with.

So there were a lot of contestation amongst certain executives. So she started also talking about the work of the what the people in governance is doing around just
20 cleaning up the governance within Eskom.

ADV SELEKA SC: So just two aspects I want you to address the Chairperson on. The one which you deal with I your affidavit is the secondment of Mr Brian Molefe from Transnet to Eskom the secondment of Mr Anoj Singh as well from Transnet to Eskom. Just briefly explain to the

Chair person or relate to the Chairperson what you know about the secondment firstly of Mr Brian Molefe and how it came about?

MS MOKHOLO: Yes, so Chairperson I cannot remember the exact date but I know it was around between March 2015 and April 2015. I was requested by the Minister to accompany her to a meeting at Eskom and the meeting was to deal with the secondment of Mr Molefe.

ADV SELEKA SC: Did you know that beforehand?

10 **MS MOKHOLO:** I did not know that beforehand I learnt that on my way to the meeting.

CHAIRPERSON: Sorry what did you not know beforehand?

MS MOKHOLO: That the meeting at Eskom was going to discuss the secondment.

CHAIRPERSON: What it was going to discuss?

MS MOKHOLO: Yes, yes I learnt that on my way to the meeting actually the Minister is the one that informed me.

20 **ADV SELEKA SC:** The Minister is the one who informed you.

MS MOKHOLO: Yes.

ADV SELEKA SC: Were you with the Minister in the car or are you again driving separately?

MS MOKHOLO: No we travelled separately again.

ADV SELEKA SC: You travelled separately.

MS MOKHOLO: Yes.

ADV SELEKA SC: So how did you – you say you learnt about it on the way so how did you learn, did she telephone you?

MS MOKHOLO: Yes Minister telephoned and requested that she is meeting with the Chairperson at Eskom, actually she is meeting with both Chairperson's at Eskom and that she would like me to accompany her to the meeting and then on the way she called to indicate that she is going to
10 be there earlier than me and the meeting is going to take place at the Chairpersons office and is to discuss the transfer not the transfer the secondment of Mr Molefe to Eskom.

We had the brief discussion around the challenges she was remarking that Eskom is giving me grey hair and really I need to sort out the issues. We need leadership in that entity and then I said Minister I would join the meeting yes.

ADV SELEKA SC: And who is the Chairperson at this
20 time?

MS MOKHOLO: It was Doctor Ngubane was now the acting Chairperson at that point.

ADV SELEKA SC: Of the Eskom Board.

MS MOKHOLO: Of the Eskom Board, yes Sir.

ADV SELEKA SC: Yes, let us go into the meeting.

MS MOKHOLO: And then in the meeting we were which went by Mr Sithemba Khoza who was by then now the acting CEO as well as the Chairperson of Transnet Ms Linda Mabaso and then of course it was myself present together with the Minister.

Mr Dlamini who was in the office of the Chair at that point came into the meeting but was not part of the meeting so there were no formal recordings or minutes being taken, everybody was taking their own notes.

10 **CHAIRPERSON:** And what transpired at this meeting about the secondment of Mr Molefe?

MS MOKHOLO: Yes and then the Chairperson, the acting Chairperson Dr Ngubane is the one that opened the meeting by indicating that Eskom – they wanted to check with the Minister the ability of seconding Mr Molefe from Transnet to Eskom and hence both the Chairperson are there.

The Minister indicated that the reason she has asked me to join the meeting was not only because of the
20 acting DG but also from my role as the DG responsible for legal governance and risk. To be able to advise the Board in terms of are the things that needs to be looked into if the secondment is to be considered.

So in that meeting Dr Ngubane indicated that Mr Molefe is regarded as the ideal candidate because of this

is going to be a temporary position while the Board is embarking on a selection and a recruitment process for a permanency because Minister had written to the Board prior to say they must start looking at the strengthening leadership within the company.

Now the proposal was then supported by the Transnet Chairperson because both Chairperson then agreed that Minister Molefe was a perfect candidate for the position. Even Mr Charm[?] and Gravitass[?] in the market place his relationship the banking sector, his past experience with having been a senior official at National Treasury and his role with the PIC and also just the reputation that he has built with the Transnet within a short space of time he has been able to build a good relationship with Transnet and other stakeholders. So those were some of the reasons that were put why him, then...[intervene]

ADV SELEKA SC: Sorry Ms Mokholo you want to carry on just do not forget, did it appear to you in that meeting whether or not the persons in the meeting were discussing this issues for the first time?

MS MOKHOLO: No Chairperson it did not come out as a matter of fact it was clear that at least the two Chairpersons they have had this conversation before and I think then they did try prior to the meeting to raise it to the Minister hence the meeting was requested because in the

meeting Minister when she introduced my attendance as well as we would need it to look at the do ability from whether we needed to – is it a matter that would require us to go to cabinet or not.

But also Mr Molefe had a contract with Transnet that was due to terminate within a year and a few months' time and Mr Matona by then and this is when I was given the opportunity just to then express my view in terms of the proposal. That once the two Boards would meet from the
10 governance side is that they must engage as the Board because there would have to be resolution that would have to be drafted that concerns us. But also some of the issues that they need to take into account includes the fact that yes Mr Molefe's contract as a year and a couple of months to run with Transnet but Mr Matona is still the standard with full packs.

So for purpose of PFMA and fruitless and wasteful and irregular expenditure is something that the Board would have to look into because you are going to be still
20 paying him and you going to bring somebody into act and if you going to be paying the acting allowance you will be paying two people.

But also the Board must look into Transnet itself who is going to act in Transnet and to that it was responded Ms Mabaso responded is that the good thing

with Transnet is that it does not have challenges like Eskom and it said that there is many executives at Transnet that could step in, in the acting positions. The one issue was maybe we look at the issue of the remuneration we could consider Transnet continuing to pay Mr Molefe's salary even if he is seconded at Eskom.

But then it needs to be considered carefully because if you are going to bring somebody to act in Mr Molefe's position as the CEO at Transnet it is additional
10 responsibility for that divisional team so they would need to be paid an acting allowance as well. So you are going to, Transnet to pay the money on services rendered somewhere else and at the same time they are paying somebody. So there were all this dynamics that we requested then the two Boards will have to sit and then debate and then put a proposition and then to be considered by the department.

ADV SELEKA SC: Ja so then the rest is history because then on the 17th of April 2015 the Minister did announce
20 her decision to second Mr Molefe to Eskom. You were present at that conference?

MS MOKHOLO: Yes, at the press conference I was.

ADV SELEKA SC: That took place at Eskom?

MS MOKHOLO: It took place at Eskom.

ADV SELEKA SC: And how and you also state how Mr

Anoj Singh got to be seconded to Transnet. We could just read paragraph 69 of your affidavit.

MS MOKHOLO: Yes, so it was – immediately once Mr Molefe came through some of the major challenges that Eskom was facing as we call [00:00:03] was then a precarious financial position and they were actually Eskom was working on submitting a request to the Minister of Finance and our Minister to – so it will be to the Minister but with the concurrence of the Minister of Finance for an Equity
10 injection and that requires an appropriation bill.

So then the Minister – the chairperson indicated that having discussed with Mr Molefe Mr Molefe believes that he needs somebody with a firm hand on the finances and the person that he believes can help him navigate this process at Eskom is Mr Singh and that is how Mr Singh then was also recommended to come over to us.

CHAIRPERSON: Was Mr Molefe's motivation for Mr Singh to be brought to Eskom in writing?

MS MOKHOLO: The – the letter that was from the
20 chairperson but the – in the conversation with the chairperson and the Minister it was that Mr Molefe feels that having looked at all the financial challenges he feels that the [00:01:20] that he has needs to be augmented and Mr Singh can do it.

CHAIRPERSON: So there was a letter from the ...

MS MOKHOLO: From the chairperson.

CHAIRPERSON: Acting chairperson or chairperson on one of the Eskom board to the Minister – Minister Lynne Brown.

MS MOKHOLO: Yes.

CHAIRPERSON: Asking that Mr Anoj Singh be seconded to Eskom in the position of Financial Director or CFO. But the – in some conversation you understood that the actual person who put Mr Anoj Singh's name forward was Mr Molefe?

MS MOKHOLO: Yes Chairperson because he – he had done
10 the scanning of the landscape financially.

CHAIRPERSON: Yes.

MS MOKHOLO: As the acting CEO now.

CHAIRPERSON: Yes.

MS MOKHOLO: And his reasoning was that he would have to be supported as somebody who is stronger financially if he is to do this application, the appropriation and all of that and work on the Eskom plan.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Ja. Chairperson that concludes the
20 issues in her affidavit. I should just point out to the Chairperson that there is an issue not contained there which Ms Mokholo has agreed to provide us a supplementary affidavit on. It arises from her handover report to the Minister and deals with – it alludes to the investigation that had taken place at Transnet in regard to what I have

considered is of interest to the commission regarding irregularities there.

CHAIRPERSON: Having?

ADV SELEKA SC: Regarding irregularities in the acquisition of certain transactions. She will – she cannot testify about it now but she will do an affidavit and maybe in due course.

CHAIRPERSON: Ja.

ADV SELEKA SC: We could call her to do this.

CHAIRPERSON: Yes okay. Okay.

10 **ADV SELEKA SC**: Other than that ...

CHAIRPERSON: You are done.

ADV SELEKA SC: That is the end.

CHAIRPERSON: Just before we – well I know that you wanted to make some – to say something towards the end I will give you that chance. But before that you were acting DG from September 2014 up to September 2015.

MS MOKHOLO: Yes Chairperson.

20 **CHAIRPERSON**: Is that right? But apart from the time that you were acting DG you were basically part of the senior management of the Department for a number of years.

MS MOKHOLO: Yes Chairperson.

CHAIRPERSON: At DDG level.

MS MOKHOLO: Yes.

CHAIRPERSON: Yes. Now did you at any stage prior to 2015 or during 2015 or even 2016 have occasion to meet

with Mr Salim Essa?

MS MOKHOLO: No Chairperson.

CHAIRPERSON: Hm. Did you hear of him within the department at any stage?

MS MOKHOLO: Yes Chairperson. As a matter of - Chairperson there is another work stream of the commission that have asked that I depose an affidavit that talks to the board appointment processes. So I came across Mr Essa at first when he was nominated at first for an Eskom board.

10 **CHAIRPERSON:** Yes.

MS MOKHOLO: In 2012 and – but subsequently he was not appointed but he was appointed into another SOE.

CHAIRPERSON: Yes.

MS MOKHOLO: To [00:05:04] so that is when I came to know of his name.

CHAIRPERSON: Oh so you say there is an affidavit in which you deal with your interactions with him?

MS MOKHOLO: Not his interactions with him but...

CHAIRPERSON: But his interactions with the department.

20 **MS MOKHOLO:** With the department and how he was appointed.

CHAIRPERSON: That you became aware of.

MS MOKHOLO: Yes and appointed. How he was appointed into one of the boards.

CHAIRPERSON: Yes.

MS MOKHOLO: Of the SOE then.

CHAIRPERSON: I have not seen that affidavit do you know about it?

ADV SELEKA SC: She has told me about the affidavit Chair.

CHAIRPERSON: But you do not have it?

ADV SELEKA SC: I do not have it here with me. I – ja I do not have it here with me currently.

CHAIRPERSON: Ja because to the extent that she might have knowledge of certain matters relating to Mr Salim Essa
10 those may be important. Do you have a recollection of how long that affidavit is?

MS MOKHOLO: It is quite long Chairperson I think it is about forty pages or so.

CHAIRPERSON: So it is quite extensive?

MS MOKHOLO: Yes it is extensive. It is not – it is just the final stages of being...

CHAIRPERSON: Oh it is still being prepared?

MS MOKHOLO: Yes to do the other work stream but it is ..

CHAIRPERSON: Oh you have not delivered it to the
20 commission yet.

MS MOKHOLO: Not yet Chairperson.

CHAIRPERSON: Oh okay. Which work stream – is it this work stream that is working with you on that or that has requested it or is it another work stream of the commission?

MS MOKHOLO: It is another work stream of the commission

Chair.

CHAIRPERSON: Transnet?

MS MOKHOLO: The – it deals with the board appointment.

CHAIRPERSON: Oh okay no, no that is fine. Mr Seleka.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Will you liaise with whoever let us establish who in the commission is – has requested it because I was going to have some questions for her but if she is preparing an affidavit that deals with these matters I
10 would rather see the affidavit first so that as soon as it has arrived I could have a look. So probably you would need to come back to the commission to deal with those matters.

MS MOKHOLO: Yes Chairperson I have been informed so.

CHAIRPERSON: Yes. Okay no that is fine. So I am not going to ask you any further questions about Mr Salim Essa. But I want to give you now the opportunity to say something because you wanted to say something. Because you said everybody is asking you about this telephone call that you received from Mr Zuma.

20 **MS MOKHOLO:** Yes Chairperson. It has been almost six years now since the events of 2015 when I started acting including the matters that relates to the suspension of the executives. And – I – we – you are went as the evidence has been led went into a meeting Chairperson of the board to go and support the Minister.

Little would I know Chairperson that we will walk out of the meeting few minutes time. People's lives would have been turned and changed massively mine included. Because subsequent to that I had to explain to a lot of people what role did I play in having Dan Marokane, Mr Matona, Mr Molefe being fired from there and I could not give those answers to date Chairperson because I went into literally what I believed it was going to be a meeting and it turned out that led to other events.

10 But I remain grateful to Mr Matona and Mr Marokane in particular that even Mr Molefe when I explained to them subsequently that you know I had – because the question would always be even from my parents that what happened? What role did you play in having these people fired? So they understood and they accepted my explanation that I went into a meeting that I did not know that we were going to discuss that the suspension and all of that. Understanding governance the way I understood I would have advised differently in terms of how the matters could have been dealt
20 with.

The same goes with the telephone call Chairperson. Most of the DG's because I was the – the acting DG I was the – not only the convenor of the war room but also the – the coordinator of the outcome 64 for the economic cluster. I was the call chairperson of the cluster so I have [00:10:05]

a lot of questions around the role – my role and the governance.

And to the extent that there has been a perception that says I am – I am not a diligent public servant I have aided capture by working with the Ministers who are seeing to have been the architect of capture and it changed my own life as well. I have lost friends along the way. It has made my life very difficult.

Other people they have been kind enough to explain
10 why they had to distance themselves from me because of the belief that there was no way I could be so close to the [00:10:47] and still remain dry. So I am hoping with this process Chairperson that we – we would be able to get some of the answers that even myself I could be able to understand what really transpired. But it is not only those executives that are lacking.

Some of us are also our lives was affected and in a way that we are still living with those repercussions today. Thanks Chairperson.

20 **CHAIRPERSON:** Okay. I know that I said I was not going to ask you any further questions about Mr Salim Essa because your affidavit is coming but I have decided to ask you anyway not many but one or two. Do you know whether during 2015 there were any interactions between Minister Lynne Brown and Mr Salim Essa?

MS MOKHOLO: Not formally Chairperson, ja not formally.

CHAIRPERSON: Well when you say not formally it gives the impression you say maybe you know informal interactions.

MS MOKHOLO: Yes I have heard – I know that sometimes in the Minister’s office through the PA there was some kind of a whether telephone conversations or what there would be – there was some kind of maybe let us a relationship but I would not know the extent of the relationship.

CHAIRPERSON: Yes. You see when one talks about the
10 suspensions of the executives at Eskom on 11 March 2015 one of the issues that is quite intriguing is the inclusion of Ms Tsholofelo Molefe among the executives who were to be suspended.

As you remember she was the Financial Director of Eskom at the time. So the financial portfolio or financial department at Eskom was included among the portfolios that the Minister said at the board meeting on the 11 March who needed to be the subject of an enquiry. You remember that?

You see the evidence that I have heard is that on the
20 8 March 2015 there was a meeting in Durban at Mr Zuma’s official residence and that meeting was attended by Mr Tsotsi, Ms Dudu Myeni – there were two meetings actually. The first one was attended by Mr Tsotsi, Ms Dudu Myeni and Mr Linnell and Mr Jabu Maswanganje and well it has been said that Ms Dudu Myeni’s son was also there but she was –

he was not participating in the meeting but he was there.

And at that meeting there was a discussion of the suspension of executives at Eskom. But at that stage it was only three portfolios and they did not include Ms Molefe's portfolio the finance.

Then there was another meeting after that one and in the same venue, same day which was attended by Mr Zuma with the same people that I have mentioned for the earlier meeting and that there to the discussion about the
10 suspension of executives related to three portfolios and therefore three executives to be suspended. And Ms Molefe's portfolio was not included. That is on the 8th.

Then it is the 9th, then it is the 10th but on the 11th it would appear the evidence seems to suggest that it was the Minister who in talking to the board on the 11th talked about four portfolios instead of three. And she included Ms Molefe's portfolio and therefore in terms of the principle that was followed she would need to be suspended too because her portfolio would be the subject of the inquiry.

20 Then there is evidence that on the 10th March that is now the day before the 11th Mr Koko Mole – Mr Koko – Matshela Koko from Eskom called had two meetings at Melrose Arch at certain offices. One involved himself Mr Abram Masango who was from Eskom and Mr Salim Essa. Another one involved Mr Koko, Mr Salim Essa and Ms

Daniels at Melrose Arch on the same day but separately.

Now if I recall correctly both Ms Daniels and Mr Masango say that the discussion which took place or what they were told either by Mr Koko and Mr Salim Essa separately was that there were four executives to be suspended.

And then on the 11th the Minister speaks about four portfolios. But one of the two namely either Mr Masango or Ms Daniels I think it is Mr Masango if I am not mistaken says
10 that Mr Salim Essa either intro – ja introduced himself as...

ADV SELEKA SC: That is Ms Daniels Chair.

CHAIRPERSON: If I am not mistaken.

ADV SELEKA SC: It is to Ms Daniels.

CHAIRPERSON: It is – is it Ms Daniels?

ADV SELEKA SC: It is Ms Daniels.

CHAIRPERSON: Oh Ms Daniels said Mr Salim Essa introduced himself as an advisor to Minister Brown. Now Ms Koko has denied that there was such a – there were such two meetings involving him.

20 But if it is true that those meetings did take place then there is this issue that at the Durban meeting only three executives were contemplated as executives who would be suspended. The earliest we hear about four being suspended seems to be on the 10th in these meetings that Mr Salim Essa or Mr Koko had with Ms Daniels and with Mr

Masango separately.

And the Minister comes the following day also talks about four. It seems rather strange so that is why I am – I was asking whether you were aware of any interactions between the Minister – Minister Brown and Mr Salim Essa around that time.

MS MOKHOLO: No definitely not Chairperson. What I can even confirm is that at least I know having worked in the department even before Minister appointed me acting DG
10 she had four advisors at any particular point in time others leaving. Mr Essa is – was not one of them.

CHAIRPERSON: Was not one of them.

MS MOKHOLO: Yes.

CHAIRPERSON: Ja you see Ms Molefe there is evidence to the effect that prior to this namely March 2015 much earlier when the CEO of – or acting CEO of Eskom was Mr or Dr Matjila.

ADV SELEKA SC: Yes Colin Matjila.

CHAIRPERSON: Yes Colin Matjila that she had had
20 interactions with Mr Salim Essa in meetings where Mr Colin Matjila had I think arrange to have meetings with Mr Salim Essa or Mr Salim Essa had come to whatever meetings with Mr Matjila and Ms Molefe was there.

And Ms Molefe had resisted the awarding of a certain contract to Mr Salim Essa's company or entity and refused to

sign the contract and all of that. So it seems strange if the evidence that Mr Salim Essa mentioned or included Ms Molefe when she – he was talking about the suspension of four executives at Eskom already on the 10th because Ms Molefe had not been included as one of the executives to be suspended at the meeting in Durban.

And then it would be quite interest – quite interesting if that is true it would be quite interesting that when the Minister came to the meeting with the board she talked about
10 four and not three portfolios which would be subjected to the inquiry.

MS MOKHOLO: No I think...

CHAIRPERSON: And if Mr Salim Essa also introduced himself as an advisor to Minister Brown.

MS MOKHOLO: Yes.

CHAIRPERSON: To Ms Daniels.

MS MOKHOLO: No as I said Chairperson I am also would – I am very interested in the Minister at some point to explain the meeting of the 11th because the whole issue of the
20 suspension how it unfolded. Me attending the meeting with her and us not even having discussed the materiality of that issue at least even before the meeting and it is something that as I said that it stays with me till today that I have no answers.

CHAIRPERSON: Ja.

MS MOKHOLO: Other than the fact that I attended that meeting.

CHAIRPERSON: Ja. Ja. Okay alright.

ADV SELEKA SC: Chair.

CHAIRPERSON: Is there anything arisen?

ADV SELEKA SC: Chairperson?

CHAIRPERSON: Is there anything arising from that?

ADV SELEKA SC: Oh yes, yes. Just to add to your collection of information there Chairperson Mr Tsotsi when
10 he – when he is doing the composition of the sub-committees remember he says he received an email from Mr Salim Essa how to compose the sub-committees.

He says I quietly ignored his submission and he sent his to the Minister. Obviously the Minister denies what I am about to say. He says whereupon the Minister responded with the exact submission I had received from Salim Essa. I kept going back and forth with this process of chopping and changing the allocation of the Minister until she called me to the meet – to a meeting.

20 At the meeting was Salim Essa and Tony Gupta. She merely informed me that the board allocations will be the way she had sent them to me. This she did in the presence of these two gentlemen.

CHAIRPERSON: Yes and of course he also said the Minister gave him her composition of the committees of the board

that was identical to the composition of the board of the committees of the board that had been proposed or emailed to him by Mr Salim Essa.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: And this would have been I think either in December 2014 or January 2015.

ADV SELEKA SC: Yes.

CHAIRPERSON: I seem to think it was December.

ADV SELEKA SC: That...

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: The exchanges are right at the beginning

.

MS MOKHOLO: It must be January.

ADV SELEKA SC: It is December the 1st and then it spills over to January 2015.

CHAIRPERSON: Yes but [00:25:04] before March.

ADV SELEKA SC: Yes correct Chair.

CHAIRPERSON: 2015 ja.

ADV SELEKA SC: Correct.

20 **CHAIRPERSON:** Okay alright. Ms Mokholo I thank you very much for coming to assists the commission. You probably will come back because there is still some affidavit that you are preparing for the commission. So we should see you in due course. But thank you very much for coming today and you are now excused.

MS MOKHOLO: Thank you Chairperson.

