

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**29 NOVEMBER 2018**

**DAY 33**

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**PROCEEDINGS HELD ON 29 NOVEMBER 2018**

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

**ADV PAUL PRETORIUS SC:** Morning Chair. Chair may we commence with the application for condonation which will be presented to you by Advocate Gcabashe?

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** Then Ms Hofmeyr will lead Ms Carolus.

**CHAIRPERSON:** Okay thank you.

**ADV LEAH GCABASHE SC:** Good morning again Chair.

**CHAIRPERSON:** Morning Ms Gcabashe.

- 10 **ADV LEAH GCABASHE SC:** My task Chair is simply to move an application for condonation in respect to the failure by the Commission's legal team, which really is the Commission to comply with Rule 3.3 of the Commission's rules governing the proceedings of this Commission.

There are two applications Chairman that I am moving this morning. One; in respect of Advocate Ramathlodi's statement and the Rule 3.3 that was eventually issued in terms of that statement. Then also one in relation to Advocate Moufhe. I will start with the one relating to Advocate Ramathlodi.

**CHAIRPERSON:** Yes.

- 20 **ADV LEAH GCABASHE SC:** Which starts off the notice of motion is on page 5 of your bundle Chairman.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Chairman this essentially is a condonation application in relation to timeframes that are prescribed in our rules. What is envisaged in Rule 3.3 is that implicated persons will be given 14 day's notice. The rule speaks to reasonable time. But the convention has been that they will receive 14 day's notice, to enable them

to respond, or elect to respond in whichever manner they would want to respond.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Chairman the notice of motion, therefore, that I speak to seeks relief in terms of Prayers 1, 2 and 3 thereof, because the Commission failed to serve that Rule 3.3 notice on former President Jacob Zuma within the prescribed timeframes.

I just want to point out Chair that that notice of motion does notify any implicated person of the terms of Rule 3.5, which Chairman you know allows an implicated party to approach you for the relief envisaged there.

10 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** It also Chairman is brought in terms of the rules, which means that the condonation application was served on the implicated person Chairman. That can be found on page 27. If you would like to verify that the condonation application itself was served, page 27 of your papers and the Rule 3.3 itself the proof of service is on page 22. All is in order Chairman.

I would like to point out that all the other parties who are implicated persons in this matter were served with timeous notices.

**CHAIRPERSON:** Yes okay.

**ADV LEAH GCABASHE SC:** They were also served with the condonation application.

20 I have got the dates here Chairman.

**CHAIRPERSON:** Yes, yes.

**ADV LEAH GCABASHE SC:** The only small little error we have made is not including the proof of service on Mr Manyi.

**CHAIRPERSON:** Yes, but he was served?

**ADV LEAH GCABASHE SC:** But I am assured that he was served with that.

**CHAIRPERSON:** Oh okay.

**ADV LEAH GCABASHE SC:** Yes Chairman. Chairman just very briefly, the reasonable explanation that accompanies the affidavit of our attorney of record is that when the legal team had a look at these papers in preparing for the hearing, we realised that though President Zuma was not directly implicated, because his name was mentioned, out of an abundance of caution, it was better to actually serve him with the notice.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Just in case what came out of the mouth of the witness,  
10 dug a bit of a hole and showed that he is directly and substantially affected, or implicated.

**CHAIRPERSON:** Ja, ja.

**ADV LEAH GCABASHE SC:** That is the long and short of it Chairman. You know that we have set out in the affidavit those reasons. Prejudice Chairman is very limited. He has had 7 day's notice, he does have an attorney who has placed himself on record. We believe there is no prejudice to him at all.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** In the circumstances Chairman, I move for an order in terms of Prayers 1, 2 and 3 of the notice of motion in respect of Ramathlodi matter.

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### **ORDER**

**CHAIRPERSON:** I grant Prayers 1, 2 and 3 being the notice of motion.

**ADV LEAH GCABASHE SC:** Thank you Chairman. Chairman similarly with Advocate Moufhe's statement, the facts are slightly different. The parties were given 7 day's notice instead of the 14 day's notice that we have followed as a convention, all of them in this instance, all the implicated persons had not being served with their

3.3 notices. So they have been given those 3.3 notices Chairman and it is apparent from the papers where the proof of service is.

I do not know if you would like me to go through – but with all of them Chairman, the 3.3s were served on the 21<sup>st</sup> November and then the condonation application was served on the 23<sup>rd</sup> November in respect of all of them.

In this instance Mr Zwane is added to these implicated persons, whereas he was not added to the ones who Advocate Ramathlodi's statement is referred to.

**CHAIRPERSON:** Yes okay.

**ADV LEAH GCABASHE SC:** Chairman again in terms of the facts, the facts really  
10 relate to Advocate Mofhe and Mr Mabunda trying to find each other, just to start preparing the initial statements. When they eventually came to the legal team there were a couple of grumblings which we thought might create confusion and we decided we would rather clean those up and put out a statement that would cause consternation for implicated parties.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** That is essentially what we have set out in the affidavit Chairman.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Other than that Chair, I would like to point out that the  
20 legal representatives of Doctor Ncubane and those of Mr Duduzane Zuma have indicated in letters, I have copies here if you would like to have copies Chairman, that they reserve their rights to approach you in terms of Rule 3.5 to pursue whatever rights they think they might wish to pursue. Once they have read the transcripts and consulted with their clients.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** In the circumstances Chair, if you are satisfied, I move for an order in terms of Prayers 1, 2 and 3 of the notice of motion attached to this application.

**ORDER**

**CHAIRPERSON:** I grant Prayers 1, 2 and 3 of the notice of motion.

**ADV LEAH GCABASHE SC:** Thank you Chairman.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR SC:** Thank you Chair.

**CHAIRPERSON:** Yes Ms Hofmeyr.

- 10 **ADV KATE HOFMEYR SC:** Chair today we have the evidence of Ms Cheryl Carolus. Before we have the witness sworn in, there is one or two aspects of housekeeping and then a general submission I propose to make in relation to the relevance of the evidence to the Terms of Reference of this Commission. If I may deal with those two matters initially?

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR SC:** Chair in relation to housekeeping matters, I can inform you that the relevant Rule 3.3 notices arising from Ms Carolus' statement were issued timeously. In respect of those three notices that were issued, there have been no applications for cross-examination.

- 20 **CHAIRPERSON:** Yes okay.

**ADV KATE HOFMEYR SC:** In terms of sketching the relevance of the evidence today. Chair as the legal team has it, there are four broad aspects of relevance in Ms Carolus' evidence today.

The first of those relates to setting the scene of the state of South African Airways at the time that Ms Carolus took over as Chairperson in 2009 and the state in

which she and her Board left the airline in 2012.

We submit that story is of critical relevance to the work of this Commission. Because what Ms Carolus' evidence will show, is the extent to which, in that period of 3 years that Board made substantial strides in turning around SAA in getting an effective management team in place and in the course of those 3 years, resisting external pressure and undue influence in relation to the management of the entity.

It is critical to set that story, because the evidence that will be led in due course, when the details of the SAA position after this Board's resignation in 2012 