CHAIRPERSON: We are going to take the lunch adjournment it is half past one now we will resume at half past two.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready Mr Seleka?

10 **ADV SELEKA SC:** Yes, we are Chairperson. The next witness Mr Chairperson is Ms Mosilo Mothepu. We will be using ...[intervenes]

CHAIRPERSON: Oh, yes, she has been through the Commission before.

ADV SELEKA SC: She has indeed Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: And I will explain ...[intervenes]

CHAIRPERSON: Thank you for coming back Ms Mothepu.

20 **MS MOTHEPU:** Thank you, Mr Chairperson. It is a pleasure to be back.

CHAIRPERSON: [laughs] Okay alright. Thank you.

ADV SELEKA SC: Chair, should I outline now Chairperson or after she has taken the oath?

CHAIRPERSON: You can outline first, ja.

ADV SELEKA SC: Thank you. Ms Mosilo Mothepu was

here last time Chairperson to talk mainly about the fore knowledge in regard to the removal of the ministers. She is here now today as a former employee of Regiments, later Trillian to talk about the relationship Regiments/McKenzie had with Eskom.

How Regiments gained its way into Eskom because they were first at Transnet with McKenzie. Gained its way into Eskom. What the offer was made by McKenzie and Trillian and Regiments to Eskom. Where there was a contract in
10 place for the services that were subsequently rendered, if they were at all rendered.

What money was paid by Eskom in regard to that at the time she remained an employee at Regiments/Trillian. She will also highlight to the Chairperson the officials of Eskom who were involved in the discussions and the transactions between Eskom and McKenzie, Regiments, Trillian.

CHAIRPERSON: Yes.

ADV SELEKA SC: That is her evidence today Chair.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Yes. And I think she then is ready to take the oath.

CHAIRPERSON: Ja, please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

WITNESS: Mosilo Mikalena(?) Mothepu.

REGISTRAR: Do you have any objections in taking the prescribed oath?

WITNESS: I do not.

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

WITNESS: Yes, I do.

REGISTRAR: Do you swear the evidence you will 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

10 God.

WITNESS: So help me God.

MOSILO MOTHEPU: (d.s.s.)

CHAIRPERSON: Thank you. You may be seated.

ADV SELEKA SC: Thank you, Chair. Chairperson, we are using Bundle 14(B).

CHAIRPERSON: 14(B)?

ADV SELEKA SC: 14(B).

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Exhibit U-32.

20 **CHAIRPERSON:** Ja. It was already admitted, hey? I think it was.

ADV SELEKA SC: It was submitted as U-32.1.

CHAIRPERSON: Ja.

ADV SELEKA SC: Correct Chairperson.

CHAIRPERSON: H'm?

ADV SELEKA SC: Ms Mothepu, you have ...[intervenes]

CHAIRPERSON: Are there legal representatives who need to be placed on record? No?

ADV SELEKA SC: Yes, I think... Yes. Thank you Chair for reminding me. I think the thing is making noise for me.

CHAIRPERSON: Oh, the aircon?

ADV SELEKA SC: Yes.

CHAIRPERSON: I think the reverend keeps on pushing it down our throats even if there is only one person who wants
10 it here. I think that he is more persuaded by her arguments than ours. [laughs]

ADV SELEKA SC: Yes. Ms Mothepu is indeed legally represented.

CHAIRPERSON: Yes.

ADV SELEKA SC: And I will ask Mr Daniel Witz to place himself on record.

CHAIRPERSON: Okay. And you may do so from where you are but you will have to switch on the mic.

MR WITZ: Chair, I confirm my representation of
20 Ms Mothepu.

CHAIRPERSON: Yes, okay. Just mention the name for the record.

MR WITZ: It is Daniel Witz of Witz Inc Attorneys, Chair.

CHAIRPERSON: Thank you.

MR WITZ: Thank you.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ms Mothepu, your affidavit is in that bundle, Eskom Bundle-14(b). It starts on page 570, seven-zero. Now you are familiar with the page numbers here?

MS MOTHEPU: Are we using the black or the red?

CHAIRPERSON: Use the black ones.

ADV SELEKA SC: Always the black.

10 **MS MOTHEPU**: Thank you.

ADV SELEKA SC: You have it?

MS MOTHEPU: I have it in front of me. Thank you.

ADV SELEKA SC: Thank you. Ms Mothepu... Chair, I have spoken to Ms Mothepu. This is their approach. Ms Mothepu, you have heard my summation to the Chairperson of your evidence. How you – the first is. How you became employed by Regiments. When was this was? Who approaches you for this employment? And what are you told about Regiments? So let us start here. And ...[intervenes]

20 **CHAIRPERSON**: Just in case she has something else but I would imagine they are better today than last time.

ADV SELEKA SC: [laughs]

MS MOTHEPU: Much better. Thank you. [laughs]

CHAIRPERSON: [laughs] I think that will help her to relax.

ADV SELEKA SC: [laughs]

MS MOTHEPU: [laughs]

CHAIRPERSON: Then you can start.

ADV SELEKA SC: [Indistinct] Ja. And always address the Chairperson.

MS MOTHEPU: Thank you.

ADV SELEKA SC: Thanks. Ja. Let us start.

MS MOTHEPU: May I start?

ADV SELEKA SC: Yes.

MS MOTHEPU: Thank you. By way of background and
10 context Chairperson. I was employed at Regiments in 2007
up until 2010. If you recall my last testimony ...[intervenes]

CHAIRPERSON: You said 2007?

MS MOTHEPU: 2007 up until 2010. If you recall my last
testimony in December. And then I left in December 2010 to
go to Transaction Capital and then eventually KPMG. So
sometime in May 2015 while I was an Associated Director at
KPMG, I was called by Eric Wood who was a Director of
Regiments Capital and also one of the three shareholders.

He called me, actually, at ...[indistinct] [00:07:10] on the
20 same day and he wanted us to meet for coffee. And we met
for coffee at Aucklands at a coffee shop called Europa.

And he – essentially, he told me about the goals of
Regiments Capital. When I left there were 50 people. Now
they had 250 people within their employ, they were working
with McKenzie. At that time McKenzie was one of the best

reputable consultancy consultancy firms globally. And also, what he expanded on was that they have all the, what I call the Blue-Chip Public Sector clients, the Department of Public Enterprise, namely, they were working on Denel.

They were working on SAA Express. They have previously worked with McKenzie at SAA. And they were working with McKenzie at Transnet on the 1064 Locomotive transaction as financial advisors.

And so he told me that they wanted a senior resource
10 which they had identified. I should be the candidate because they – I had worked with them previously and they knew what I was capable of.

And Eric, essentially, went on to say that they want to duplicate the work that they did at Transnet to Eskom. So if you would recall the contracting of McKenzie and Regiments at Transnet. It was via consignment. And McKenzie were the lead contractors. And then Regiments was the sub-contractor, supplied development partners.

So they wanted to duplicate that model from Transnet
20 and take it into Eskom.

ADV SELEKA SC: Sorry, just before you move on. Tell the Chairperson, how did Mr Eric Wood – or is it Dr Eric Wood – know you?

MS MOTHEPU: At the time, he was still Mr Erich Wood but now he is Dr Eric Wood.

ADV SELEKA SC: Yes. How did he know you in order to contact you?

MS MOTHEPU: Remember, I have worked there previously at Regiments. And in the three to four years that I was there, I worked primarily with him.

ADV SELEKA SC: I see.

MS MOTHEPU: Yes. So he knew what I was technically capable of and my work ethic.

ADV SELEKA SC: I see. So what? You have this meeting
10 with him, with Mr Tebogo Leballo?

MS MOTHEPU: Yes, it was quite interesting because after my coffee with Eric ...[intervenes]

ADV SELEKA SC: Yes.

MS MOTHEPU: ... Mr Leballo called me. And I did not even greet him. I asked him: Did Eric just called you too? And then we laughed. And then he said: Yes, he wants me go back to Regiments.

Mr Leballo also worked at Regiments during the same period that I did. And Eric also requested him to return.
20 Yes.

So I started working on the 15th of June 2015 and the first thing Eric gave me. He asked Mr Mohammed ...[intervenes]

CHAIRPERSON: Now when you started the 15th of June. This is now working for Trillian?

MS MOTHEPU: Pardon?

CHAIRPERSON: You said you started working, I think you said on the 15th of June.

MS MOTHEPU: Yes, we started working on the 15th of June. If you recall, I ...[intervenes]

CHAIRPERSON: 2015?

MS MOTHEPU: 2015. If you recall, our coffee was in May?

CHAIRPERSON: Oh, that was ...[intervenes]

MS MOTHEPU: 2015.

10 **CHAIRPERSON:** But through Regiments?

MS MOTHEPU: Yes, at Regiments.

CHAIRPERSON: Oh, ja, ja.

MS MOTHEPU: So I was employed at ...[intervenes]

CHAIRPERSON: Trillian was to come in 2016?

MS MOTHEPU: Yes, Mr Chairperson.

CHAIRPERSON: Oh, okay.

MS MOTHEPU: Thank you.

CHAIRPERSON: Alright.

20 **MS MOTHEPU:** So I – we spent, I think, a week or two going through the – my remuneration and the final ...[intervenes]

CHAIRPERSON: But just before you get there. Let us go back to the telephone call. I know you testified about this earlier, but there are lots of evidence that we are hearing.

MS MOTHEPU: [laughs] Yes.

CHAIRPERSON: [laughs] Dr Wood gave you a call and he asked that you go and have coffee or he said already in the telephone conversation that he wanted you to come back?

MS MOTHEPU: Yes, he did indicate that he wants to discuss an opportunity at Regiments.

CHAIRPERSON: Oh, okay.

MS MOTHEPU: Yes. So I went to that coffee, knowing what was on the agenda.

CHAIRPERSON: And the – that call would have been
10 roundabout when?

MS MOTHEPU: May.

CHAIRPERSON: May 2015?

MS MOTHEPU: 2015. Correct, Mr Chairperson.

CHAIRPERSON: Okay. And how soon after that call did you have the meeting or coffee with him and with Mr Leballo?

MS MOTHEPU: I think a week or two lapsed and then we had the coffee.

CHAIRPERSON: Ja.

20 **MS MOTHEPU:** Yes.

CHAIRPERSON: Okay. And that meeting over coffee, the discussion was that he would like both of you to come back to Regiments?

MS MOTHEPU: We only talked about myself.

CHAIRPERSON: Ja.

MS MOTHEPU: But remember when Eric ...[intervenes]

CHAIRPERSON: Was it the two of you or Mr Leballo was not there?

MS MOTHEPU: It was just the two of us.

CHAIRPERSON: Oh, it was the two of you?

MS MOTHEPU: If you go to the main call, he had told me that there is an opportunity and then before we had coffee, a few weeks after, that – within five minutes of Eric dropping the phone, I got a call from Mr Leballo. And then that is
10 when I said: Did Eric just call you as well? Yes. But when we had the coffee, we only spoke about myself.

CHAIRPERSON: It was just the two of you?

MS MOTHEPU: But Eric did indicate that he has also reached out to Tebogo Leballo. Mr Leballo.

CHAIRPERSON: Okay.

MS MOTHEPU: And he is also trying to negotiate his return as well.

CHAIRPERSON: Okay alright.

MS MOTHEPU: Thank you.

20 **CHAIRPERSON:** Remember, either it was Mr Wood, Dr Wood and Mr Leballo.

MS MOTHEPU: Pardon?

CHAIRPERSON: Remember, it is Mr Wood or Dr Wood and Mr Leballo.

MS MOTHEPU: Oh, sorry.

CHAIRPERSON: Okay.

MS MOTHEPU: Thank you for the correction. [laughs] I think it is a bit confusing because in our office we used to call each other on our first names.

CHAIRPERSON: Ja, you are used to call. First name, ja.

MS MOTHEPU: But I take the correction. Thank you.

ADV SELEKA SC: Mr Mothepu, I think you did testify but the Chairperson wanted to know, whether at the – when you met for coffee, was it the three of you?

10 **MS MOTHEPU**: No, it was just the two of us. It was Mr Wood and myself.

ADV SELEKA SC: Okay. So he makes an offer to you.

MS MOTHEPU: So he makes an offer and it was very generous. At KPMG, I think I was on 1.3 million. Then he raised it to 1.7 million. And a R 500 000,00 sign on bonus. So he really wanted me to join. [laughs]

CHAIRPERSON: He was quite keen. [laughs]

MS MOTHEPU: Yes. [laughs]

CHAIRPERSON: Ja.

20 **MS MOTHEPU**: So I started on the Monday. Okay, no. The 15th. I think it was a Thursday because the 16th was a Friday, which is June, 16th. So the first document that he asked, Mr Wood asked Mr Mohammed Bobat to send me, was a draft proposal which McKenzie and Regiments had sent to Eskom roundabout April/March 2015.

And it had McKenzie's Master Service Agreement Top Programme and the Cost Savings Initiative but also, it also had Regiments' financial leg, if I can call it, called Allan Sheet Optimisation and Cash Unlocking Initiatives.

So he wanted me to eventually climatise myself with the proposal that they had sent but I did not – he did not tell me who it was sent to at Eskom.

Yes. So I spent the first week or so just going through the proposal and asking questions with regards to – if I can
10 get more information about it. So at the time ...[intervenues]

ADV SELEKA SC: Sorry. Sorry, Ms Mothepu.

MS MOTHEPU: H'm?

ADV SELEKA SC: Regiments, what services or company of the sort was Regiments?

MS MOTHEPU: Regiments were a – I think I can say was because I think they have gone into liquidation.

ADV SELEKA SC: Yes?

MS MOTHEPU: They were a financial services company but they had various divisions. You had Regiments Properties.

20 **ADV SELEKA SC:** Ja?

MS MOTHEPU: Which dealt with properties. If you recall, if you have been watching the media. They had bought some property about the Gautrain Station to build a mixed(?) use development. I think that is subject to litigation.

They had Regiments Fund Management and they had the

Transnet Pension Fund, was one of their clients. And the City of Joburg Sinking Fund was also one of their clients.

They had Regiments Advisory and it was split into two, Management Consultant and Financial Advisory. So I was the Principle in the Financial Advisory.

And then it had Regiments Securities, where they traded bonds and financial instruments just like derivatives on behalf of the Transnet Pension Fund and the City of Joburg Sinking Fund.

10 **ADV SELEKA SC:** Yes. So you were appointed into the position, Principle at the division, Financial Advisory?

MS MOTHEPU: That is correct Mr Chair.

ADV SELEKA SC: Ja. So then, your evidence has to be understood in that context. When you are dealing with the proposal that you have been asked to look at which had been submitted to Eskom, it will deal with financial matters.

MS MOTHEPU: That is correct. If we go to my paragraph 16 of my affidavit, I ...[intervenes]

ADV SELEKA SC: 16?

20 **MS MOTHEPU:** 16.

ADV SELEKA SC: Yes.

MS MOTHEPU: So the – as I said, McKenzie was the main contractor under the Master Service Agreement which included cost savings on procurement, generation, primary energy and the establishment of the Top Engineers

Programme.

Now it was envisioned that McKenzie would be given 70% of the fees that would be paid. And as the supply development partners, Regiments would get 30%. Ms Coetzee will – this was her area. She will elaborate once – I think she is due to testify after myself.

And then there was Regiments financial work stream, if I can call it that. And it was called Balance Sheet Optimisation and Cash Unlocking Activities. Because they
10 were a financial advisory firm, we took the lead.

So that was the leg that I led. And where we would get fifty – I mean, 95% of the fee, McKenzie would get 5% of the admin – just administrative fee because it was envisioned that Eskom would pay McKenzie and then McKenzie would pay Regiments.

ADV SELEKA SC: H'm.

MS MOTHEPU: So they charged 5% administration fee.

ADV SELEKA SC: Yes. So that proposal you have referred to earlier, does it relate to this Balance Optimisation and
20 Cash Unlocking Initiatives?

MS MOTHEPU: Yes, that was just to give you a background and context where Eskom was at the time so that I can – you can see why there was a need of balance sheet optimisation. At the time, if you recall Mr Chair, Eskom had liquidity concerns. Its balance sheets were heavily in debt and they

were struggling to collect revenue.

On top of that, the Credit Rating Agencies, Fetch Ratings Moody's and Standard and Poor because if you recall, after the suspension of the four executives, they were downgraded. And the new built, there was a lot of delays and costs overruns.

Eskom, I think, they had a funding deficit of something like 50 billion a year. So what this cash – this Balance Sheet Optimisation And Cash Unlocking Initiative essentially
10 says, let us look at Eskom's balance sheet. How do we know use this? What – where are the low-hanging fruits? Where is the fat in this balance sheet?

So they had identified these initiatives that might essentially unlock cash because of their liquidity constraints. But also one of the – the requirements of the cash injection from the Sovereign which is I think R 400 million, was that they had to sell non-coal assets from their balance sheet.

And none of Eskom's non-coal assets was a company called Eskom Finance Corporation, where essentially, it was
20 a company that provided mortgages to the Eskom employees. Hence, it was not a coal asset. So they needed to sell that. So I will just go to ...[intervenes]

ADV SELEKA SC: Yes, my question ...[intervenes]

MS MOTHEPU: ...acting. Yes, h'm?

ADV SELEKA SC: My question was the proposal you

referred to earlier related to that Balance Sheet Optimisation?

MS MOTHEPU: Yes, it did.

ADV SELEKA SC: Ja.

MS MOTHEPU: Unfortunately, it was on the Regiments' server.

ADV SELEKA SC: Yes.

MS MOTHEPU: And I only had access to Trillian's server.

ADV SELEKA SC: Okay that is alright. Regiments at the
10 time with McKenzie was rendering services to Transnet.

MS MOTHEPU: That is right.

ADV SELEKA SC: Yes.

MS MOTHEPU: So they were discontinuing on the tra-loan(?) [00:22:13] So I led the tra-loan. I will give you more information as I close(?). And then also, they – because of the – the forecast were overly optimistic at Transnet.

So they had ordered 1064 Locomotives and the forecast was a positive economic trajectory but we know that the commodity market will sell.

20 So as Transnet had all these trains that were ordered, they had incurred that but the volume and the customers were not going to be there.

So was – it is quite interesting that the same people, the same consultant who worked on the forecast of the business plan, were the same consultants that were asked to assist us

in the same cash optimisation and unlocking, I mean cash unlocking opportunities. So ...[intervenes]

ADV SELEKA SC: And the same consultants. That is McKenzie and ...[intervenes]

MS MOTHEPU: It was the same consultants. So they were the ones who worked on the business plan and Regiments assisted them with the China Development Bank loan and the tri-loan/tra-loan(?) [00:23:26].

And now they had to back-track and say we were overly
10 ambitious in the forecast. How do we know find fat in the in the balance sheet so that we do not incur further debt and ...[intervenes]

ADV SELEKA SC: I see.

MS MOTHEPU: ...and to the detriment of the credit rating.

ADV SELEKA SC: Ja. Yes. Now please tell the Chairperson. You have this proposal you have been given which is a proposal, you say, was submitted to Eskom. But first listen to my question.

MS MOTHEPU: H'm.

20 **ADV SELEKA SC:** So what – I think you need to tell the Chairperson, what develops after that and particularly in relation to that proposal to Eskom? How do you engage Eskom going forward and who do you engaged with at Eskom? Tell the Chairperson about that.

MS MOTHEPU: Thank you. So before I go into the

transaction. We and Mr Anoj Singh had been seconded from Transnet and he was seconded to Eskom as the Chief Financial Officer. So ...[intervenes]

ADV SELEKA SC: Sorry. You are in June 2015?

MS MOTHEPU: So we are now in June. And I remember the first time I formally met Mr Singh was in Maboneng.

ADV SELEKA SC: Ja, but in June 2015 ...[intervenes]

CHAIRPERSON: I am sorry. Where was it where you first met him?

10 **MS MOTHEPU:** It was in a conference facility centre at Maboneng. So he had been seconded at Eskom and he was working with Regiments and McKenzie on his first hundred days. So, essentially, Regiments and McKenzie were assisting him with regards to, what does he have to accomplish in the first hundred days of his appointment. And we also assisted him with the Funding Plan.

So we met at various venues. So the first one was at Maboneng. And the other was in the airport. There is a hotel by O.R. Tambo Airport.

20 So we used those facilities as well. And then the other facility was in a Boutique Hotel on Wonder Boulevard. Now it was quite interesting. If we go to... Just give me a minute so that I can get the reference.

ADV SELEKA SC: [No audible reply]

MS MOTHEPU: Mister – Advocate, if you can just help to

find that paragraph that I had the dates in it and the various venues.

ADV SELEKA SC: Ja, look at paragraph 22, page 574. Chairperson. And you need to clarify to the Chairperson whether these meetings were before or after his secondment.

MS MOTHEPU: Okay. So I am not sure when he was seconded but when I arrived on the 15th, he had already been seconded but it was before he was officially appointed as the Eskom Chief Executive – I mean, Eskom’s Financial
10 Officer, Chief Financial Officer. So specifically
...[intervenes]

CHAIRPERSON: You mean that at that time he may have been acting CFO or acting Financial Director as opposed to having been permanently employed at Eskom?

MS MOTHEPU: Yes. If I recall, Minister Lynne Brown made an announcement in October 2015 that he was appointed a permanent CFO at Eskom.

CHAIRPERSON: Yes.

MS MOTHEPU: So we met at – if we go to paragraph 22.

20 **CHAIRPERSON:** H’m?

MS MOTHEPU: We met on the 8th of July 2015.

CHAIRPERSON: 8th of July.

MS MOTHEPU: So McKenzie used to book the venues and we used to work together with McKenzie, which myself, Mohammed Bobat and the Advisory Team. And then we – so

one meeting was on the 8th of July 2015. And then the meeting was on the 24th of July 2015.

So these are the only two that I could find on my – in my documents but there were many others but I could not find. And quite interesting Mr Chairperson is that, it was called Project Pandora. And when the meeting invites were sent via email, the CFO was not emailed.

CHAIRPERSON: When you say the CFO?

MS MOTHEPU: Mr Anoj Singh was not emailed. He was
10 contacted telephonically.

CHAIRPERSON: Oh.

MS MOTHEPU: Yes.

CHAIRPERSON: And everybody else was emailed?

MS MOTHEPU: Yes.

CHAIRPERSON: Okay.

MS MOTHEPU: But I suspect because he was – he did not have an Eskom email address. I am not sure.

CHAIRPERSON: [laughs]

MS MOTHEPU: But there was quite a secrecy because it
20 was called Project Pandora.

CHAIRPERSON: Yes.

MS MOTHEPU: Like Pandora's Box.

CHAIRPERSON: Who had come up with this name, do you know?

MS MOTHEPU: No, I think they came up with it before I

joined. It was already there.

CHAIRPERSON: Oh, it was already known as Project Pandora?

MS MOTHEPU: Yes, correct.

CHAIRPERSON: Okay.

MS MOTHEPU: So, next time ...[intervenes]

CHAIRPERSON: And jus basically, that was the project of doing what?

MS MOTHEPU: That was the – what I have just outlined.

10 **CHAIRPERSON**: The Master Service ...[intervenes]

CHAIRPERSON: Can you summarise ...[intervenes]

MS MOTHEPU: Yes, the Master Service Agreement, where they looked at cost savings initiatives on procurement, on generation and establishing the Engineers Top Programme. And then on the financial side, the initiatives that would optimise the balance sheet and unlock cash.

CHAIRPERSON: Yes.

MS MOTHEPU: So, essentially, all of that was Project Pandora.

20 **CHAIRPERSON**: Okay.

MS MOTHEPU: Yes.

CHAIRPERSON: Now did you get a sense – did you get the sense in mid-June when you started at Regiments that this Project Pandora had been around for quite some time or did you get the sense it was a new thing?

MS MOTHEPU: I got the sense it had been around for quite some time because if you recall my earlier evidence, they had already submitted a proposal in April/March 2015.

CHAIRPERSON: Yes.

MS MOTHEPU: And McKinsey and Regiments already knew and had information on Eskom.

CHAIRPERSON: Yes.

MS MOTHEPU: That is why they were able to assist him on what his priorities will be on the first hundred days what
10 Eskom's challenges were. So I know he would give us information like minutes from the finance and investment committees, he would give us copies of the credit rating reports. He would give us any information that we could assist him with. So I think I just – I got there in the middle of it.

CHAIRPERSON: Okay.

MS MOTHEPU: Just to ...[intervenes]

CHAIRPERSON: Okay, one second?

MS MOTHEPU: Yes.

20 **CHAIRPERSON:** It would be important to establish how far back this Project Pandora had been initiated in relation to June, mid-June when Ms Mothepu started at Regiments. The reason why it would be important to establish that is that it may well be that it would reflect that it is a plan which preceded the suspension of the executives and that

it may well be that its execution would require that certain key positions at Eskom be occupied by persons that the people who were driving Project Pandora knew would play along in order to ensure the success of, among other things, Project Pandora.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: So it is important to check that.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay, alright.

10 **MS MOTHEPU:** Mr Chair, from the evidence that I have seen previously, I got the sense that Anoj knew that he will eventually be appointed permanent ...[intervenes]

CHAIRPERSON: Who is that?

MS MOTHEPU: Mr Anoj Singh.

CHAIRPERSON: Ja.

MS MOTHEPU: The fact that we were planning his first hundred days, in his mind and our understanding was that he is going to be appointed permanently.

CHAIRPERSON: Yes, okay.

20 **MS MOTHEPU:** So there was – it was never a sense that I am just...

CHAIRPERSON: Yes, a temporary.

MS MOTHEPU: Temporarily.

CHAIRPERSON: Yes.

MS MOTHEPU: And then I am going back to Transnet.

CHAIRPERSON: Yes. Yes, yes, yes.

MS MOTHEPU: Yes.

CHAIRPERSON: No, I think that would be consistent with logic to anyone who has listened to what I have listened to. Yes. Okay, alright.

MS MOTHEPU: I would like to take you to annexure – I think it is 14/588.2.

ADV SELEKA SC: Yes. That is ...[intervenes]

CHAIRPERSON: I am sorry, what is the page number?

10 **ADV SELEKA SC:** At the top of the page.

MS MOTHEPU: The black numbers. It is 14/588.2. Correct, Mr Chairperson.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes?

MS MOTHEPU: So if you look at the subject, it is:

“Invitation Project Pandora discussion with CFO, July 8, eight o’clock.”

And they need to be confirmed ...[intervenes]

20 **CHAIRPERSON:** You are too fast because you know the document.

MS MOTHEPU: Apologies.

CHAIRPERSON: Okay, Invitation at the top.

MS MOTHEPU: Yes.

CHAIRPERSON: Project Pandora discuss with CFO, July 8, eight o’clock in the morning, location venue TBC. Okay

and this is what, start on the 7 August 2015.

MS MOTHEPU: I think it is the 7 July 2015. It was July.

CHAIRPERSON: Oh, do you mean 8 July?

MS MOTHEPU: July is the 7th – ja, sorry, the 8 July, correct. Yes, 8 July.

CHAIRPERSON: Okay.

MS MOTHEPU: And ...[intervenes]

CHAIRPERSON: Yes. Okay, alright.

MS MOTHEPU: And then show time as – so it is
10 Wednesday 8 July at one o'clock, so it was scheduled from
8 a.m. to one o'clock.

CHAIRPERSON: That is quite a long time.

MS MOTHEPU: Yes. So this venue to be confirmed, it was either at the Mabuleng Conference Facility of the Airport Hotel Conference Facility or the Boutique Hotel in Rivonia's Conference Facility. I do not remember.

And then if you go the next page ...[intervenes]

CHAIRPERSON: Well, before you go to the next page, let us finish with it.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: It was sent on the 3 July 2015, is it not?

MS MOTHEPU: That is correct.

CHAIRPERSON: Who was it sent by?

MS MOTHEPU: It was sent by McKinsey. The organiser was ...[intervenes]

CHAIRPERSON: [indistinct] 06.41.

MS MOTHEPU: Yes, he always organised the meetings of McKinsey.

ADV SELEKA SC: Tomori Butsi.(?)

MS MOTHEPU: Yes and if you see in all the invitations Mr Singh is not there but all the subjects you can see it is discussion with CFO.

CHAIRPERSON: Yes.

MS MOTHEPU: So there was a little bit of ...[intervenes]

10 **CHAIRPERSON:** Some secrecy.

MS MOTHEPU: Secrecy.

CHAIRPERSON: Yes.

MS MOTHEPU: Now that I – in hind - insight.

CHAIRPERSON: Oh, you mean, you did not appreciate it then?

MS MOTHEPU: Yes, that is correct, Mr Chairperson. And then if you go – are you ready to proceed to the next one?

CHAIRPERSON: Ja, you can go to the next one.

MS MOTHEPU: So it is page 588.3.

20 **CHAIRPERSON:** H'm.

MS MOTHEPU: So this one is the subject. Are you there?

CHAIRPERSON: Ja, the subject is the same, is it not?

MS MOTHEPU: Yes:

“Invitation Project Pandora, discussion with CFO”

This is now the 24 July, one o'clock p.m. venue to – and

then it is location, venue to be confirmed. This time it started at 1 p.m. and it ended at 6 p.m.

CHAIRPERSON: Any significance to the reference to short time?

MS MOTHEPU: I think – no.

CHAIRPERSON: Oh.

MS MOTHEPU: This is just a printout of my emails, so...

CHAIRPERSON: Oh, okay. So was it issued by the same person as the previous one?

10 **MS MOTHEPU:** Yes, he always organised the meetings.

CHAIRPERSON: Okay. So this would have been a follow-up from the previous one.

MS MOTHEPU: That is correct, Mr Chairperson.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Did the meeting – see the show time is indicated as tentative on both emails. Did these meetings actually take place?

MS MOTHEPU: Yes, these meetings did take place.

ADV SELEKA SC: Did take place.

20 **MS MOTHEPU:** Yes.

ADV SELEKA SC: To you know what TDC stands for?

MS MOTHEPU: To be confirmed.

ADV SELEKA SC: To be confirmed. Oh, venue to be confirmed?

MS MOTHEPU: Correct.

ADV SELEKA SC: Oh, I see.

MS MOTHEPU: Remember it was either Mabuleng or the Airports Hotel venue or it was Boutique Hotel in Rivonia.

ADV SELEKA SC: Oh, I see, okay.

MS MOTHEPU: Yes.

ADV SELEKA SC: Thank you. And when the meetings did take place was Mr Anoj Singh present?

MS MOTHEPU: Yes, Mr Anoj Singh was present, he was the key figure of the meetings, as I said previously. He
10 essentially told us what kept him up at night.

CHAIRPERSON: Well, before you do that, let us separate between the two, let us talk about what was discussed at the first one and then you can move to the second one.

MS MOTHEPU: The first one was ...[intervenes]

CHAIRPERSON: That is the one on the 8 July.

MS MOTHEPU: Yes, I think it was his first hundred days and because I was new, this is just from memory, he was not impressed with McKinsey and Regiments, so I think he interrupted the presentation I think within ten minutes and
20 then he – you asked about his participation. He took a pen and he said no, it is quite obvious that McKinsey and Regiments do not understand Eskom. It is quite obvious that they do not understand the key challenges he has to face so he essentially on a white board put:

“These are the things that are keeping me up at

night.”

So I want you to focus on what solutions to these problems.”

So he completely scrapped the presentation. Ja, it is like your primary school teacher saying you can do better, see me. So we took notes and I think he gave us two weeks or a month to essentially work on the points that he had provided us.

We asked for additional information, hence he gave
10 us credit rating reports, he gave us minutes of the finance and investment committee meetings and any other relevant documentation.

ADV SELEKA SC: Is that of Eskom?

MS MOTHEPU: Of Eskom, that is correct.

ADV SELEKA SC: So at this time he is still at Transnet.

MS MOTHEPU: He is still at Transnet, yes.

ADV SELEKA SC: And he is able to provide you with information ...[intervenes]

CHAIRPERSON: No.

20 **MS MOTHEPU:** He is seconded at Eskom.

CHAIRPERSON: No, he could not have been at Transnet.

MS MOTHEPU: He is seconded to Eskom.

CHAIRPERSON: He had been seconded to Eskom.

MS MOTHEPU: Yes, yes.

CHAIRPERSON: And he probably was acting CFO at that

time.

MS MOTHEPU: That is correct, Mr Chairperson.

CHAIRPERSON: Ja.

MS MOTHEPU: because at Transnet the acting CFO was Mr Gary Peter. Yes.

ADV SELEKA SC: I thought the secondment was in August 2015 but I will check.

CHAIRPERSON: But you must check but I – my impression was that he was brought to Eskom about a
10 month or two after Mr Brian Molefe started there but I could be wrong.

ADV SELEKA SC: I will check the dates.

CHAIRPERSON: Ja.

ADV SELEKA SC: Will check, Chair.

CHAIRPERSON: Ja. So that he was acting CFO of Eskom in June or July, in July 2015.

MS MOTHEPU: '15.

CHAIRPERSON: I subject to being checked.

ADV SELEKA SC: Yes, Chair.

20 **CHAIRPERSON:** But if he was not at Eskom in July when he had these two meetings, he was still at Transnet but already having these meetings discussing Eskom matters, that would be quite interesting.

MS MOTHEPU: I think we need to just get an official date when he was officially seconded.

CHAIRPERSON: Ja, somebody should be able to check quickly, maybe Mr Seleka's junior could try and check that. We can continue in the meantime.

MS MOTHEPU: So and then there was another meeting the 24 July. There we ...[intervenes]

CHAIRPERSON: So to complete the picture in regard to the first meeting...

ADV SELEKA SC: Yes.

CHAIRPERSON: ...8 July 2015, you are saying that a
10 presentation had been prepared by McKinsey and Regiments or McKinsey only?

MS MOTHEPU: McKinsey and Regiments.

CHAIRPERSON: And Regiments. Was it one presentation to be presented by one person or McKinsey present their own and Regiments their own?

MS MOTHEPU: It would be McKinsey would present their part, that portion of the presentation.

CHAIRPERSON: Ja.

MS MOTHEPU: And Regiments would present that
20 portion.

CHAIRPERSON: The other portion, okay.

MS MOTHEPU: Remember, that is supply development.

CHAIRPERSON: Yes, ja.

MS MOTHEPU: So it would give the subcontractor skills also to present in front of the client and to lead some

transaction.

CHAIRPERSON: He was not happy with their presentations.

MS MOTHEPU: He was not happy at all.

CHAIRPERSON: And he basically said let us start afresh.

MS MOTHEPU: Stop, yes.

CHAIRPERSON: Stop.

MS MOTHEPU: H'm.

CHAIRPERSON: These are the issues that are keeping
10 me awake at night. But if you are saying they were
keeping him awake that seems to be consistent with him
being at Eskom.

MS MOTHEPU: Yes, he was seconded to Eskom but I am
not sure if it was official, that is my uncertainty because
...[intervenes]

CHAIRPERSON: Ja but you remember that he spoke on
the basis that at that time these were Eskom issues that
were keeping him awake at night.

MS MOTHEPU: That is correct plus ...[intervenes]

20 **CHAIRPERSON:** That is how he spoke.

MS MOTHEPU: That is correct, Mr Chairperson. Plus on
the other side, I was also involved with Transnet and we
were meeting Mr Gary Peter as the acting CFO.

CHAIRPERSON: Oh, okay.

MS MOTHEPU: Yes.

CHAIRPERSON: So if that is factually true then he probably was acting CFO at Eskom.

MS MOTHEPU: Yes, he was acting.

CHAIRPERSON: Ja, but they will just – somebody will double-check.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay, then how did that meeting end, the first one on the 8 July.

MS MOTHEPU: The first meeting, he gave us two weeks
10 or a month to ...[intervenes]

CHAIRPERSON: To go and do your homework.

MS MOTHEPU: To go and do our homework.

CHAIRPERSON: Yes.

MS MOTHEPU: And to come back to him.

CHAIRPERSON: Yes. Yes and then there was then the next meeting of Project Pandora.

MS MOTHEPU: Correct, on the 24th.

CHAIRPERSON: On the 24 July.

MS MOTHEPU: Yes.

20 **CHAIRPERSON:** And I guess this was the occasion when then Regiments and McKinsey were given a chance to make presentations and show that they understood what they were told they should deal with.

MS MOTHEPU: Yes and I remember this meeting was at the airport.

CHAIRPERSON: Oh, it was at the airport.

MS MOTHEPU: Now I recall that meeting.

CHAIRPERSON: Yes.

MS MOTHEPU: Yes.

CHAIRPERSON: Okay, talk about the content of that discussion so far as you can remember, obviously only the main features.

MS MOTHEPU: So the meeting went better than the first meeting because we had had time to do our homework and
10 he had given us the information, so ...[intervenes]

CHAIRPERSON: So these students learnt faster.

MS MOTHEPU: Yes. So we learnt fast and I think we had identified some key points that keep him up at night and we had prioritised them and one of them was the funding plan ...[intervenes]

CHAIRPERSON: I am sorry, I am going to interrupt you just to make sure. Would it be correct to say the context of the discussion at the first meeting of Project Pandora was on – was that he was saying to Regiments and
20 McKinsey these are the serious challenges that I am faced with at Eskom, you people must go away, do your homework and come back and tell me how you can help solve these problems. Is that a fair comment?

MS MOTHEPU: That is exactly right, Mr Chairperson.

CHAIRPERSON: Yes.

MS MOTHEPU: And he wanted both low hanging fruit so that when he is finally appointed...

CHAIRPERSON: Ja.

MS MOTHEPU: He is shy within the first hundred days, he can say this is what I have accomplished in such a short period of time.

CHAIRPERSON: Oh, okay, okay.

MS MOTHEPU: Yes.

CHAIRPERSON: But are you saying that because he did
10 say that himself at the meeting or he ...[intervenes]

MS MOTHEPU: Yes, absolutely.

CHAIRPERSON: He said that at the meeting.

MS MOTHEPU: Absolutely, absolutely, he wanted that hundred day plan, he wanted to prioritise which key areas that he wants to focus on and those low hanging fruit that he can eventually implement.

CHAIRPERSON: Ja.

MS MOTHEPU: So that at least he has a good track record in his first hundred days.

20 **CHAIRPERSON:** Ja, okay, alright. Yes, now you are at the second meeting then.

ADV SELEKA SC: Yes.

CHAIRPERSON: McKinsey and Regiments make representations.

MS MOTHEPU: Yes, we made ...[intervenes]

CHAIRPERSON: The meeting went much better than the first one.

MS MOTHEPU: Yes, it went much better.

CHAIRPERSON: Ja, continue.

MS MOTHEPU: Yes, so we took him through the presentation and we also took him through the funding plan. Eskom – I think they had a funding deficit of between 70 and 80 billion a year so I recall it was Eric Wood and Mr Tewodros Gebreselasie and his team which
10 had Mzwane and Justin Kubal and they presented the funding plan.

Once again Mr Singh was not happy and he interrupted the presentation by Regiments. At this time I was still just an observer and he said we have not shown anything new, there is nothing innovative, there is nothing, there is no out of the box thinking, his treasury can do it, why should he pay us what his treasury can do.

ADV SELEKA SC: I thought he was a soft-spoken man.

MS MOTHEPU: Pardon?

20 **ADV SELEKA SC:** I thought he was a soft-spoken man.

MS MOTHEPU: Oh no, he is not. Definitely not. So he interrupted that presentation and once again there were certain things – I mean because Eskom essentially is a state owned company it can only issue bonds and rands in Euros and dollars, it can go the development institutions, it

can go to the banks. So it does not have – it cannot issue equity on the stock exchange. So there is only a few instruments that it can use when it raises debts. So for him to say it is not innovative, the PFMA is quite – it depicts what you can and cannot do. So we had to stop.

The next meeting was at Rivonia. I do not have the invitation to that. So ...[intervenes]

CHAIRPERSON: So you, at the second meeting, did it end on the basis that McKinsey and Regiments had not
10 impressed him?

MS MOTHEPU: Yes, on the funding plan.

CHAIRPERSON: In terms of the final plan.

MS MOTHEPU: Yes.

CHAIRPERSON: He did not think that you came up with anything that his Treasury department could not come up with.

MS MOTHEPU: That is correct.

CHAIRPERSON: So did it end on the basis that there would be another meeting later?

20 **MS MOTHEPU:** Yes, he – so he also told us what features he wanted to see on this funding plan and I think an important point was Eskom has a R350 billion government guarantee. So he wanted to find out how much have we used in terms of that guarantee and he wanted to see a five year profile, which loans are going to be paid off that

will make room so that we can raise more debt because I think the – I think Eskom had – it was close to – it had issued almost R300 billion, so it had something like R60 billion left of the guarantee. So he wanted a profile, probably five years, ten years, to see which loans will be repaid now to have room for the new loans.

We had not put that in our funding plan so we spent I think two weeks getting information from Mr Singh and there was a subsequent meeting at Rivonia in a Boutique
10 Hotel and we presented the amended funding plan and he was happy with it. Yes.

ADV SELEKA SC: Thank you, Chair. Ms Mothepu, there seems to have been various plans for him, is the funding plan also part of the first hundred days plan at Eskom?

MS MOTHEPU: Yes, it was ...[intervenues]

ADV SELEKA SC: Or are there various plans?

MS MOTHEPU: It was because Eskom has to submit a corporate plan to the shareholder.

ADV SELEKA SC: Yes, yes.

20 **MS MOTHEPU:** And so it is the corporate plan which is a strategic document but, of course, with strategy, how are you going to fund it? So with it there is a funding plan.

ADV SELEKA SC: Yes, that is why I wanted you so that you can explain the distinction to the Chairperson. The corporate plan is what Eskom needed to submit, you say to

who?

MS MOTHEPU: To the shareholder, the Department of Public Enterprise and to National Treasury.

ADV SELEKA SC: Okay, part of the corporate plan is a funding plan.

MS MOTHEPU: That is correct.

ADV SELEKA SC: You were tasked to work on the funding plan.

MS MOTHEPU: That is correct.

10 **ADV SELEKA SC:** Which will be part of the corporate plan.

MS MOTHEPU: That is correct, Mr Chairperson.

ADV SELEKA SC: Did you also have to work on the corporate plan?

MS MOTHEPU: I only worked on the funding plan, I think Ms Goodson will testify if she assisted.

ADV SELEKA SC: You do not ...[intervenes]

MS MOTHEPU: No, she would not have because she only started in ...[intervenes]

20 **ADV SELEKA SC:** In March.

MS MOTHEPU: In November 2015. So I suspect it was Mohamed Bobat and Mr John Rossouw.

ADV SELEKA SC: Okay, so you ...[intervenes]

MS MOTHEPU: Who were in Regiments Management Consulting who maybe would have worked with McKinsey

on the corporate plan ...[intervenes]

ADV SELEKA SC: You personally do not know.

MS MOTHEPU: I personally do not know.

ADV SELEKA SC: Okay. Chairperson, in regard to the date of the secondment in his submission, written submission to the parliament Portfolio Committee Mr Singh writes:

“I assumed my role as CFO of Eskom on 1 August 2015 on a secondment from Transnet.”

10 **CHAIRPERSON:** Oh, that is interesting and I guess that date has to be correct. He should know when he started at Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: It therefore would mean that in July he was meeting you on Project Pandora while he was at Transnet and not when he was at Eskom.

MS MOTHEPU: It appears so, Mr Chairperson.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** So looking at your affidavit we see – well, let me build into this. There is the first meeting, the second meeting, the third meeting you are being asked to make a proposal, proposal plans to Mr ...[intervenes]

CHAIRPERSON: I am sorry, Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: Were you able to get an idea at the

meeting of the 8 July 2015 of Project Pandora whether Mr Singh was attending such a meeting for the first time or did you get any impression that this Project Pandora was something that the and the others may have been involved in for some time?

MS MOTHEPU: I got the impression that he had met with McKinsey and Regiments previously because, if you recall, they presented to him and he was not happy with their presentations. So got the impression that they had met
10 previously, they discussed what he wanted to see at that meeting before. So it was not a kick-off meeting.

CHAIRPERSON: Ja, where did you get the information that he had met with McKinsey prior to the 8 July 2015?

MS MOTHEPU: Because in the presentation it was like McKinsey already knew Eskom and they had information about Eskom and Regiments as well, so it was not a – like a kick-off meeting where you say hello, this is Mr Singh and I want you guys to assist me with x, y, z. The fact that when I arrived at that meeting McKinsey was already
20 presenting to the CFO. I got the sense that there were previous engagements before then.

CHAIRPERSON: Oh, at any rate – well, the invitation to that meeting was a discussion with the CFO.

MS MOTHEPU: Correct.

CHAIRPERSON: But you say the context of the

discussion made you believe that he was not meeting them for the first time about this project.

MS MOTHEPU: That is correct, Mr Chairperson. Plus, about two days before the actual meetings McKinsey would send the slides and then we would also incorporate our slides and then – so that they are consolidated and then they would print. So when I read McKinsey’s submission it was very, very clear that they had inside information with regards to Eskom and it was not just a desktop analysis

10 that was very shallow.

CHAIRPERSON: Ja.

MS MOTHEPU: Yes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you, Chair.

MS MOTHEPU: Plus they were very familiar with each other.

CHAIRPERSON: Oh, is that so?

MS MOTHEPU: Yes.

CHAIRPERSON: Ja.

20 **MS MOTHEPU:** So it was quite evident that they...

CHAIRPERSON: They knew one another.

MS MOTHEPU: That is correct, Mr Chairperson.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: What we have not asked you and it might be important to the Chairperson, from Regiments’

side, apart from yourself, who else was there?

MS MOTHEPU: Okay, it was Mr Mohamed Bobat before he was seconded to National Treasury, it was Mr Tewodros Gebreselasie, it was myself, it was Eric Wood, it was an analyst called Justin Kubal and transactor called Mzwane Mangu. So that is on paragraph 23.

ADV SELEKA SC: Yes.

MS MOTHEPU: From McKinsey Mr Vikas Sagar who was a partner, Behrens – that is German surname, which I cannot
10 pronounce.

ADV SELEKA SC: I think it is fine, Regiments
...[intervenes]

MS MOTHEPU: No, this is McKinsey and there was Dr Alex Weiss, so they were both Germans and Mr Vikas Sagar who was – so they were both – all three of them were partners.

ADV SELEKA SC: Yes. So to be clear from your testimony, this meeting is taking place in July, they are not taking place at Eskom offices.

20 **MS MOTHEPU:** No, not at all, they took place in venues that I have outlined.

ADV SELEKA SC: Private venues?

MS MOTHEPU: Private venues.

ADV SELEKA SC: Did you ever have to meet at Eskom at any point with Mr Singh?

MS MOTHEPO: No if I just fast forward my evidence, we started meeting at Eskom after October when he was officially appointed as the CFO by Minister Lynne Brown, that is when we started going to Eskom.

ADV SELEKA SC: Yes, so you – it is again the same, is it again the same team, personnel from Regiments?

MS MOTHEPO: It is exactly the same team from Regiments, and it is exactly the same team from McKinsey.

ADV SELEKA SC: Meeting with Mr Anoj Singh at Eskom?

10 **MS MOTHEPO:** Yes, that is correct Mr Chairperson. Before we go in there can I take you back to paragraph 18, I just want to take the Chair just to outline the initiatives that we had proposed but I will go into a little bit more detail later on.

ADV SELEKA SC: Yes.

MS MOTHEPO So it was ...[intervenes]

CHAIRPERSON: What page do you want us to go to?

MS MOTHEPO: 573 paragraph 18.

CHAIRPERSON: Alright.

20 **MS MOTHEPO** So, if you go to 18.1, so Insurance Trains Management the Duvha unit three recovery project, 18.2, rebuild Duvha unit three recovery project to recover 600 megawatt capacity loss, online vending, I think there was some online vending evidence yesterday. 18.4, optimisation of fibre optic cable capacity. 18.5, insurance

claim management in relation to the Hitachi settlement offer. 18.6, Escap capital structure optimisation. 18.7, overall insurance claim management. 18.8, arrangements and negotiations of long-term facilities. 18.9, arrangements and negotiations of working capital facilities. 18.10, sale of Eskom Finance Company business and mortgage book and if you recall, Mr Chairperson, hybrid's issuance – 18.11 from last year, the hybrid capital issuance.

10 **CHAIRPERSON:** Yes, yes.

MS MOTHEPO: Yes, there it is again.

CHAIRPERSON: Yes, I remember that. Now, were these elements of projects Pandora.

MS MOTHEPO These were elements of project Pandora and I think I made a mistake here because some of these initiatives were added later. So – by Mr Matshela Koko and Mr Anoj Singh so you may find that the original proposal had fewer initiatives, but I think – I based this on what I had and if you recall I don't have the original
20 proposal but my testimony going forward, I'll let you know which ones were added on by Mr Koko and Mr Singh, thank you.

CHAIRPERSON: So, some of these elements or all of them were issues that Regiments and McKinsey were discussing with Mr Anoj Singh at different stages, including

July 2015 and later, maybe even after he had been permanently appointed as CFO of Eskom?

MS MOTHEPO: That's correct Mr Chairperson.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Thank you Chair, Ms Mothepo.

MS MOTHEPO Thank you, so, in October the Minister of the Public Development – Public Enterprise, Ms Lynne Brown formally appointed, I think, on the same day, Mr Brian Molefe as the CEO and Mr Anoj Singh as the CFO.

10 So, that is when now, we were able to work at Eskom. He introduced us to a colleague of his, Ms Maya Bana, Mr Matshela Koko – so I'm on page 575, paragraph 26 under heading, work performed by Regiments and TCP at Eskom.

ADV SELEKA SC: Yes, and as you go there Ms Mothepo, just clarify to the Chairperson, whether, at this stage – because you previously said you are submitting a proposal as Regiments Trillion, Regiments and McKinsey, it's a proposal submitted to Eskom, you mentioned the services were to be rendered under a master service agreement.

20 **MS MOTHEPO**: Yes.

ADV SELEKA SC: And how the allocation of percentage was broken down into 70/30 percent, 70 in favour of McKinsey, 30 percent in favour of Regiments. We need to be clarified, whether, when you say you're starting to work at Eskom, was that agreement concluded?

MS MOTHEPO You know, I've been a consultant in the public sector, municipalities, state owned companies, there's always a difficulty where the public sector will say, we need work urgently, but the procurement is taking long. So, as I alluded earlier, they had anticipated a confinement and they were supposed to get – McKinsey was supposed to get 10% - 10.8% on the saving. So, for example, if they could not have any savings, if their initiatives on, for example, procurement or primary energy which is coal and
10 fuel – diesel, if, within I would say a year, let's say Eskom spent R5billion and McKinsey's initiative saved Eskom, let's say now it's R4billion, so they would get 10% of the saving which is R1billion. So that is why, I think, Mr Anoj Singh said, because of your – because of that model it will be a confinement and he undertook to get this confinement to be approved by the Board and also get National Treasury approval, but he wanted us to work concurrently while he was getting these approvals. Yes, so there was no contact in place and we worked on risk with the
20 anticipation that the Board will approve the master service agreement and National Treasury will approve the confinement, yes.

ADV SELEKA SC: Ja, not everybody knows what you mean by confinement, so you may want to explain briefly – well just one sentence.

CHAIRPERSON: I think the public has heard quite a lot of it because there have been a lot of evidence here about confinement.

MS MOTHEPO: So, if you say you are the sole source of that innovative solution but...[intervenes].

ADV SELEKA SC: So, without following a competitive.

MS MOTHEPO Yes you don't have to – but the requirement is that your offering should be innovative, nobody else should have it, you should be the sole
10 provider, but this was not the case because all the other consultants and firms could do exactly the same thing.

ADV SELEKA SC: So, you start working then at Eskom once Mr Anoj Singh is appointed permanently but the MSA, Master Service Agreement, is still not concluded?

MS MOTHEPO: Yes, they were negotiating with Mr Anoj Singh, so Eric Wood was negotiating on behalf of Regiments, Mr Vikas Saga was negotiating on behalf of McKinsey and Mr Anoj Singh and Mr Matshela Koko were negotiating on behalf of Eskom.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Well, I wanted to go back to the question I had raised with you earlier on about whether you got the impression that – at the meeting of the 8th of July 2015, project Pandora, whether you got the impression that McKinsey and Regiments people and Anoj Singh knew one

another, like, well but actually it had to be so because he was from Transnet, McKinsey and Regiments had been involved in Transnet if I recall correctly.

MS MOTHEPO: That's correct.

CHAIRPERSON: And there was evidence of, was it Mr Bester?

ADV SELEKA SC: Henk Bester, yes.

CHAIRPERSON: Bester, about a meeting he had with Mr Salim Essa and Mr Anoj Singh, during 2014 in regard to
10 certain Transnet contracts. Ja, so I'm sure they knew each other quite well.

MS MOTHEPO: Yes, you've just jogged my memory, Mr Chairperson. When we were having coffee, he had told me that they are working...[intervenes].

CHAIRPERSON: That's Mr Wood?

MS MOTHEPO: Mr wood had told me that they are waiting
– they had submitted a proposal to Eskom, they're awaiting Board approval, but he was 100% certain that the Board will approve it, that's why he gave me that generous
20 package because he wanted me to be there to lead that team.

CHAIRPERSON: Yes, that's quite important, ja, okay, alright, continue Mr Seleka.

MS MOTHEPO: So, as soon as Mr Anoj Singh was appointed, so we started working at Eskom. We were

given consultant access cards, so we were given a form to sign and complete and so we were given a consultant access cards. I have a picture of mine, but I don't think...[intervenes].

CHAIRPERSON: I've seen it.

MS MOTHEPO: You've seen it, so I don't think it's that material that we have to go there and also Mr Singh gave us a designated boardroom for us to work at Eskom. So, we worked together with McKinsey and the Regiments team
10 in this boardroom. Our main contact person was a Ms Maya Bana, so she's the one who organised the boardroom and the logistics, the acquisition of the access cards. So, in addition to introducing us to these people, he gave us – he also introduced us to Mr Prish Govender who was a project Director, Mr Matshela Koko who was Head of Generation, Mr Andre Pillay, he was not the Treasurer at the time, Ms Caroline Henry was the Treasurer and Mr Edwin Mabelane.

CHAIRPERSON: Well, let's go back to the time when you
20 were given a designated boardroom at Eskom. Did you work from Eskom on a daily basis, why did you have to be given a boardroom?

MS MOTHEPO: I wasn't working at Eskom on a daily basis, but I was there sometimes. Myself and my team were also working at Transnet on the 1064 Management

Consulting area, I also led the R12billion club loan, I was also working – my team and I were also working on SA Express and we were also working at Denel but McKinsey, I think, they were – being a large international organisation, I think they had something like – between 10 and 20 people who were always there. So, we would come in and out depending on what we needed to do but I had spread my time and resources on the other clients.

CHAIRPERSON: So, a particular boardroom was
10 designated as the boardroom that Regiments and McKinsey would use?

MS MOTHEPO: That's correct, Mr Chairperson.

CHAIRPERSON: But you say, the Regiments team, which – of which you were part, wasn't there on a daily basis, wasn't at Eskom on a daily basis because you had to attend to other projects, but you say McKinsey by and large were there on a daily basis?

MS MOTHEPO: That's correct, Mr Chairperson.

CHAIRPERSON: Yes, did you ever get an understanding
20 why, whether it's Regiments or McKinsey or both, why they needed to be given an Eskom boardroom or use, it seems on a long – for a long time?

MS MOTHEPO: Anoj would come in and out of the boardroom, we would ask him questions...[intervenes].

CHAIRPERSON: Mr Singh?

MS MOTHEPO: Sorry, apologies, Mr Anoj Singh would – so he wanted close proximity to the team.

CHAIRPERSON: Oh, okay.

MS MOTHEPO: Yes, so he would give us certain things to do, sometimes we'd call him and say, no can we meet – I don't know if it was the same floor as his office or a different floor, I think it was – the Executive wing, I think, is on the top floor we were in the middle. So, he would just come down and explain, so he wanted the close
10 proximity.

CHAIRPERSON: Ja, okay, no that's fine, Mr Seleka?

ADV SELEKA SC: Thank you Chair. Ms Mothepo – ja let's see here because in your affidavit you were on page 575, paragraph 26, you've mentioned the names of the people at Eskom who you interacted with and you say,

“Each initiative steering team would meet regularly and with designated Eskom representatives at Megawatt Park”,

And then you deal with what you say are the
20 additional initiatives that were added to the original proposal in the next paragraph, if you could just tell the Chairperson about that because you were saying you would come back to it.

MS MOTHEPO Thank you, if we go to page 575, Mr Chairperson, paragraph 27, so it was – we had, if you

recall, we had the original proposal that was submitted in March/April of 2015 and Mr Anoj Singh and Mr Matshela Koko had a copy of this proposal and they added three more initiatives or I'll call them initiatives or transactions that were not on the original proposal and these were, online vending and it was the Duvha Three Insurance claim and rebuild and the Hitachi Insurance settlement. So, these were there – I would say Mr Anoj Singh and Mr Matshela Koko said, these are the top initiatives that are
10 keeping us up at night and we require your assistance with them.

ADV SELEKA SC: Yes.

MS MOTHEPO: And the key figures that we dealt with was Mr Singh and Mr Koko. If we go to my Annexure which is MM4 and MM5, let me just give you the page reference, it's page 588.1.

ADV SELEKA SC: Is that the black number?

CHAIRPERSON: Yes.

MS MOTHEPO: Are you there okay, so it's from Mosilo
20 Mothepo, sent the 30th of November 2015, I'm not sure who's email is that...[intervenes].

CHAIRPERSON: ...[indistinct] @eskom.co.za?

MS MOTHEPO: Yes, and it's copied, Matshela Koko and the subject, Balance Sheet Optimisation and Cash Unlocking Financial initiative stream, so I

say...[intervenes].

CHAIRPERSON: I'm sorry, the term, Project Pandora, I assume that was just an informal term that was used among yourselves?

MS MOTHEPO: That's correct, there was no need for the secrecy because now he was now appointed CFO and now, we could officially name...[intervenes].

CHAIRPERSON: So, what was the official name now, was it this one here, Balance Sheet Optimisation and Cash
10 Unlocking?

MS MOTHEPO: That's correct, Mr Chairperson.

CHAIRPERSON: Okay, but I guess privately you didn't seize to refer to Project Pandora?

MS MOTHEPO: Yes.

CHAIRPERSON: Okay, alright yes.

MS MOTHEPO: So, this is an email from myself to Mr Koko,

20 "Good day, Matshela I hope this email finds you well. It was a pleasure meeting you last week. I had a chat with Eric Wood regarding additional financial initiatives but needs to be included as part of our balance sheet optimisation and cash unlocking financial initiative stream, these include sale and lease back on the optic fibre network, pre-paid electricity vending, that's online vending, EFC

disposal, that's Eskom Finance Company disposal, Hitachi claims, replacement of boilers and Duvha insurance claim. We are currently compiling a business case for each initiative and require some information from you and your team. I would like to set up time, early next week, with yourself and your team to source the additional information in order to complete the business case by the end of the week. Kind Regards, Mosilo Mothepo, Principal”.

10 **CHAIRPERSON:** Now, was ...[indistinct]@Eskom.co.za Mr Koko's email address?

MS MOTHEPO: I'm not sure who's email address that would be because the fact that I sent it directly to him and I copied Mr Matshela, it doesn't have a name but if I recall, I met Mr Koko...[intervenues].

CHAIRPERSON: Sorry, why would you address the email to him when he was not the addressee, but he was simply being copied?

20 **MS MOTHEPO:** I think now my memory is jogged, remember I said, it was a pleasure meeting you last week. So, he introduced me to this gentleman, I forgot his name and I spent about 30 minutes on these proposals. So, what I needed Matshela to be aware of, is, that I have spoken to your team, but I need information from you, and he was a gentleman from Indian descent, I forgot his name

yes, but it was Mr Koko who introduced me to him, yes.

CHAIRPERSON: So, would this email address be that gentleman's address – email address?

MS MOTHEPO: That's correct.

CHAIRPERSON: Ja, okay, Mr Seleka?

ADV SELEKA SC: Thank you. Ms Mothepo, I see there's another email on page 588.5, of 5 December 2015.

ADV SELEKA SC: Yes, so let – that email was the 13th of November and then – okay so between that date, indeed
10 my team and I were given information, we were introduced to some of the Eskom officials and so we were able, now to, put weight on the business case because if you recall the additional initiative, we were not – we didn't have information on them. So, we spent that week or two interviewing the Eskom officials, getting the information, understanding the challenges, proposing some solutions so that we can include them in the final proposal and this proposal, by the way, had to go to Board for approval. So, if we go to page 588.5, so now it's from myself, Ms Mosilo
20 Mothepo sent the 5th of December 2015 at ten past nine, to Mr Koko and I copied Eric Wood and the subject, Eskom Initiatives and there was the final updated financial initiatives, so it reads,

“Hi Matshela, attached please find the financial stream initiatives for your review and comment. I'm

available on my mobile phone should you wish to contact met and I can come into the office to discuss, should you wish. Kind Regards, Mosilo Mothepo”.

And page 588.6 is the attachment, I’ll just, later on just give you a brief outline of what each transaction entails.

CHAIRPERSON: Yes.

MS MOTHEPO: So, if we go now to...[intervenes].

10 **CHAIRPERSON:** You don’t want to do that now in terms of what the main features of the attachment?

MS MOTHEPO: Because where I cover it, I go on a brief outline and the people responsible from Eskom and from Regiments and McKinsey, so I would prefer to do that.

CHAIRPERSON: Ja, that’s fine.

MS MOTHEPO: Thank you. So, if we go to page 588.26, so the previous communication was the 5th of December, now it is the 7th of December, Mr Koko had – and Mr Mabelane had a chance to go through the updated proposal
20 and so I was sending it to him. So, this is – this is sent on the 7th of December 2015 to Mr Matshela Koko, subject, updated proposal, and there’s the attachment,

“Good Morning Matshela, attached please find the updated proposal for your consideration, kind regards, Mosilo Mothepo”.

ADV SELEKA SC: And the attachment is on the next page?

MS MOTHEPO: Yes, and the attachment on the next page.

ADV SELEKA SC: Titled, balance sheet optimisation and cash unlocking initiatives.

CHAIRPERSON: The attachment starts at 588.27, up to what page, it's not just a one pager.

MS MOTHEPO: Yes.

10 **CHAIRPERSON:** Up to what page does it go?

MS MOTHEPO: Pardon, can you repeat?

CHAIRPERSON: The attachment it starts at page 588.27 up to what page does it go, I take it it's not a one page?

MS MOTHEPO: No, it's very long.

CHAIRPERSON: Ja, I just want to know what constitutes part of the attachment.

ADV SELEKA SC: Chair, I think it is 588.49.

CHAIRPERSON: Oh okay.

MS MOTHEPO: Yes.

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

DV SELEKA SC: And on the next page?

MS MOTHEPO: And then on the next page.

ADV SELEKA SC: There's another email.

MS MOTHEPO: We were very busy but it's on the same day...[intervenes].

CHAIRPERSON: When you say on the next page, you mean 588.50?

MS MOTHEPO: Yes, so the previous email I sent at nine minutes past eight, I had time to go to meet with Mr Matshela Koko, he had made updates and reviews and so I sent him the updated proposal at – the same day, the 7th of December, this time at 12h33, so it reads,

10 “Dear Matshela, attached please find the updated financial proposal document for this afternoon’s meeting at 2 o’clock. Kind Regards Mosilo Mothepo”.

ADV SELEKA SC: We don’t see emails from them to you.

MS MOTHEPO I’m going to – there’s ...[intervenes].

ADV SELEKA SC: Replying to your emails for the sake of...[intervenes].

CHAIRPERSON: Sorry, for the sake of completeness, mention again up to what page that attachment goes, starting at page 588.51n does it go up to 588.209?

20 **ADV SELEKA SC:** I think it goes up to 588.74, Chairperson.

MS MOTHEPO: Yes.

CHAIRPERSON: Ja, it’s important, because otherwise, sometimes it can be difficult to see in the Bundle whether a particular document is still part of an attachment or it’s a stand-alone document.

ADV SELEKA SC: So, it's from 588.51 to 588.74. Ms Mothepo take us to the next email.

MS MOTHEPO So, I'm taking you to the next email, Mr Chairperson, 588.75.

ADV SELEKA SC: Thank you.

MS MOTHEPO: If you recall, the previous email I mentioned a meeting at 2 o'clock, so that meeting had happened. So I sent an email at the same day now at 21 past 8 in the evening. We had met Mr Mabalane and Mr
10 Matshela Koko so it is to Mr Mabalane and Matshela Koko have copied Mr Eric Wood. Mr Vikas Sagar, my team was Asanda Smith, Fahiemma Badat, Grant Joseph and Mr Mohammed Bobat and the subject is Eskom Cash Unlocking Initiatives.

So it reads:

“Dear Matshela and Edwin. Attached please find the revised cash unlocking initiatives for your review and comments. As per your request we sat with your technical team who
20 provided us guidance and additional information to the document. We have incorporated their inputs and comments to the body of the document. Kind Regards Mosilo Mothepu.”

And so that attachment is 55.76 and then goes onto –

it ends on

ADV SELEKA SC: 588.100.

MS MOTHEPU: 100.

ADV SELEKA SC: Now the – the email Ms Mothepu on page 588.50 – 588.50 7 December 2015 at 12:33 to Mr Koko it alluded to a meeting in the afternoon at 14H00. Did that meeting take place?

MS MOTHEPU: Yes that meeting takes place. If you go to page 588.75.

10 **ADV SELEKA SC:** Yes.

MS MOTHEPU: It says remember I said Hi Matshela and Edwin as per your request as in.

ADV SELEKA SC: Yes.

MS MOTHEPU: During that meeting at two o'clock we sat with your technical team and provided – and they provided guidance and information. If you see that after that two o'clock meeting we met with the team hence we worked – we worked through the night and up until almost 8:30 in the evening to incorporate the ...

20 **ADV SELEKA SC:** The proposals.

MS MOTHEPU: The proposal.

ADV SELEKA SC: So this is still at the drafting stage of the proposal. You have not rendered services yet?

MS MOTHEPU: Not yet.

ADV SELEKA SC: Did you get to render services?

MS MOTHEPU: Yes.

ADV SELEKA SC: You did?

MS MOTHEPU: In January 2016 I will get there.

ADV SELEKA SC: In January 2016.

MS MOTHEPU: Yes. Plus after this my team started working on the online vending and the Duvha 3 and the funded plans so I will go into that detail.

ADV SELEKA SC: Yes.

MS MOTHEPU: What is important Mr Chairperson if we go
10 to any of the attachments – let us go – I will take you to
page 588.51.

ADV SELEKA SC: This is one of the proposals.

MS MOTHEPU: Yes. So if...

ADV SELEKA SC: Or a version of it.

MS MOTHEPU: If you look at – so our contract was in – it was supposed to be on a success base. So if you go to page 588.53 it is the arrangement – okay let me wait for you to get there.

CHAIRPERSON: I am there.

20 **MS MOTHEPU:** You are there. So it is the arrangement of long term facilities. So that is long term loans. So if we could arrange Eskom let us say R2 billion – if you go to the next page 1. – so it is page 588.45 1.3 project cost. So what Regiments ...

CHAIRPERSON: I think you said 45 you meant 54?

MS MOTHEPU: Sorry 54.

CHAIRPERSON: Ja.

MS MOTHEPU: And you go to 1.3 the project cost. So that is how much is it going to cost Eskom. So let us say we arranged R2 billion in long term facilities. Once Eskom gets that money they would have to pay – if you go Eskom will be charged a capital raising fee of 1.5% - 105 – 150 basis points for the successful origination negotiating and raising of funding. So all of these initiatives were based on risk and
10 once they are completed all of them have a different fee.

So if we did not raise – even if you worked there for a year and we did not raise a cent you would not be incur – Eskom will not pay us. So that was in all of these initiatives I will not take you through each one but that was the promise of the contract.

ADV SELEKA SC: Yes the intended contract.

MS MOTHEPU: Yes the intended contract.

ADV SELEKA SC: That never.

MS MOTHEPU: That never happened. Okay.

20 **ADV SELEKA SC:** But Ms Mothepu I know you are going to take the Chairperson through other things there that you feel strongly to draw to his attention. I want us not to lose the bigger picture so that when we do that exercise. So you are at the proposal stage. You say you started rendering the services in 2016. That will be the services contemplated in

these proposals.

MS MOTHEPU: That is correct and if I correct – if I can correct myself.

ADV SELEKA SC: Yes.

MS MOTHEPU: We started rendering services in 2015 probably November/December.

ADV SELEKA SC: So that is even prior the finalisation of these proposals?

MS MOTHEPU: That is correct.

10 **ADV SELEKA SC**: And there is no contract?

MS MOTHEPU: There is no contract at the end I say it is still being negotiated so there was no contract.

ADV SELEKA SC: Yes.

MS MOTHEPU: : It was in anticipation of the finalisation of the contract and board approval and National Treasury approval.

ADV SELEKA SC: So what services do you start rendering as Regiments? Can you recall?

20 **MS MOTHEPU**: I can recall it was the online vending and it was the Duvha 3 insurance claim. We went to their insurer which was Marsh and we negotiated the – the boiler in I think it is in Mpumalanga had exploded and they were negotiating an insurance claim with Marsh. I think they were – they were the independent insurance assessors.

ADV SELEKA SC: So your services were to do what in

respect of that?

MS MOTHEPU: I have to say something and I – it is in my observation which I make at the end but I think it is important now. Now with hindsight.

Eskom was capable of all of these initiatives on their own. The fact that others were added. So when we started working with Eskom's team the – the officials were the lower ranking technocrats who were actually working on these transactions already had the capacity, the expertise to do it.

10 I remember even on the Duvha 3 insurance I know nothing about insurance and I told Eric I do not have any inkling about a boiler and insurance. But we were shoved down the throats of the Eskom officials and of course with a lot of resistance.

So – I mean in my observation I say that a lot of part of state capture essentially is just appointing consultants unnecessarily and siphoning off very large seeds while the – the internal team has the capacity and expertise to perform them.

20 **ADV SELEKA SC:** Ja okay.

MS MOTHEPU: Yes.

ADV SELEKA SC: Of course that is important.

CHAIRPERSON: In that case of course where some individuals within an entity give work to outsiders to do for the entity that can be done by people employed within the

entity.

MS MOTHEPU: Hundred percent Mr Chairperson.

CHAIRPERSON: That is a case of you just want to give those people money.

MS MOTHEPU: Precisely.

CHAIRPERSON: Ja because there is no need.

MS MOTHEPU: : There is absolutely no need.

CHAIRPERSON: Ja.

MS MOTHEPU: : Because Eskom had an insurance division
10 who it was headed by somebody who is an expert at insurance. We – my team and I knew nothing about insurance.

CHAIRPERSON: Hm.

MS MOTHEPU: : The treasury team can negotiate long term and short term loan facilities. They had relationships with the banks. They had relationships with asset and asset managers and the pension funds. All they had to do was if they issued bonds is obviously they would have to appoint a lead manager on the – which are the local and international
20 banks registered in South Africa and they would pay them a marginal fee.

But all of these initiatives Eskom already had teams working on them. We came in as McKinsey, as Regiments and eventually Trillian in the middle of the implementation of these transactions.

And I mean a total of R1.6 billion was paid which was completely unnecessary because Eskom had and still does have the capacity to do them.

CHAIRPERSON: Hm

ADV SELEKA SC: Ja but that begs the question Ms Mothepu. Did you know these things at the time and what was your attitude in regard?

MS MOTHEPU: Our attitude was I think I told Eric we do not have any expertise in this so I am not comfortable to
10 continue. And also getting a lot...

CHAIRPERSON: Is it – that is [speaking over one another].

MS MOTHEPU: I mean Mr Eric Woods.

CHAIRPERSON: In respect of insurance.

MS MOTHEPU: Yes insurance.

CHAIRPERSON: Only in regard to other things as well.

MS MOTHEPU: Yes. And the insurance and...

ADV SELEKA SC: Ja just understand the question. Because we want to know – well my question really related to everything whether in respect of all these initiatives are
20 you saying Eskom had people who were already working on them and they could do that or are you confining that comment only in respect of the insurance part?

MS MOTHEPU: All of them.

ADV SELEKA SC: All of them yes and that is my question.

MS MOTHEPU: All of them.

ADV SELEKA SC: And my question is, if you saying now that – well you could observe but Eskom has people they were already implementing these things and it parted with over R1.6 billion all for nothing my question was but did you not – what was your attitude at the time? Were you not aware of these things at the time?

MS MOTHEPU: Well my attitude at the time was to essentially – my reservation we were not needed and I – we do not have the expertise and...

10 **CHAIRPERSON:** Well that is the part I was asking.

MS MOTHEPU: Yes.

CHAIRPERSON: You whether ...

MS MOTHEPU: And then...

CHAIRPERSON: Hang on, hang on.

MS MOTHEPU: Yes.

CHAIRPERSON: Whether when you said you did not have – your team did not have the expertise you meant in regard to insurance that you have talked about or are you talking about everything that were asked to do for Eskom?

20 **MS MOTHEPU:** The only expert.

CHAIRPERSON: Or some?

MS MOTHEPU: Some elements

CHAIRPERSON: Elements.

MS MOTHEPU: The only expertise we had were two which was the negotiation of the short term loan facilities and the

negotiation of the long term loan facilities. We were experts at that. But the insurance cyber optic I do not know. There were the Hitachi settlement. There was an insurance of Duvha 3 and the rebuild as well.

So we were completely – our heads were under the water and I expressed my reservations that is why...

CHAIRPERSON: To whom did you express your reservations?

MS MOTHEPU: To Mr Wood. That is why Mr Edwin
10 Mabalane and Mr Matshela Koko brought in the teams that were already working on these transactions.

So to explain to the consultant this is what we are doing and we were asking very elementary questions because we were completely clueless about insurance and boilers and it was quite embarrassing I have to say.

CHAIRPERSON: But now it is quite interesting one would have thought that if you were supposed to have this expertise maybe you were supposed to have better expertise than the internal team one would have thought that you
20 would secretly go and get experts to tell you exactly what is happening where you could ask all the questions and then come back you know – you know feeling more knowledgeable.

ADV SELEKA SC: Empowered.

CHAIRPERSON: But it is interesting that Eskom actually

brought its own people to explain to you.

MS MOTHEPU: To the consultant who are getting paid.

CHAIRPERSON: Now do you remember the – the people that Mr Matshela Koko brought to explain these things to you because that is important from Eskom?

MS MOTHEPU: If you recall I said it was that – a gentleman of Indian descent.

CHAIRPERSON: Ja.

MS MOTHEPU: So he brought his team but I had forgotten
10 his name.

CHAIRPERSON: Well was it a Mr Govender by any chance?

MS MOTHEPU: No it was not Prish – it was not Prish – Mr Prish Govender it was not.

CHAIRPERSON: Okay. Okay.

MS MOTHEPU: Yes.

CHAIRPERSON: Hm. And who else or you cannot remember others?

MS MOTHEPU: I do not – I do not recall because he just brought his colleagues.

CHAIRPERSON: Ja. So – so they explained these things to
20 you.

MS MOTHEPU: Yes.

CHAIRPERSON: And were they made to be like your team and them to be like one team working together or they were brought in to explain whatever needed to be explained and

then go back and leave you to continue?

MS MOTHEPU: The earlier we were supposed to work together with the internal team.

CHAIRPERSON: Ja. So that you would be seen to have done the job but actually they are the ones who would have actually either done the job or guided you to do the job.

MS MOTHEPU: That is correct Mr Chairperson. All of these initiatives had – had commenced.

CHAIRPERSON: Ja.

10 **MS MOTHEPU:** Obviously at – they were all at various stages of completion. Some had board approval, others were still – had to be submitted to board. So we just came in – in the – somewhere in between.

CHAIRPERSON: So now when you – when your team and the team that Mr Matshela Koko brought to you to explain certain things worked together the products was it then presented as your team's product?

MS MOTHEPU: No the product was presented as Eskom's product.

20 **CHAIRPERSON:** Oh but now were you not going to charge for it?

MS MOTHEPU: Remember we would only be – charge Eskom upon the successful.

CHAIRPERSON: Oh okay.

MS MOTHEPU: So we were not like auditors or lawyers

where they – we charge per hour.

CHAIRPERSON: Oh but still you were going to charge for a product that basically Eskom did for themselves?

MS MOTHEPU: That is quite correct. I mean it is – we can even go back to the Transnet China Development Bank loan where Regiments was paid R190

CHAIRPERSON: Yes.

MS MOTHEPU: R189 million.

CHAIRPERSON: Yes.

10 **MS MOTHEPU:** And Transnet Treasury had the capacity and expertise.

CHAIRPERSON: Yes.

MS MOTHEPU: To negotiate and originate even the former Transnet treasurer said it is too expensive we do not agree and then Regiments was brought in – she left the former treasurer Mr Petro Saboody [?] came and he appointed Regiments and the – his team had the capacity to negotiate but R190 million went towards the consultants. So it is – it is a cut and paste everywhere.

20 **CHAIRPERSON:** Ja. But when you – when you realised this whole thing you could not feel good about it could you?

MS MOTHEPU: At the time I think because I came in in the beginning.

CHAIRPERSON: Ja.

MS MOTHEPU: And when the – in the middle plus I was a

principle even in as much as I think my stance takes a different view when I am now CEO in March 2016. So I would have a reservation and communicate it to Mr Wood. He would say no do not worry about it.

CHAIRPERSON: And it would end there.

MS MOTHEPU: Just work.

CHAIRPERSON: Ja okay. Okay. Alright.

ADV SELEKA SC: So until when did you remain there Ms Mothepu?

10 **MS MOTHEPU:** There is some events at Eskom or at Regiments?

ADV SELEKA SC: No as an employee of Regiments which later becomes Trillian. You see all these things happening; these transactions or services rather that are being rendered by Regiments/ - well we have not come to Trillian yet that could competently be rendered by the onsite employees who do not even share in the percentage when you do get the money. So how long did you stay there? When did you leave?

20 **MS MOTHEPU:** I left in last day at Trillian was the 31 May 2016. I had been at the job – as the Trillian CEO for three months and I officially resigned 22 June.

ADV SELEKA SC: Ja so you are nearly a year with this team whether it is under the name of Regiments or under the name of Trillian you were there for about a year.

MS MOTHEPU: That is correct.

ADV SELEKA SC: And what made you leave? We will come back to the details of what happens but what made you leave?

MS MOTHEPU: I think ...

ADV SELEKA SC: Well were you...

MS MOTHEPU: First of all I...

ADV SELEKA SC: Were you fired?

MS MOTHEPU: A lot of – no I was not – I was not fired I
10 wrote a letter to Eric sometime in – my lawyer on the 31 May
essentially saying my – these are my views. There was a
unilateral change in my employment and then also I had
raised flags that – red flags with regards to the fact that we
were working at Eskom without a contract and the other
15 trials – the other state owned companies Regiments was
supposed to cede those contracts to Trillian and that did not
happen.

ADV SELEKA SC: Ja face the Chairman.

MS MOTHEPU: Oh and that did not happen and I was kept
20 in the dark. Mr [00:20:50] told me about it then I realised
that as a director I was liable.

So I wrote a letter to – through my lawyers to Eric on
the 31 May 2016 and then he asked me not to return to the
office. And we tried a mediation he refused. He refuted
every allegation and he said I am complaining because I am

not performing. I am overwhelmed by the job and I resigned and I took him to – Trillian to the CCMA for constructive dismissal.

So I did try and change the way we worked but it – my concerns fell on deaf ears up until it was – I needed to leave.

CHAIRPERSON: Ja. I think it is better to go back to the story.

ADV SELEKA SC: I will – yes, no.

10 **CHAIRPERSON:** Because that is at the tail end.

ADV SELEKA SC: Yes. No indeed Chair. I was...

MS MOTHEPU: Yes you asked.

ADV SELEKA SC: Yes I did mention.

CHAIRPERSON: No, no I know he asked you but it breaks the sequence.

MS MOTHEPU: Yes it does.

ADV SELEKA SC: The chain.

CHAIRPERSON: It breaks the sequence.

ADV SELEKA SC: No, no that is...

20 **CHAIRPERSON:** Well that is we will reach – we will reach it.

MS MOTHEPU: Yes we will.

ADV SELEKA SC: Yes. So this - these services then were being rendered by you – you say from November 2015 onwards. You are still drafting the proposal. The agreement has not been signed. The master service agreement. We

are in 2016 maybe you could take us through 2016 because there is an important event in March you need to deal with that as well.

MS MOTHEPU: Thank you very much.

ADV SELEKA SC: Which is – sorry together with that is how Trillian became Trillian.

MS MOTHEPU: Okay

ADV SELEKA SC: Because we have been referring to Regiments all the time.

10 **MS MOTHEPU**: Yes I think let me start there.

CHAIRPERSON: But remember she did cover that last time how Trillian came about.

MS MOTHEPU: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: How she moved from Regiments to Trillian. She did cover that.

MS MOTHEPU: Yes but I think there is an important development that is specific to Eskom. So if you recall my earlier testimony I said that McKinsey and Regiments were
20 supposed to move from Transnet to Eskom via confinement. Regiments was already McKinsey Supply Development partner.

So in December 2015 Eric Wood alongside [00:23:17] and Niven Pillay the other shareholders and directors of Regiments said we are parting ways. Eric and his – and a

black businessman or BEE partner – he never said Mr Salim Essa were – they are going to acquire purchase Regiments advisory which is financial advisory and management consulting.

So in December we were already aware that on the 1 March 2016 there is going to be the split. Now there is – there was a complication. Eric now told Mr – Mr Eric Wood told Mr Anoj Singh that McKinsey has – is replacing Regiments with Trillian as the supply development partner.

10 So what needed to happen was something McKinsey called a credit risk review – a due diligence of the new supply development partner.

So from January 2016 they – McKinsey had a whole list of questions about the new supply development partner and I will eventually go into the outcome of the credit review committee.

So in 2016 January they – there was a steering committee that was established between Eskom executives and mainly Mr Singh.

20 I am now on page 576 paragraph 29 and I think I have mentioned these individuals before and how I was introduced to the various – various executives. I am going to...

ADV SELEKA SC: Is it not paragraph 44 you are looking for on page 579?

MS MOTHEPU: Yes but I think it is a repetition. Oh so we have the first steering committee. It was chaired by Mr Anoj Singh. It took place – so in this chairing committee we would Regiments and McKinsey would essentially flash out the initiatives. And initiative was allocated an official from Eskom who would champion it, an official from McKinsey and an official from Regiments.

So what in my employee at Regiments and Trillian there was steering committee meetings. One was on the 9
10 February 2016 and the last one was on the 31 March 2016. They were always at Megawatt Park.

Okay so I am going to now go through – I am going to – I think I will skip paragraphs 31 to 34. I will come to that earlier – later on. But now I would like to focus on the – the transactions we worked on. So this is now page 577 paragraph 35. So it is R1.6 billion guarantee in favour of Tegeta Exploration and Resources Limited from ABSA bank. Now Eric and I used to work very closely together.

CHAIRPERSON: Hang on one second. The Dentons Report
20 you skipped because you – it is move convenient to deal with it later?

MS MOTHEPU: Yes that is correct.

CHAIRPERSON: Mr Seleka is that okay?

ADV SELEKA SC: That is correct – that is fine Chair.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: That is fine.

CHAIRPERSON: Okay. Yes continue.

MS MOTHEPU: Yes. So...

CHAIRPERSON: So you are now talking under the R1.68 billion guarantee?

MS MOTHEPU: That is correct.

CHAIRPERSON: Okay.

MS MOTHEPU: So Eric and I worked together and I think we were working on the trab loan at Transnet. So the banks especially ABSA bank knew that Eric and I worked closely together.

CHAIRPERSON: It looks like I will never succeed to get you to ...

MS MOTHEPU: Oh my goodness I am so sorry. Mr Wood.

CHAIRPERSON: You refer to them appropriately in a forum such as this.

MS MOTHEPU: Apologies.

CHAIRPERSON: Okay. Alright.

MS MOTHEPU: Yes. So we had worked together closely on the trab loan with ABSA bank. ABSA bank was one of the banks that lent Transnet I think it was R3 billion on the trab loan.

So – and we dealt – we liaised with Ms Thuli Zulu who was a transactor in – at ABSA in the corporate banking side focussing on state owned companies.

So early December I cannot remember the exact date I got a call from Ms Thuli Zulu and she asked – she was very confused because she said that Mr Anoj Singh had called her to explain the process of securing a guarantee on behalf of Tegeta of R1.6 billion. And because Eric – she thinks that I should know what is happening. I told her no I have absolutely no idea what you are talking about because ABSA had questions with regards to the latter of the guarantee because it is very strange for a state owned company to
10 provide to a private company. So the product specialist were very confused. So I went into Eric's office and I told – I am going into Mr Wood's office and I relate the conversation I had with Ms Thule Zulu. And he said no, I can sit in on the conference call.

So he called Ms Thule Zulu to schedule a conference call. And I think it happened within ten minutes. So I just sat in that conference call.

And so Eric had to essentially unpack the – how this guarantee was going to work. And they wanted us to provide
20 that guarantee and it was going to be on three months.

They had various questions, of course, because it is very strange, as I have eluded earlier, how does a state-owned company provide a guarantee to a private company?

Eventually, Eric was able to explain. And they were satisfied with his explanation.

Now it is quite interesting. One of the questions that Ms Thule Zulu asked was who were the shareholders of Tegeta? And Eric said no, he will revert back to Ms Zulu.

And so I asked Eric out of curiosity, after the conference call: Who are the shareholders of Tegeta? And he said no, it is Mr Duduzane Zuma. And he said I should not tell Ms Thule Zulu about that development.

ADV SELEKA SC: Yes.

MS MOTHEPU: So they get or after all the approvals, I
10 think the following week, and Mr Anoj Singh and the then
Treasurer, Ms Caroline Henry, signed the guarantee. And I
think it lapsed in April 2016.

ADV SELEKA SC: H'm.

MS MOTHEPU: Okay. So as I go to 37. So we were - in
January 2016, as – annually, each state-owned company has
to submit a corporate plan. And as I have eluded earlier,
part of the Corporate Plan is the Funding Plan. This is,
essentially, something that happens every year.

The Treasury submits this Funding Plan to the
20 shareholder and to National Treasury. So we were requested
by Mr Anoj Singh to assist Mr André Pillay in the Funding
Plan.

Something very strange happened because I got that
instruction on Friday, later afternoon. And Mr Singh wanted
this Funding Plan by Monday.

So it was quite – I did not understand how come I had to do a Funding Plan over the weekend. So I called Mr André Pillay and he had no idea about Mr Singh’s instruction for us as the consultant to draft this Funding Plan.

Because it is annually, it is performed by Treasury. So he had no idea that ...[indistinct] [00:03:42] had the Funding Plan, because I was trying to get an extension.

Eskom has, as I said, they – the finance between 70 and 80 billion rand per a year. And a Funding Plan, I think, goes
10 up to five years.

So over the weekend, we had to do a plan which was completely unreasonable. And what I later found that McKenzie knew all along but they did not tell us.

So when Anoj said: Guys, remember I am expecting a Funding Plan on Monday. Then Eric frantically called and said: You have to work over the weekend and do this Funding Plan. So my team and I worked over the weekend.

The team from Regiments’ side consisted of Eric Wood, Fahima Badat, Stephen ...[indistinct] and Tyrone Vanders
20 and Grant Joseph. Now we gave – we met the deadline.

I tried getting hold of Mr Singh but unfortunately he was not picking up. So, obviously... If we go to thirty – page 578. These were the points that we had to look at. So it is 37.1.

“In showing that there would sufficient cash

available to meet all of Eskom’s operational and capital requirements, credit rating considerations, funding sources, markets, investor appetite and concerns and financial risk management.”

So we submitted but obviously the quality of the Funding Plan was less to be desirable. So Anoj is not happy with the Funding Plan. So ...[intervenes]

ADV SELEKA SC: Sorry. Did, apart from Mr André Pillay for even including him, were you assisted by employees
10 within Eskom to come up with that draft?

MS MOTHEPU: Over the weekend, we worked alone.

ADV SELEKA SC: Yes.

MS MOTHEPU: And we submitted without the Treasury’s input. Because if you recall, Mr André Pillay ...[intervenes]

ADV SELEKA SC: Yes.

MS MOTHEPU: ...had no idea about the instruction to draft a Funding Plan by Monday. But when Mr Singh saw how – it was terrible. It was a terrible job. So he wrote and Mr André Pillay and his team, and we worked with my team and the
20 Treasury Team worked together.

ADV SELEKA SC: Oh, I see.

MS MOTHEPU: So eventually have ...[intervenes]

ADV SELEKA SC: Again?

MS MOTHEPU: Again.

ADV SELEKA SC: Again. [laughs]

MS MOTHEPU: Yes. [laughs]

CHAIRPERSON: I see we have done just over two hours.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Maybe we should have a short break.

ADV SELEKA SC: Indeed.

CHAIRPERSON: How long do you think we – you might still need with Ms Mothepu before she finishes?

ADV SELEKA SC: Chair, I am capable of shortening Ms Mothepu to 30-minutes but I know she wants to tell you
10 much more than... [laughs]

CHAIRPERSON: [laughs] Well, the important thing is that we strike an appropriate balance ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...between not spending more time than we should ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...on one witness. But also, ensuring that we do justice to the issues.

ADV SELEKA SC: Okay.

20 **CHAIRPERSON:** So that is the guiding principle.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let us take a short adjournment of ten minutes and then we come back.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay. I guess Mr Seleka, you must resume your role of leading Ms Mothepu.

ADV SELEKA SC: [laughs] Yes, Chair.

CHAIRPERSON: Do not allow her to lead herself.

ADV SELEKA SC: [laughs] Yes.

CHAIRPERSON: [laughs]

ADV SELEKA SC: She has already told me, she wants to
10 take one more hour. [laughs]

CHAIRPERSON: Yes?

ADV SELEKA SC: She says she wants to take one more
hour. [laughs]

CHAIRPERSON: [laughs] Was that a threat or a promise?
[laughs]

MS MOTHEPU: I have load-shedding at my house. So I
can be here all night. [laughs]

CHAIRPERSON: [laughs]

ADV SELEKA SC: Ja. [laughs]

20 **CHAIRPERSON:** Okay. Mr Seleka, please led then.

ADV SELEKA SC: Let me lead the witness. And Ms Bianca
Goodson is already here Chairperson.

CHAIRPERSON: Yes. Ja, let us ...[intervenes]

ADV SELEKA SC: Let us continue.

CHAIRPERSON: Without compromising on doing justice to

the important issues.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Let us not spend one more minute that we do not need to spend on her evidence.

ADV SELEKA SC: Yes.

CHAIRPERSON: But in the end, we must cover important issues.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay.

10 **ADV SELEKA SC:** Chair, earlier Ms Mothepu said, the issue of online vending came out yesterday, but that was two days ago. And let me refer the Chairperson to what Ms Mothepu is talking about in Eskom Bundle 18(b). Chair, and you have to look at that to – by reference to Bundle 14, page 573, which is the affidavit of Ms Mothepu.

CHAIRPERSON: Okay just repeat what you just said Mr Seleka.

ADV SELEKA SC: Yes. So the bundle now given to the Chairperson is 18(b), page ...[intervenes]

20 **CHAIRPERSON:** Yes?

ADV SELEKA SC: Page 1032.

CHAIRPERSON: Yes?

ADV SELEKA SC: Chairperson will see it is an email.

CHAIRPERSON: H'm?

ADV SELEKA SC: To Mr Matjila Koko.

CHAIRPERSON: H'm?

ADV SELEKA SC: It is dated Monday, 20 July 2015. It is addressed to info – well, sent to infoportal1@zoho.com

CHAIRPERSON: H'm?

ADV SELEKA SC: And the subject is: Top Engineers.

CHAIRPERSON: Top Engineers? Yes.

ADV SELEKA SC: Top Engineers. Yes, that is the first.

CHAIRPERSON: H'm?

ADV SELEKA SC: And the second email is page 1056. It is
10 also from Mr Matjila Koko, Saturday, 8 August 2015, also to infoportal.

CHAIRPERSON: What page?

ADV SELEKA SC: 1056.

CHAIRPERSON: Ja.

ADV SELEKA SC: An email from Mr Matjila Koko dated 8 August 2015 on Saturday and sent to infoportal, subject is: Online vending. And the message says – well, we do not know. There is no dear sir or whoever, the name. The message simple says:

20 "We did not finish our discussions about this transaction. This is what is going to the board on 18 August."

Now what Ms Mothepu referring to online vending, that came up during the testimony she was referring to this Chairperson.

CHAIRPERSON: So ...[intervenes]

ADV SELEKA SC: Then you go back to the affidavit.

CHAIRPERSON: So I guess on Mr Koko's version of who he says he was – he thought he was addressing these emails to.

ADV SELEKA SC: Yes.

CHAIRPERSON: We are supposed to take it that when he says this is what is going to the board of 18 August, he was telling the chairperson of the board ...[intervenes]

10 **ADV SELEKA SC:** Correct Chair.

CHAIRPERSON: ...what was coming to the board on the 18th of August.

ADV SELEKA SC: On the 18th of August 2015.

CHAIRPERSON: Yes, okay. Alright. You were referring me somewhere else as well.

ADV SELEKA SC: Yes, then we go back to Ms Mothepu's affidavit.

CHAIRPERSON: Yes.

ADV SELEKA SC: Page 573.

20 **CHAIRPERSON:** What was the point about page 1032? That is the email address from Mr Matjila Koko to infoportal to Regiments.

ADV SELEKA SC: Yes. Is that, apparent from these emails Chairperson.

CHAIRPERSON: H'm?

ADV SELEKA SC: There are – there is documents, Top Engineers, on the one hand, a pdf document. And on the other, Online Vending document, pdf document.

CHAIRPERSON: H'm?

ADV SELEKA SC: Which are exchanged with infoportal.

CHAIRPERSON: H'm?

CHAIRPERSON: Which are the part of the proposals made by Regiments which you will see in Mr Mothepu's affidavit.

CHAIRPERSON: Okay I am sorry. Just repeat that.

10 **ADV SELEKA SC:** Yes. So the documents exchanged in the two emails ...[intervenes]

CHAIRPERSON: Ja, that is one at 1032.

ADV SELEKA SC: Yes.

CHAIRPERSON: And the other one is at page – again, what page?

ADV SELEKA SC: 1056.

CHAIRPERSON: Yes.

ADV SELEKA SC: 1056.

CHAIRPERSON: The attachments?

20 **ADV SELEKA SC:** The attachments.

CHAIRPERSON: Ja.

ADV SELEKA SC: They form part of the proposal that Ms Mothepu is being talking about.

CHAIRPERSON: Yes.

ADV SELEKA SC: That Regiments is preparing for Eskom.

CHAIRPERSON: Okay yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: And so you see that on page 573
...[intervenes]

CHAIRPERSON: Yes.

ADV SELEKA SC: ...if we go back to Bundle 14.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja.

10 **CHAIRPERSON**: Okay. We then – now we go back to her affidavit.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: At what page in her affidavit?

ADV SELEKA SC: 573.

CHAIRPERSON: 573?

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes?

ADV SELEKA SC: It starts paragraph 16, one six.

CHAIRPERSON: H'm?

20 **ADV SELEKA SC**: So she says there:

“McKenzie and Regiments had submitted a joint proposal in the first quarter of 2015.

When McKenzie and Regiments were supposed to assist Eskom with Management Consulting Services under the Master Service Agreement, which included

cost savings on procurement, generation, primary energy and the establishment of Eskom's Top Engineering Programme.”

So the top engineers or the Top Engineering Programme is one which you see in the second – in the first email, the 10:32 email.

The Vending Online is in the next paragraph, paragraph 18 Chairperson, at 18.3 in particular which is part of the initiatives in regard to the Balance Optimisation and
10 Cash Unlocking.

So that Vending – Online Vending is what Ms Mothepu on page 575, paragraph 27 says was one of the additional transactions or initiatives added to the original proposal. It was added subsequently by Mr Matjila Koko and Mr Anoj Singh. Added initiatives that were originally not in the proposal and the first one is that Online Vending.

So the email show that this documents or initiatives in regard to some of these documents – or documents in regard to some of these initiatives would have been exchanged with
20 infoportal. One in July 2015 and the other one in August 2015.

So Ms Mothepu, you as Regiments were then also asked to do proposals on this very subject matters?

MS MOTHEPU: That is correct. And if you recall my last testimony. I said that Mr Salim Essa and Mr Kuben Moodley

were Regiments' business development partners. So they are the ones who essentially sourced these contracts with – from the state-owned companies under the umbrella of the Department of Public Enterprise.

And I am sure you have seen testimony that the bulk of the fees that Regiments earned from Transnet, from SAA Express, from SAA.

Probably, I would say, between 50 and 60% of it was paid in commissions to Mr Kuben Moodley and Mr Salim
10 Essa.

CHAIRPERSON: I wanted to say on a lighter note that Ms Mothepu is more reserved after the break than before. [laughs] Maybe it is because I said she was leading herself. [laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: Yes, continue Mr Seleka.

ADV SELEKA SC: Yes. I had to flex my muscles Chair.

MS MOTHEPU: [laughs]

ADV SELEKA SC: Ms Mothepu, you were taking us through
20 what you say are the services rendered by Regiments to Eskom and the first one was ...[intervenes]

CHAIRPERSON: Can I ask this question, please? Please, do not forget your question Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: Can I ask this question because I do not

want to forget it? You interacted with, among other people at Eskom, Mr Koko and Mr Anoj Singh in 2015 and 2016. In your interactions with them, are you aware of them using this email address infoportal?

And if you are aware, is there anything you can tell me which might throw light what their understanding would have been as to who they were communicating with?

MS MOTHEPU: Unfortunately, Mr Chairperson I cannot throw light because the first time I saw this infoportal, you
10 know, was at the Commission. So in my time at Regiments and my time at Trillian ...[intervenes]

CHAIRPERSON: Yes.

MS MOTHEPU: ...I never used that.

CHAIRPERSON: Yes.

MS MOTHEPU: And even in my correspondence ...[intervenes]

CHAIRPERSON: You never ...[intervenes]

MS MOTHEPU: ...nobody ever copied that email.

CHAIRPERSON: Ja, okay alright. Continue Mr Seleka.

20 **ADV SELEKA SC:** Thank you, Chair. Was Mr Salim Essa part of Regiments?

MS MOTHEPU: No, he was not part of Regiments. He was the business development partner. So he was the guy who sourced the contract with the state-owned companies and he would earn a commission. So he was not formally part of

Regiments, not was Mr Kuben Moodley. So he did not have ...[intervenes]

ADV SELEKA SC: Oh, so the business developer partner sourcing work for Regiments?

MS MOTHEPU: That is correct.

ADV SELEKA SC: And this work we are now talking about, do you know whether or not it would have been sourced by him?

MS MOTHEPU: I suspect so.

10 **ADV SELEKA SC:** So you do not know for sure?

MS MOTHEPU: I do not know for sure.

ADV SELEKA SC: Well, you got in the middle of it?

MS MOTHEPU: That is correct. But if you look at the Transnet model. I earlier mentioned that Regiments was paid R 190 million for negotiating the China Development, that 2.5 billion Dollar loan. About 60% of that money went to Mr Essa.

20 So if you – typically that model, it was going to attract(?) now a trillion(?). He was no longer a supply development partner. He was now a 60% shareholder.

So what – when Trillian was paid those dividends and the money were flowed to him as a majority shareholder.

ADV SELEKA SC: Yes. Ms Mothepu, you – in additional to the Funding Plan, you have already mentioned, is one of the services you rendered, even though you were put under

pressure and your draft was trashed. You mentioned six more initiatives that you worked on, on page 578 to 579.

You could in a nutshell just tell the Chairperson what are those projects or initiatives, whatever you call them, and who at Eskom you worked with, if at all you worked with, in terms of giving you instructions and working together in the rendition of the services.

MS MOTHEPU: Thank you. Before I proceed. May I please have another bottle of water? Okay. Let us go to page
10 ...[intervenes]

CHAIRPERSON: I think probably give her two.

MS MOTHEPU: Yes, please.

CHAIRPERSON: [laughs] Because I observe that she drinks water quite frequently. Yes?

MS MOTHEPU: Yes, my mouth gets dry when I am nervous.
[laughs]

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

MS MOTHEPU: [laughs]

20 **CHAIRPERSON**: Okay alright.

MS MOTHEPU: Okay so we are on page 578. We are on paragraph 38. Analyses of China Development Bank, 500 million Loan Facility.

So Anoj sent us a proposal. I mean, Mr Singh sent Regiments through Erich Wood, Mr Eric Wood a proposal of

500 million US Dollars that the China Bank Development had made to Eskom.

And obviously, it was – there was an interest rate attached to it. So he asked my team to review if it was competitive. As I said, the Treasury at Eskom could easily do this ...[intervenes]

CHAIRPERSON: Well, I was to ask the question because I see at paragraph 38, you say your team assisted Anoj Singh and André Pillay. And I wondered whether they – you
10 assisted them or they - Mr André Pillay assisted you.
[laughs]

ADV SELEKA SC: [laughs]

MS MOTHEPU: At least, at this particular point – remember I said there were two areas that we were expert at.

CHAIRPERSON: Yes.

MS MOTHEPU: So this is funding, but I can say that his Treasury Team at Eskom could have easily ...[intervenes]

CHAIRPERSON: Could have done the job.

MS MOTHEPU: ...done the analyses.

20 **CHAIRPERSON:** Yes.

MS MOTHEPU: ...because then you would Eskom's average cost of funding was.

CHAIRPERSON: Yes.

MS MOTHEPU: And then compare it to what the China Development Bank had proposed.

CHAIRPERSON: Yes. Ja.

MS MOTHEPU: So this was not anything complex or difficult.

CHAIRPERSON: Ja. And of course, when something like this is done, namely, bringing in outside service providers to do something that can be done by people who are employed full time, who are paid to do that kind of job.

One, is just an unnecessary duplication but actually the company, the entity effectively pays for work that pays
10 outsiders for work that it has already paid the people who are employed on a full time basis to do that job.

MS MOTHEPU: Precisely Mr Chairperson.

CHAIRPERSON: H'm, h'm. Yes, continue.

MS MOTHEPU: So from ...[intervenes]

ADV SELEKA SC: Chair, there is one observation from what she said about business development partner. That infoportal was called Businessman. So there seems to be this – now the connection why Businessman is Businessman. Because he was developing business partner.

20 **CHAIRPERSON:** Yes, I... But is the position not that Businessman was the name and infoportal was the email address?

ADV SELEKA SC: Correct.

CHAIRPERSON: That was used by Businessman.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: It is just that sometimes there was no – there would no reference to Businessman, the emails.

ADV SELEKA SC: Yes.

CHAIRPERSON: Sometimes. But the email address would be there.

ADV SELEKA SC: Yes.

CHAIRPERSON: But Businessman did not use any other
10 email address, is that correct?

ADV SELEKA SC: Not as far as we have ...[intervenes]

CHAIRPERSON: As we know so far.

ADV SELEKA SC: Yes.

CHAIRPERSON: So... Ja, okay. Okay.

ADV SELEKA SC: So it is not far from him, his designation as a business development partner. And they will explain why he is called Businessman.

CHAIRPERSON: Yes.

MS MOTHEPU: In addition, if I can just assist the
20 Chairperson? I was contacted by Fundudzi investigators while they were doing their investigation on Eskom and Transnet.

And they also asked me this question with regards to, do I know who the owner of that account was. And they showed me an email.

I think it was from Minister Lynne Brown's PA and she started saying: Dear Salim. So I saw that but obviously, I gave them the same response that I gave you.

CHAIRPERSON: Yes.

MS MOTHEPU: That I never used the email.

CHAIRPERSON: Yes, I think we have seen that.

ADV SELEKA SC: We have Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: I referred to it, ja.

10 **CHAIRPERSON**: Ja, okay.

ADV SELEKA SC: Okay. Well, Chair if I lead the witness ...[intervenes]

CHAIRPERSON: Yes, please.

ADV SELEKA SC: So you ...[intervenes] ‘

CHAIRPERSON: But let – that email address from Minister Brown's PA address to Salim and using the infoportal email address. Was it not quite recent when there was evidence about it here? Or was I just reading it that email outside of the hearing?

20 **ADV SELEKA SC**: Ja. I know we have relied on it insofar as it is in the Fundudzi Report.

CHAIRPERSON: Ja.

ADV SELEKA SC: And it is to that extent that we have put that to the witnesses.

CHAIRPERSON: Ja.

ADV SELEKA SC: The email itself Chairperson, I do not think it is of – when you say recent Chair, would you have 2020 in mind?

CHAIRPERSON: No, no, no.

ADV SELEKA SC: No, not ...[intervenes]

CHAIRPERSON: Actually, I was – well, it could be 2021 or 2020, December/November. But it may be that it is not something that came up at the hearing. Maybe I was – I came across it outside of the hearing.

10 **ADV SELEKA SC:** Ja, okay.

CHAIRPERSON: Will somebody just try and chase that email please, again?

ADV SELEKA SC: Yes.

CHAIRPERSON: To see where it is. So, it was against an email from Ms Davids who was the Executive PA to Minister Brown.

ADV SELEKA SC: Yes.

CHAIRPERSON: And it goes to the infoportal address and it says: Dear Salim.

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

CHAIRPERSON: Ja, it is fresh in my mind.

ADV SELEKA SC: Ja. I know that the Fundudzi Report is of July 2019.

CHAIRPERSON: H'm?

ADV SELEKA SC: There are two reports but we will check

for Chairperson.

CHAIRPERSON: Ja, okay alright. Yes, continue.

ADV SELEKA SC: Yes.

MS MOTHEPU: Thank you.

CHAIRPERSON: Thank you for mentioning that you saw that as well.

MS MOTHEPU: It is a pleasure Mr Chairperson. So as I said, we assisted Mr Anoj Singh with a comparison and we gave him advice. Point(?) 9: Analyses of Goldman Sachs 30 billion loan facility.

So Goldman Sachs - I am not sure if Regiments had introduced Goldman Sachs to Mr Singh and Eskom or if Gorman Sacks had already had a relationship with Eskom and Mr Singh. And Regiments was brought in. So that I am not clear about.

ADV SELEKA SC: H'm.

MS MOTHEPU: But once Mr Singh was appointed, the CFO, we were – we had to work alongside Goldman Sachs. They had proposed a R 30 billion loan facility. And we, essentially, had to analyse the proposal, the quantum, the interest rate. Is it comparable again. And from Regiments' side it was Mr Eric Wood. It was Ms Fahima(?) Bedat(?) [00:24:05] And on Eskom's side, was Mr Singh and Mr André Pillay.

ADV SELEKA SC: So who is providing a loan, Gorman

Sacks to Eskom?

MS MOTHEPU: Pardon?

ADV SELEKA SC: Who is providing a loan?

MS MOTHEPU: It is Goldman Sachs.

ADV SELEKA SC: To Eskom?

MS MOTHEPU: To Eskom. A R 30 billion loan facility.

ADV SELEKA SC: Yes.

MS MOTHEPU: Yes.

ADV SELEKA SC: And the next is Online Vending.

10 **MS MOTHEPU**: The next is Online Vending.

ADV SELEKA SC: And I am going to lead on that which is – you say, on the part of Eskom Mr Anoj Singh was there and Mr Prinesh Govender and Mr Eduard Mabelane and Mr Matjila Koko. Your team assisted Eskom on this Online Vending. What does that entail, Online Vending? Can you recall?

MS MOTHEPU: About 20% of Eskom's capital are on pre-paid electricity. So Eskom had a lot of suppliers, like Pick 'n Pay, Shoprite, Checkers and some of the petrol stations. So
20 it had a lot of supply agreements with these vendors. It wanted to reduce the administration of dealing with so many vendors and have a master vendor.

And this master vendor would essentially be contracted to Eskom. And then he – this master vendor would now sub-contract the other vendors. And this was part of the Cash

Unlocking Initiatives because they said that master vendor had now the capacity.

I think either via a bank guarantee to buy the entire year worth of pre-paid at once. And then it distributes that to the other vendors. So that is what is what Online Vending was.

ADV SELEKA SC: Did you achieve all this? Did you successfully assist Eskom achieve what you were tasked to do here?

MS MOTHEPU: I think they eventually – I think Blue Label
10 was eventually awarded the contract as the master vendor but it was, I think, a year or two after I had left Trillian.

ADV SELEKA SC: Chair, Blue Label. You would recall that name.

CHAIRPERSON: What is the name?

ADV SELEKA SC: It is related to ...[intervenes]

MS MOTHEPU: Mr Mark Pamensky who was a board member at Eskom.

CHAIRPERSON: Pamensky?

MS MOTHEPU: Mark Pamensky.

20 **CHAIRPERSON:** Ja, I remember him.

MS MOTHEPU: Yes.

ADV SELEKA SC: He was employed at Blue Labels.

CHAIRPERSON: He was – he recused himself in board meetings when it came to certain matters because ...[intervenes]

ADV SELEKA SC: Correct.

CHAIRPERSON: ...he had some relationship with either Trillian or Regiments or Salim Essa or the Gupta's.

ADV SELEKA SC: It was Tegeta by the time the pre-payments decision.

CHAIRPERSON: Ja, ja.

MS MOTHEPU: Mr Mark Pamensky was supposed to be the CEO of Trillian Property.

ADV SELEKA SC: Do not ...[intervenes]

10 **MS MOTHEPU:** And he had a ...[intervenes]

ADV SELEKA SC: Do not mention ...[intervenes]

MS MOTHEPU: Oh, sorry. I... Sorry. Apologies. I did not mention it.

ADV SELEKA SC: [laughs]

MS MOTHEPU: Okay sorry.

ADV SELEKA SC: I just wanted to tell the Chairperson how Blue Label has been mentioned here.

MS MOTHEPU: Yes.

20 **ADV SELEKA SC:** And then you have three more projects you worked on. On page 579, Eskom Finance Company, in respect of which you say from Eskom's side, the team was Mr Matjila Koko, Mr Prinesh Govender, Mr Anoj Singh. You rendered services there. You mentioned also, from your side, who was present.

Next paragraph is Duvha Three Power Station Insurance.

Again, from Eskom's side, Eskom executive – the last sentence in that paragraph:

“Responsible for this transaction, comprised of, were Mr Anoj Singh, Jackie Kelani and Mr Matjila Koko.”

Is Jackie there, Miss or Mister?

MS MOTHEPU: It is Miss and she was Head of Eskom Insurance.

ADV SELEKA SC: Yes. Then the last one which is the
10 seventh of – in the list, is Insurance Claim Management in relation to Hitachi Settlement Offer. Eric Wood and Faheem Badat advised Eskom on the Hitachi Settlement offer. You did not take part in that one?

MS MOTHEPU: Not at all, no.

ADV SELEKA SC: No. Now some of this – you have not located some of these projects and services rendered by Regiments in respect of the time or date when they were rendered. Can you indicate to the Chairperson, when does this get to be done? Is it from November, as you said
20 ...[intervenes]

MS MOTHEPU: It ...[intervenes]

ADV SELEKA SC: 2015, to which date?

MS MOTHEPU: The majority of them started October – well, I say November 2015. And they continued onto, as Regiments. And then on the 1st of March, they continued

onto Trillian. But what was finalised, I think, was the Duvha Three Claim. That did not continue after the 1st of March. We had completed the Goldman Sachs 30 billion at Regiments, and the 500 million Dollar China Development Facility. The others moved onto Trillian after the 1 March 2016.

ADV SELEKA SC: Yes. Okay, I understand later in your affidavit you deal with the denials by Eskom officials that they had – you can tell the Chairperson about those
10 denials.

MS MOTHEPU: Do you want us to go into detail now or later on?

ADV SELEKA SC: Not into details.

MS MOTHEPU: Okay.

ADV SELEKA SC: But because we have covered this part I think it is rather than just to say to the Chairperson this is how Eskom officials and which ones have denied that you have rendered services.

MS MOTHEPU: Okay. Mr Chairperson, if you recall my
20 testimony last December I said my statement was leaked to the Sunday Times and what I told the then Public Protector Thuli Madonsela was that Eskom paid Trillian without a contract and I listed these transactions that we assisted them on. After that Sunday Times revelation a lot of the media started calling Eskom spokesperson asking them to

comment on the revelations that I had made.

So the Eskom stance was Eskom did not have a contract with Trillian or Regiments and we did not – and neither Regiments nor Trillian assisted them on the Duvha 3 claim, the Hitachi, the China Development Bank loan and I think Goldman Sachs.

So we were denied like I guess Peter denied Jesus three times, so we were completely denied, yes. And what subsequently happened was ...[intervenes]

10 **CHAIRPERSON:** Did not know what was the explanation of why payment had been made?

MS MOTHEPU: Unfortunately, when the Sunday Times leaked my story, they did not have my supporting documentation to that is why Eskom was able to just do a blanket denial. It was only after Mr Segwale, who was the Chairperson of Trillian, appointed senior counsel Geoff Budlender that I had sight of these emails and he eventually did vindicate my allegations, thank God, that there was no truth what Mr Singh had said to his
20 spokesperson that indeed there was no contract, which was factually correct, plus we did assist them in those transactions and he said they have not paid Trillian a cent. Which is true. They had paid Trillian R595 million and which he denied.

What subsequently happened was that a member of

the DA, Ms Natasha Mazzone, laid a complaint to the Public Protector that Ms Brown had misled parliament because after this confusion the DA MP needed clarity because she had asked Ms Lynne Brown can you please give us a comment or an explanation with regard to the contract between Trillian and Eskom and how much money has been paid.

So Ms Brown went to Eskom, obviously Mr Anoj Singh, and his response was there was no contract and
10 there was no payment. So eventually the Public Protector found that Ms Lynne Brown had inadvertently misled parliament.

ADV SELEKA SC: Yes, no.

CHAIRPERSON: Okay.

ADV SELEKA SC: I recall Mr Anoj Singh being asked about that at the parliamentary Portfolio Committee. So those are the – the projects, your rendered services, some of them seemed to have been shady services, others you think you were experts on.

20 **CHAIRPERSON:** Okay...

ADV SELEKA SC: Payments were – I do not know where payments, maybe you could tell the Chairperson because what we see from the evidence is that payments, most of the payments were made from August 2016. I know that you by that time had left. You resigned 31 May.

MS MOTHEPU: My last day at the office was 31 May but I resigned on the 22 June 2016.

ADV SELEKA SC: June 2016.

MS MOTHEPU: Yes.

ADV SELEKA SC: Okay, so still those payments postdate you, postdate your resignation.

MS MOTHEPU: The only payment that was made was R30.6 million payment for the corporate plan, the funding plan. There was a – I think – I am not sure if there was a
10 contract but McKinsey was paid 70 million to assist Eskom to draft a funding plan and Regiments got 30 million, so that is 70/30 split, once again. Ms Goodson will -, I think also I her testimony she will provide the Commission with evidence as to if work was indeed done by Trillian on that corporate plan or not.

ADV SELEKA SC: Does that relate to the first of the seven items you have listed, which is the Eskom plan?

MS MOTHEPU: That is correct.

ADV SELEKA SC: That payment of 30.6 million?

20 **MS MOTHEPU:** Yes, yes.

ADV SELEKA SC: And you had drafted the funding plan over the weekend, it was found to be not up to scratch.

MS MOTHEPU: One thing...

ADV SELEKA SC: And you got 30.6 million.

MS MOTHEPU: We – yes.

ADV SELEKA SC: Well, not you personally, I am saying Regiments.

MS MOTHEPU: Trillian.

ADV SELEKA SC: Ja, tell the – who got paid, by the way?

MS MOTHEPU: The work was done at Regiments but Trillian got paid, that is why the former partners, Mr Nitha Nyhonyha and Mr Niven Pillay sued Mr Eric Wood for essentially Regiments did the work and then Trillian got
10 paid. Mr Chairperson, if I can be indulged before I go into – can we go back to the section I missed, I think it is quite important.

ADV SELEKA SC: Dentons report?

MS MOTHEPU: The Dentons report.

CHAIRPERSON: Yes, okay.

MS MOTHEPU: So I think from me – so this is page ...[intervenues]

CHAIRPERSON: Is that on page – okay?

MS MOTHEPU: 576.

20 **CHAIRPERSON:** Yes.

MS MOTHEPU: 31, Dentons report. Yes, so in October 2015 Eric – Mr Woods gave me a call and he wanted me to meet Mr Singh at his offices. He did not tell me what the purpose of the meeting was, so we – it was quite late in the afternoon. So we had a meeting with Mr Anoj Singh,

Mr Eric Wood and myself and he – Mr Singh gave me a copy of the Dentons report and he asked me if I can make an executive summary on Dentons' findings on the Treasury department. Once again I was given 24 hours to do this. Yes. So I went back to my office and I ...[intervenes]

CHAIRPERSON: Sorry, you were asked to do what with regards to ...[intervenes]

MS MOTHEPU: To essentially look at the Dentons report.

CHAIRPERSON: Ja?

10 **MS MOTHEPU:** But only focus on his findings in relation to the Treasury department because there was a section on auditing.

CHAIRPERSON: Ja.

MS MOTHEPU: There was a section on procurement, there was a section on primary energy, new build, so he wanted just me to focus on the Treasury area.

CHAIRPERSON: Ja, okay. H'm.

20 **MS MOTHEPU:** So I went home and I read the Dentons report and started to make notes. So if we go to page 588.180.

CHAIRPERSON: Just repeat the page?

MS MOTHEPU: 588.180.

CHAIRPERSON: Yes?

MS MOTHEPU: So this was my executive summary of the events that Denton – so I am assuming that Denton

interviewed the Treasury officials so I made an executive summary for Mr Singh, as requested and so one of – I will just highlighted some of the areas that I looked at, the fact that Treasury had alerted I think National Treasury that they were going to run out of funds and that did not happen so that is why it is called even cry wolf and essentially, the report says that had Treasury had sufficient forecasting capability they should have known that because of the delays in Medupi and Kusile, the
10 inefficient cash would not come through. So those were one of the factors, that they lacked forecasting capabilities.

Another one was, after the downgrade, Eskom issued a dollar denominated bond and the interest rate was very high. Of course it had to be because it was reflective of a downgraded credit rating and there was nothing Treasury could have done about it and so I made – I think in your own time you can just read the other things I have made but what is particularly concerning is that
20 after I submitted this – now I am on paragraph 34 on page 577, that I submitted this report to Mr Singh.

And then Mr Eric Wood eventually told me that Mr Singh wanted to – he used this report, amongst other things, to negotiate an exit package for the treasurer, Ms Caroline Henry, and her thing was, she did not want to

work with Regiments.

So, as we have seen, that part of state capture is essentially you ask an official with integrity to do something that is not within the prescripts or policy and if they refuse then you offer them an exit package.

CHAIRPERSON: Ja, well sometimes you do not have to ask them, let them refuse. If you know that they are people who will not cooperate with your agenda, you try and have them pushed out without asking them to do
10 anything because you know they will not agree.

MS MOTHEPU: That is correct. So Ms Henry's sin was that she did not want to work with Regiments. In addition, ...[intervenes]

CHAIRPERSON: What was Ms Caroline Henry's position?

MS MOTHEPU: She was Group Treasurer at Eskom.

CHAIRPERSON: Group Treasurer would be immediately below the CFO?

MS MOTHEPU: Yes, she reported directly to the CFO, Mr
20 Anoj Singh.

CHAIRPERSON: That is Anoj Singh. Oh, okay.

MS MOTHEPU: So in addition to that, Eric also – Mr Wood also said Mr Singh is putting undue pressure on Mr Andre Pillay so that he will rely on Regiments more and if – so he ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, Ms Mothepu, please do not forget what you wanted to say. I do not want us to leave this without me understanding this correctly. Now what you say in paragraph 32 of your affidavit about what Mr Wood told you with regard to ...[intervenes]

MS MOTHEPU: Mr Chairperson, can you please speak into the microphone? So I need to hear.

CHAIRPERSON: Oh, you cannot hear me.

MS MOTHEPU: Yes.

10 **CHAIRPERSON:** Okay. Usually my voice is very loud and quite audible so I am not used to people not hearing my voice.

MS MOTHEPU: No, I have – I may be young but I think I have the hearing of a 65 year old.

CHAIRPERSON: Okay. Paragraph 32. You say Mr Wood told you that Ms Caroline Henry had resisted working with the Regiments OTCP team and the first thing Mr Anoj Singh when he was officially appointed at Eskom was to find ways to get rid of her. My question is whether you were
20 being told this after the event, in other words after Ms Henry had been got rid of or were you being told this before the event?

MS MOTHEPU: It was after the event.

CHAIRPERSON: It was after the event.

MS MOTHEPU: Yes so Mr Singh had negotiated an exit

package with Ms Henry.

CHAIRPERSON: Yes.

MS MOTHEPU: And Mr Singh was now acting Treasurer and ...[intervenes]

CHAIRPERSON: So he was acting Treasurer and CFO at the same time.

MS MOTHEPU: That is correct, Mr Chairperson.

CHAIRPERSON: Yes. And you were saying that Mr Wood told you that Mr Singh had used the Dentons – what was
10 said in the Dentons report to get rid of Ms Henry.

MS MOTHEPU: As ammunition. I think he had other ...[intervenes]

CHAIRPERSON: There may have been other things.

MS MOTHEPU: Yes.

CHAIRPERSON: But this was one of them.

MS MOTHEPU: Yes, this was one of them, correct, Mr Chairperson.

CHAIRPERSON: Yes. Okay, alright, you can continue.

MS MOTHEPU: Yes. So I was saying that he – Mr Woods
20 continued to say the reason why Mr Anoj Singh puts excess pressure on Mr Andre Pillay was to ensure that he relies on external consultants to assist him. So he wanted to see how Mr Andre Pillay was amicable to work with Regiments, then Trillian, and if he passed the test, I remember that, then he would be appointed Treasurer. But this is by no way of

implicating Mr Andre Pillay, he was not involved in any of the contracting agreements, he was just following his superior's instructions to involve us in the transactions.

ADV SELEKA SC: Sorry, Ms Mothepu, the executive summary that you have referred the Chairperson to on page 588.180, it has some information that seems to have a bearing on the suspension of the executives. I see the first reference under March 2015.

MS MOTHEPU: Can you please repeat your comment or
10 question?

ADV SELEKA SC: Well, I would like to explain your executive summary insofar as it relates to entries under March 2015.

MS MOTHEPU: Oh, I see.

ADV SELEKA SC: Yes.

MS MOTHEPU: Okay, yes. So March 2015.

ADV SELEKA SC: Yes.

MS MOTHEPU: Mr Chairman, are you there?

CHAIRPERSON: Page 588 point what?

20 **ADV SELEKA SC:** 180.

MS MOTHEPU: 180.

CHAIRPERSON: 180, yes.

MS MOTHEPU: Okay, so March 2015 suspension and later the removal of ...[intervenes]

CHAIRPERSON: Let me get this right. Is this executive

summary from the Dentons report?

MS MOTHEPU: Yes, the ones that I put together.

Remember there was a Dentons report?

CHAIRPERSON: Your executive summary of the relevant portion of the Dentons report.

MS MOTHEPU: Yes, that related to Treasury.

CHAIRPERSON: Ja, okay, alright.

MS MOTHEPU: So in March 2015, suspension and later
the removal of the CFO – I mean CEO, pardon me, and
10 three executive, senior executives. So if we move to the
right:

“Standard and Poor downgraded Eskom’s credit
rating. Senior management suspensions. Eskom
board’s decision regarding suspension of the
company CEO and three senior executives led S &
P, now that is Standard and Poor, to have less
confidence in the company’s corporate governance
arrangements as well as in its standalone credit
profile. Subsequently, Eskom’s international rating
20 was downgraded to BB+ from BBB-. The national
scale rating ZA/ZA-2 from ZAAA-/ZA-1. The
downgrade reflected reassessment of Eskom’s
management and corporate governance to weak
from fair.”

ADV SELEKA SC: I see, go to the very last?

MS MOTHEPU: So Liquidity.

“Standard and Poor’s less than adequate assessment of Eskom’s liquidity reflected the pressure that Eskom faced at the time, negative working capital, high capital expenditures and relatively high dependence on uncommitted sources of funding to support its debt maturity profile.”

ADV SELEKA SC: So this executive summary is an executive summary ...[intervenes]

10 **CHAIRPERSON:** Just one second, Mr Seleka?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Do not forget your next question.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: I think we need to talk about what is going to happen because you said Ms Goodson is already here?

MS MOTHEPU: She is, yes, Chair.

CHAIRPERSON: And there was to be another witness for the evening originally or not?

20 **ADV SELEKA SC:** Not today.

CHAIRPERSON: Not today?

MS MOTHEPU: Not today, Chair.

CHAIRPERSON: Okay. How long would you expect Ms Goodson to be?

MS MOTHEPU: She needs about three to four hours,

Chair.

CHAIRPERSON: Ja. Okay, I am wondering whether we should not rearrange if – because I see we are at nearly quarter to six now...

ADV SELEKA SC: Yes.

CHAIRPERSON: ...with Ms Mothepu. What is your estimate of how much time you still need with her?

ADV SELEKA SC: With Ms Mothepu?

CHAIRPERSON: H'm.

10 **ADV SELEKA SC:** Ms Mothepu is unpredictable, Chair.

CHAIRPERSON: That is because you are not leading her properly. If you lead her properly she will be controllable. So ...[intervenes]

ADV SELEKA SC: We should finish within 30 minutes, hey? Yes.

CHAIRPERSON: Ja, well I was hoping 15 minutes.

ADV SELEKA SC: Oh.

CHAIRPERSON: But – so it may well be – it seems to me that maybe we should consider making fresh
20 arrangements with regard to Ms Goodson and if we are going to do that, we may as well do that now so that she can be excused.

ADV SELEKA SC: Yes.

CHAIRPERSON: Next week I do not think that there are any evening sessions that I have approved and if she

would be available we could look at her coming in next week, one of the evenings, starting from four o'clock. Do you want to check how she feels about that or is she legally represented?

ADV SELEKA SC: She is represented by the same attorney, Mr Daniel Witz.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: So fortunately.

CHAIRPERSON: What – how does that sound? Ja, they
10 should just sanitise or otherwise – ja. Ja.

MR WITZ: Chair, I confirm that I represent Ms Goodson as well. We are flexible with time and we will fit in with the Commission and the Chair's time next week regarding an evening session. So you let us know when she needs to be here and she will be here.

CHAIRPERSON: Oh, excellent. No, thank you very much. Why do we not try and fix that now? Let us say we can – she can come and give evidence on Tuesday four o'clock if that is fine with everybody. Is that fine? That is fine.

20 **ADV SELEKA SC:** They are nodding, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, let us say that she will come on Tuesday next week four o'clock. There might be, depending on a lot of things, there might – we might end up starting

with her at five but at least if she is here at four. If we are able to start at four we can start at four. So otherwise then if she wishes to be excused now, she is excused.

ADV SELEKA SC: Okay, thank you, Chair.

CHAIRPERSON: Okay, alright. Okay. Okay, let us continue then with Ms Mothepu.

ADV SELEKA SC: Yes. Ms Mothepu ...[intervenes]

CHAIRPERSON: This is not a licence that we can take more than we should.

10 **ADV SELEKA SC:** Correct.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Ms Mothepu, you are ready, ja. I was asking you the executive summary which is here contained in this document we are looking at. It is not an executive summary you created.

MS MOTHEPU: It is the executive summary that I created.

ADV SELEKA SC: Okay, you created it?

MS MOTHEPU: Yes. So I got the Dentons report.

ADV SELEKA SC: Yes.

20 **MS MOTHEPU:** I read through the Treasury area.

ADV SELEKA SC: Yes.

MS MOTHEPU: And I put together that executive summary.

ADV SELEKA SC: I see.

MS MOTHEPU: So my sources of information was the

Dentons report.

ADV SELEKA SC: I see.

MS MOTHEPU: In addition was the Standard and Poor and Moody's credit rating as well.

ADV SELEKA SC: Yes.

MS MOTHEPU: Yes.

ADV SELEKA SC: So what are you trying to convey with the information you are presenting in this executive summary? What are you trying to convey?

10 **MS MOTHEPU:** I was just asked to do it.

ADV SELEKA SC: Yes.

MS MOTHEPU: And essentially he wanted to see what were the challenges at Treasury, what findings did Dentons find so that he can essentially close any of those gaps and challenges.

ADV SELEKA SC: So, for instance, this is my question, when you are dealing with the suspension of the executives, later removed three of the senior executives, the downgrade of Eskom and I think you repeat again the
20 suspension of the three executives. What is the message you are conveying here? Is this – are you identifying this as problem areas in Eskom or just facts that happened historically, or what?

MS MOTHEPU: It was to provide background and context because one of the – I think one of the alarms that

Dentons report had said was Eskom's higher cost of funding and, of course, you cannot divorce that from the fact that the reason why they raised a bond at higher interest rate was because of the credit rating downgrades. So I needed to go back why they downgraded, it was because of the suspension of the managers.

ADV SELEKA SC: Yes. If you go to the next page please, 588.181. There are conclusions there and possible remedial action. That is the heading of those entries. Are
10 those your conclusions?

MS MOTHEPU: So thank you for saying that. I gave this executive summary to Mr Wood and he is the one who drew up the conclusions and possible remedial action. So that is Mr Wood's – these bullet points are Mr Wood's conclusions.

ADV SELEKA SC: Okay.

CHAIRPERSON: So is the position that your summary, executive summary, starts and ends at page 588.180?

MS MOTHEPU: That is correct, Mr Chairperson.

20 **CHAIRPERSON:** And then what appears at page 588.181, that is conclusions and possible remedial action, that was what Mr Wood wrote.

MS MOTHEPU: That is correct, would like me to...?

ADV SELEKA SC: Well, read them.

MS MOTHEPU: Read them? Or will you read them, Mr

Evidence Leader.

CHAIRPERSON: Ja, ja, read them.

ADV SELEKA SC: Oh, I will read them for her, Chair.

The first bullet says:

“The above chain of events...”

The above chain of events, what does that refer to? Is that the executive summaries?

MS MOTHEPU: Yes.

ADV SELEKA SC: The facts outline there?

10 **MS MOTHEPU:** Yes, this chain of events.

ADV SELEKA SC: That chain of events.

MS MOTHEPU: Yes.

ADV SELEKA SC:

“The above chain of events places question marks about the ability of Eskom’s Treasury sound judgment.”

So that includes the supplier of the executives because it is part of the chain of events, the downgrade as a result.

MS MOTHEPU: Not necessarily the...

20 **CHAIRPERSON:** Ja.

MS MOTHEPU: Ja, because Treasury had nothing to do with the decision to suspend but they were a recipient of a higher cost of funding.

ADV SELEKA SC: I see.

MS MOTHEPU: Yes.

ADV SELEKA SC: And then the next bullet point, it says:

“As a direct consequence of poor judgment of Eskom Treasurer, a series of irreversible consequences places Eskom in unattainable position going forward.”

Oh, so I remember your explanation. So your explanation was this document was used in order to get rid of Ms Caroline Henry.

MS MOTHEPU: That is correct, Mr Chairperson.

10 **ADV SELEKA SC:** Oh.

CHAIRPERSON: This unatenable position I guess should have been untenable.

MS MOTHEPO: It was drafted by Mr ...[indistinct] so okay I will ...[indistinct – laughing] on his behalf.

CHAIRPERSON: [laughing] it can't be unatenable.

MS MOTHEPO: Yes.

CHAIRPERSON: He must have intended, whatever he had in mind it should have been untenable, not unatenable. Okay.

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

CHAIRPERSON: Just before you proceed, just for the record is the position that after Mr Wood had written his conclusions and possible remedial action he made that part of the document that contained your executive summary?

MS MOTHEPO: That is correct.

CHAIRPERSON: So it was one document?

MS MOTHEPO: It was one document in a Power presentation form so this was the last slide.

CHAIRPERSON: Yes, ja, okay, alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Chairperson I am not going to read further in this document, it ends on page 186, that is 55 ...[intervenes]

10 **CHAIRPERSON:** I am sorry your voice has gone down?

ADV SELEKA SC: Sorry Chair, I was saying I am not going to read an further, the document ends on page 588, point 186.

MS MOTHEPO: The other ...[intervenes]

CHAIRPERSON: But I think you can conclude, you can just do those conclusions, and ...[indistinct] is it not – the conclusions and possible remedial action do they go beyond 588, point 181?

MS MOTHEPO: If I can just add clarity.

20 **CHAIRPERSON:** Ja.

MS MOTHEPO: This one starts on page 588 point 182, no that was a draft, so what we are seeing on page 588 point 180 to 181 was the final document that Mr Woods sent to Mr Woods so the other ones were a draft.

CHAIRPERSON: Yes, I think you have read the first two

bullet points Mr Seleka, I think you must read the last three, then conclude – that concludes the conclusions and remedial section of the – remedial action section of the document.

ADV SELEKA SC: Ja, the third bullet point reads:

10 “In addition consistent issues are raised by investors, National Treasury Department of Public Enterprise regarding a lack of timely information and lack of with the required and necessary level of depth.”

Next bullet point ...[intervenes]

CHAIRPERSON: One second, “in addition consistent issues are raised by investors Enterprises regarding a lack of timely information and lack of with the required and necessary level of ...”, yes do you understand the whole of that sentence?

20 **MS MOTHEPO:** My interpretation is that there is concern with regards to the first of all information is not timeously, is not timeous from either National Treasury, Investors or the Department of Public Enterprise, it lacks the required level of depth, so maybe it is not enough, it doesn’t go into sufficient detail to satisfy the investors and the shareholder.

CHAIRPERSON: Yes, but at least if you are going to criticise somebody else get your own act together.

MS MOTHEPO: I hope you call Mr Woods.

CHAIRPERSON: [laughing] well if he can be found.

MS MOTHEPO: I know where he lives.

CHAIRPERSON: Oh, okay. Don't say then the investigators note that, I mean consistent issues I actually think he must have meant same or same issues were being raised consistently, not consistent issues.

ADV SELEKA SC: Ja, and I think that sentence Chair we are grappling with it has these two words "with the" which
10 should not maybe be there. Ability to recover from – ja.

CHAIRPERSON: Ja, but if you are going to criticise somebody else to say they are not good in their job at least what you write should be – should reflect that you are better, okay, alright.

ADV SELEKA SC: Ja, the next bullet point:

"This is critical stakeholder management is therefore sadly lacking."

CHAIRPERSON: What does that mean? This is critical stakeholder management is therefore sadly lacking and
20 places further strained on Eskom's ability to recover from an extremely position to which it has found itself in. Ja, it's just if you criticise somebody make sure that you get your act together, I mean you write on a proper, your criticism.

MS MOTHEPO: If I can just assist.

CHAIRPERSON: Yes.

MS MOTHEPO: Remember we were given 24 hours so Anoj, Mr Singh was in such a hurry to get this so I ...[intervenes]

CHAIRPERSON: But he was the one ...[intervenes]

MS MOTHEPO: So I suspect that because of that pressure ...[intervenes]

CHAIRPERSON: But he was the one ...[intervenes]

MS MOTHEPO: That is the problem, because of that
10 pressure he made several mistakes as we can see.

CHAIRPERSON: Well we didn't pick up a number of errors on your section, on your executive summary but you wrote much more than he wrote.

MS MOTHEPO: Yes.

CHAIRPERSON: And he wrote what – five lines – and ja, okay Mr Seleka?

ADV SELEKA SC: The last one Chair;

“Treasury has made sub-optimal decisions that have obviously affected Eskom and further inquiry and
20 investigation is required for remedial action.”

CHAIRPERSON: Ja.

ADV SELEKA SC: So he doesn't offer as it says possible remedial action, the heading.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Thank you. Now Ms Mothepo then you

were about to take us to – you have been now with Regiment, we are in March or is it February/March.

MS MOTHEPO It's the 31st of March.

ADV SELEKA SC: The Chairperson recalled that you have already taken us through how Trillian came into existence and I think you did say who were the shareholders in Trillian so that is Mr Salim Essa and Mr Eric Wood.

MS MOTHEPO: Yes, ...[indistinct] Trust, the family trust.

10 **ADV SELEKA SC:** And when you say his family trust are you referring to Mr Eric Wood or Mr Salim Essa?

MS MOTHEPO: Mr Eric Wood.

ADV SELEKA SC: And the percentage of shareholding between the two?

MS MOTHEPO: Mr Essa was 60%, if I can – I stand to be corrected, I think Mr Wood's family trust was 30%, it was called Zara 1 and Zara 2 Trust and Mr Daniel Roy had a smaller percent, I think it was 3% and I am not sure who the other, the balance of the shareholders were, it was
20 envisaged that it will go to staff.

ADV SELEKA SC: Okay, so you were then, as you explained in your affidavit, were transferred – ja I recall now in your first appearance you mentioned how there were meetings, Mr Eric Wood told you about a new venture, a new company to be formed and you were to be

moved from Regiments to that company with Mr Mohamed Balbeit.

MS MOTHEPO: That's correct.

ADV SELEKA SC: Ja, although that changed in regard to Mohamed ...[intervenes]

MS MOTHEPO: That is correct Mr Chairperson.

ADV SELEKA SC: So I am just going through so that we sketch the context. Then you are moved in terms of you say the proper section of the Labour Relations Act, you are
10 transferred, taken over by Trillian and you were appointed – you moved over when?

MS MOTHEPO: On the 1st of March 2016.

ADV SELEKA SC: 1 March 2016, so Trillian is formed and Trillian now replaces Regiments at Eskom?

MS MOTHEPO: Yes that is correct Mr Chairperson. If I can add to that, Mr Wood had kept Mr Anoj Singh abreast with the developments with regards to replacing Regiments with Trillian.

ADV SELEKA SC: Yes. Now deal with the – that
20 replacement what is it, a replacement objective of Regiments by Trillian, that is as a development partner of McKinsey, does it happen or not?

MS MOTHEPO: It eventually does not happen, if you remember my earlier testimony Trillian had to be subjected to a global risk review which Regiments had been

subjected to. This global risk review ...[indistinct] in the US, the United States where McKinsey is headquartered. So they had requested us to draw up a company profile and our CV and I think sometime in January/February a global risk review had some reservations with regards to a lack of footprint that Trillian had, even if you did an internet search it wasn't there, and Mr Anoj Singh asked if we could be given a little bit more time so that he can quickly put together a company profile and I think they had appointed
10 a company to have a company website, so it was quite interesting how it was Mr Singh who was basically pleading on Trillian's behalf at McKinsey's just give them a few, give them an extension so eventually on the 31st of March 2016 at one of the steering committee's chaired by Mr Singh, Mr Andre Pillay was there, Mr Koko was there, it was official that McKinsey indicated to Mr Singh that the credit risk review had declined to have Trillian as a supply development partner of McKinsey obviously because of the lack of footprint but the red flag was the 60% shareholder,
20 Mr Salim Essa, he was labelled a politically exposed person and they did not want to take that risk, so the formal communication was given to all parties that there will be no contractual relationship between McKinsey and had envisioned a supply development partner, Trillian.

ADV SELEKA SC: So the officials at Eskom, senior

officials, Mr Anoj Singh, Mr Matshela Koko, you mentioned Edwin Mabelani, Mr Prish Govender, they all knew that McKinsey has declined Trillian to be its supply and development partner?

MS MOTHEPO: That is correct. And if I have to go back to that day Mr Singh was very unhappy with McKinsey, we were even asked to leave the boardroom and have the Eskom parties deliberate on what are the next steps, so we were in the outside for I think an hour or so and then we
10 were called back. We continued to present and then I went back to the office and told Eric that – the revelations, he was not at the meeting, and then he told me Mr Singh had communicated McKinsey’s decisions the night prior to the 31st so he felt no need to attend this steering committee, so I said to Mr Wood it means now we have to stop working at Eskom because there is no contract and he had said to me no he will speak to Mr Singh to find some other way to contract Trillian and they eventually wanted to look at another partnership with Oliver Wyman, who is another
20 international consultancy firm so from my high insight they wanted to have a reputable international consultancy company at the forefront and having a contract with Eskom and then there will be sub-contract with Trillian, so it was envisioned that if McKinsey does not to partner or they declined Trillian then I think other consultancy companies

will also they reached out to them but I can only find documentation on Oliver Wyman's meeting, it was Mr Salim Essa and Eric, they forwarded us the points that were discussed and one of the action points was Mr Wood – Mr Singh – no Mr Salim Essa would reach out to Mr Anoj Singh on exploring interest on sour gas strategy, I am not sure what that was but I think there were negotiations with Oliver Wyman and they didn't – they fell through.

ADV SELEKA SC: Thank you. Do you know whether t
10 here is – or did you know then ...[intervenes]

CHAIRPERSON: I am sorry, before that, I wanted to ask her, do we have your statement to the Public Protector?

MS MOTHEPO: I sent it to the team.

CHAIRPERSON: Oh then they have it.

MS MOTHEPO: I am not sure if it was included.

ADV SELEKA SC: I think it is here Chair.

CHAIRPERSON: Let's continue, you can check and then
let me know if it is in the bundle and whereabouts it is, if it
is not ...[indistinct] to have it included, I would like to have
20 a look at it.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Ja.

MS MOTHEPO: Okay.

CHAIRPERSON: Okay, continue.

ADV SELEKA SC: So as I understand your evidence is

that once McKinsey made the decision that we will not accept Trillian as a supply and development partner Eskom went out to try to bring a different entity by the name of Oliver Wyman ...[intervenes]

MS MOTHEPO: Trillian did.

ADV SELEKA SC: Oh Trillian itself did?

MS MOTHEPO: Yes.

ADV SELEKA SC: Oh.

MS MOTHEPO: Yes Trillian endeavoured to look for other
10 reputable international consultancy firms, yes.

ADV SELEKA SC: Okay and did you know that there is a connection at the time did you know that there is a connection between Oliver Wyman and Marsh, remember you mentioned Marsh as the insurance – what did you say they were?

MS MOTHEPO: On the ...[indistinct] 3 Marsh was the insurer, either the insurer or the insurance advisors I am not sure.

ADV SELEKA SC: Of – to Eskom?

20 **MS MOTHEPO**: To Eskom, correct.

ADV SELEKA SC: Did you know that?

MS MOTHEPO: I still don't know today.

ADV SELEKA SC: The one is a subsidiary of the other, Marsh is the holding company of Oliver Wyman or the other way round.

MS MOTHEPO: Okay.

ADV SELEKA SC: Did you know that?

MS MOTHEPO: No I am hearing it for the first time today.

ADV SELEKA SC: Oh. So 31 March 2016 you hear the news, no partnership between the two, you ultimately resign in June, but from 31 March to the time you resigned did Trillian continue to run the services to Eskom?

MS MOTHEPO: Yes Trillian continued to run the services to Eskom, but upon my resignation no invoice had been
10 submitted with the exception of the R13million that was for the corporate plan but that was outside the Master Service Level agreement.

ADV SELEKA SC: I see.

MS MOTHEPO: Yes.

ADV SELEKA SC: So that is the corporate – the funding plan. In respect of the other services that were rendered even after this announcement by – I beg your pardon – the announcement by McKinsey, or decision by McKinsey Trillian did not have an agreement with Eskom to render
20 services?

MS MOTHEPO: That is correct.

ADV SELEKA SC: To the time that you left, resigned from Trillian. Now Ms Mothepo I think that brings me to the end of my questions to you, I know that you may have other things to say to the Chairperson and I am going to – I am

going – oh, sorry Chairperson the Public Protector's, or Ms Mothepo's statement to the Public Protector is in Eskom bundle 14, the same bundle, Exhibit U32, which one is 32, it is on page ...[intervenes]

CHAIRPERSON: Is Ms Mothepo's statement ...[intervenes]

MS MOTHEPO: That's mine Chairperson ...[intervenes]

CHAIRPERSON: Yes in the ...[intervenes]

MS MOTHEPO: But I can forward it to you again.

10 **ADV SELEKA SC:** Page 6.

CHAIRPERSON: Ja U32 is her affidavit to the Commission, not to the Public Protector.

ADV SELEKA SC: Page 690, 670 sorry, I am looking at it upside down Chair.

CHAIRPERSON: Page 690? Is that what you are saying?

ADV SELEKA SC: 670, page 670, six seven zero, up until page 679.

MS MOTHEPO: Oh yes.

ADV SELEKA SC: Is that the one Ms Mothepo?

20 **MS MOTHEPO:** That is the one.

CHAIRPERSON: Is that the one that looks like a letter?

MS MOTHEPO: No, no, no this is not the right – this is not the one. This one relates to my testimony in December.

CHAIRPERSON: Let us continue Mr Seleka, you can do

this after, once you are sure.

MS MOTHEPO: Ja, no this one is my testimony in December, I will forward it to you again and you can add it on, yes.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Yes, that brought me to the end of my questions to you, I know that you had asked to say certain things to the Chairperson.

MS MOTHEPO: Okay just – I won't take more than five
10 minutes.

ADV SELEKA SC: Yes.

MS MOTHEPO: So subsequently I left Trillian in June 2016 and I testified at the Budlender Inquiry, it was the first time that I saw that Trillian had paid at the time I think it was R266million and after that I was requested by Eskom through their legal attorneys, Bowman Gilfillan, to provide an affidavit because they wanted to have a civil claim to claim back a total of R595million, so I needed to sign a confirmatory affidavit of that – Mr Hadebe's affidavit,
20 because he was not there at the time so I had to read his affidavit and sign a confirmatory affidavit and then I had to submit my own affidavit.

CHAIRPERSON: Is that Mr Phakamani Hadebe ...[intervenes]

MS MOTHEPO: Yes that is correct.

CHAIRPERSON: Who was CEO of Eskom?

MS MOTHEPO: That is correct and he was absent when these transactions were happening so it was not hearsay, I needed to sign a confirmatory affidavit on his behalf, but I think what is most disturbing Chairperson was that remember I told you that the transactions were on risk and Trillian would only get paid upon completion.

CHAIRPERSON: If the transaction was successful.

MS MOTHEPO: Yes and there was cash in Eskom bank
10 account, so I received a spreadsheet from Bowmans which my team that I had left at Trillian so now they allocated, just from ...[indistinct] I think it was sent by Ms Fahima Gordat to Mr ...[indistinct] Kuma, so they had allocated that I had spent 180 days at Eskom, I was not at Trillian, 180 days is six months I was at Trillian for three months, plus remember we were not, we did not charge Eskom per day or per hour.

CHAIRPERSON: Yes, yes.

MS MOTHEPO So it was completely a misrepresentation,
20 it was fabricated, that entire spreadsheet was I think the – and they had also inflated the time that my team members had spent at Eskom so never did they give me a call and asked me to reconcile but even if they had asked me to reconcile my time at Eskom the basis, first of all there was no contract with Trillian, number two, the premise of that

contract was risk, it was not per hour, per day and what is interesting is that eventually the high court found that there was a corrupt relationship between Eskom executives and Trillian and that Eskom executives did everything in their power to benefit Trillian at the expense of Eskom, so the judgment was, and there is a copy of the judgment in my file but because of lack of time I won't go into it. So Trillian was ordered to pay R595million plus interest from the day of payment to the day of judgment.

10 **CHAIRPERSON:** I will allow you to deal with what you consider to be the main issues of the judgment, but continue, I just wanted to tell you that I will allow you to do that.

MS MOTHEPO: Thank you.

ADV SELEKA SC: The judgment Chair is on page 590, or it starts on page 589, that's the cover page.

MS MOTHEPO It is ...[intervenes]

ADV SELEKA SC: Eskom Bundle 14, one four, page 589.

MS MOTHEPO: Isn't it 586, I have 586.

20 **CHAIRPERSON:** I have a judgment at – which starts at page 589 in the matter between Eskom Holdings Limited, the applicant and McKinsey and Company first respondent and ...[indistinct] second respondent and then continues.

MS MOTHEPO: Oh, okay, alright.

CHAIRPERSON: It should be the judgment.

MS MOTHEPO: Okay I think if we go to my statement because I just took the ...[intervenes]

CHAIRPERSON: Can you find it there?

MS MOTHEPO: No I can find it, but in my statement I copied the important parts of it, for the sake of time, let's go back to 587.

CHAIRPERSON: Ja.

MS MOTHEPO Paragraph 99 and if you can indulge me I will just read the judgment.

10 “The High Court rules that there was no contract so there was nothing to say about the contract but the payments were unlawful, irregular and Trillian Capital Partners has to pay back to Eskom the entire R595million plus interest. In this ...[indistinct] judgment three judges, Firoux, J, Babcock, J and Solgar, J wrote that. The counter of corruption can be eradicated and those who benefit from ill-getting gains will be deprived of such gains.”

20 They continued:

“In the present matter where the probabilities are apparent that senior officials of Eskom could leave no spoon unturned to the benefit of Trillian Capital Partners. They had confidential information belonging to Eskom with leaks to Trillian Capital

Partners. ...[Indistinct] Eskom who were expected to display the conduct of the utmost good faith and act in the best interests of Eskom where there appears to be a corrupt relationship between Eskom senior personnel and the directors of Trillian Capital Partners. Justice and equity demands nothing less than the monies paid to TCP unjustifiably to be returned to Eskom.”

I think I will end on that note.

10 **CHAIRPERSON:** I thought you – I interrupted you about the judgment while you had something ...[intervenes]

MS MOTHEPO: Yes I am saying that ...[intervenes]

CHAIRPERSON: You prefer then to end on this note?

MS MOTHEPO Well plus – no, no I can actually say that I was also requested to be Mr Matshela Koko’s first witness in his disciplinary. When he was in Parliament in I think 2018 he said he played no role in the contracting of Trillian, he doesn’t know, but I was contacted once again by Bowmans Gilfillan, they had imaged Mr Koko’s email
20 and they found our correspondence, which obviously contradict his version that he gave in Parliament under oath.

So part of his first – one of his charges was that he misled Parliament and he said he played no role, but the truth was as you have seen from my testimony today him

and Mr Singh were central figures in the negotiation of McKinsey and Trillian, in addition they added more initiatives.

CHAIRPERSON: Items.

MS MOTHEPO: Yes but unfortunately Mr Koko, I remember I was having coffee waiting to be called and the attorneys called and said at their council chambers that Mr Koko had resigned, I think 15 minutes before we were supposed to start and it was ...[indistinct] but Eskom
10 wanted to continue with their disciplinary so I had to wait for an hour but the legal opinion was if it is with immediate effect that employer/employee relationship no longer ceases and Eskom doesn't have a right to discipline him, yes.

CHAIRPERSON: Ja. Of course an employer who wants to know what happened there is no reason why they cannot continue with the inquiry even if it is no longer called a disciplinary inquiry and find out from the witnesses what had happened so that it knows the truth.

20 But I see that you do say, you have just repeated that, you say in paragraph 90 of your affidavit that you were able or able to provide five emails, have you provided those emails to the Commission?

MS MOTHEPO: Those are the emails that I was reading earlier on.

CHAIRPERSON: Oh the ones that we went through, 32 and 10.56, there were two of them.

MS MOTHEPO: Yes so if you – the forensic people that Bowman Gilfillan appointed they mirrored Mr Koko's emails, so they presented me with those emails, yes so ...[intervenes]

CHAIRPERSON: Okay, okay.

MS MOTHEPO: But the ones that I read were eventually what – the five emails that they indicated here.

10 **CHAIRPERSON:** But here you say five, we saw two, were there three that we didn't go to?

MS MOTHEPO: No I think in one day I sent three, there was the 1st of December, the 30th of November and then there was a 3rd of December and then there was a 7th of December.

CHAIRPERSON: I just want to make sure that if you say there are five we do have all five?

MS MOTHEPO: I suspect we even have more than five.

20 **ADV SELEKA SC:** Chair I will confirm that, there is an email on the 30th, that's the first, of November 2015, that's one, I think there are five.

CHAIRPERSON: Okay, okay you can check later on and confirm.

ADV SELEKA SC: Ja, I think there are five, there's then other emails, four of them sent on the 7th of December.

CHAIRPERSON: Yes, alright.

MS MOTHEPO: There was another one on the 5th of December.

ADV SELEKA SC: The 5th.

MS MOTHEPO: The 30th.

ADV SELEKA SC: But I will check.

MS MOTHEPO: Yes, okay.

CHAIRPERSON: But I take it that when you are going to give evidence in Mr Koko's disciplinary hearing a statement
10 had been taken from you by somebody which was going to be used to guide your evidence?

MS MOTHEPO: That is correct, I think I may have ...[intervenes]

CHAIRPERSON: Is it with the legal team?

MS MOTHEPO: I will resend but I sent them the – my final statement.

CHAIRPERSON: That was ...[intervenes]

MS MOTHEPO: That was ...[intervenes]

CHAIRPERSON: submitted to the disciplinary hearing.

20 **MS MOTHEPO:** Yes, the senior counsel was Advocate Sithemba ...[Indistinct]

CHAIRPERSON: Yes, but have you ...[intervenes]

MS MOTHEPO: I will double-check if I have sent it but I still have it with me so I will send the Public Protector's statement and my statement that I was asked to make

CHAIRPERSON: Yes okay that is fine, and has – at least part of – or the portions Ms Mothepo’s affidavit that relate to Mr Koko have they been sent to him by way of 33 notices?

ADV SELEKA SC: Yes they have Chair.

CHAIRPERSON: They have.

ADV SELEKA SC: They have.

CHAIRPERSON: Alright, okay so if and when you get the other statements that she was talking about if those have
10 not been sent to you they should also be sent insofar as they relate to him.

ADV SELEKA SC: Yes Chairperson.

CHAIRPERSON: Ja, okay, alright. So you said you had completed what you wanted to say?

MS MOTHEPO: Yes on the Eskom part yes. I have something else on the Transnet.

CHAIRPERSON: Yes, ja.

MS MOTHEPO: I have a file here, in October 2018 I was requested by Transnet to assist them with an affidavit on
20 the ...[indistinct] and I saw a testimony from Mr ...[indistinct] Sebuthi that Trillian Asset Management played a role there and they were BEE. My file is here, my version, I will give it to Advocate ...[indistinct] he can give it to the evidence leader, Advocate Myburgh, yes.

CHAIRPERSON: Yes, but you are keeping a copy of your

own?

MS MOTHEPO: This is my copy.

CHAIRPERSON: Made sure that a copy is made, you retain your originals so that ...[intervenes]

ADV SELEKA SC: We don't lose it.

CHAIRPERSON: ...in case something happens to it we don't. But thank you very much for assisting the Commission in regard to that as well, that is quite important, so you will make arrangements, I just don't want
10 her to lose the original, make arrangements so they can make copies and then hand over to Mr Myburgh.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay. Thank you very much.

MS MOTHEPO: Thank you Mr Chairperson

CHAIRPERSON: Thank you. Okay we are done?

ADV SELEKA SC: We are done then for today
Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ms Goodson has been excused until
20 Tuesday, tomorrow we have scheduled Mr Brian Molefe as well as Ms Rashni Naidoo for an evening session.

CHAIRPERSON: Yes, for the evening session. I think we must try and move Ms Naidoo to next week if that is possible as well, explore that and see – for example we could look at Wednesday but there is flexibility, evening

session, explore that, only if maybe there will be challenges to having her testify next week then we can see whether tomorrow evening we can do it.

My inclination is that we might take quite long with Mr Brian Molefe but so explore whether she would, Ms Naidoo would be available on one of the evenings next week.

ADV SELEKA SC: Yes sir.

CHAIRPERSON: And if she will be available Wednesday
10 or Thursday let us explore that.

ADV SELEKA SC: I will do so with their legal team.

CHAIRPERSON: Alright, thank you very much Ms Mothepo and you are now excused, thank you once again for coming to assist the Commission. We are now going to adjourn for the day and tomorrow we will continue at ten o'clock.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS TO 15 JANUARY 2021**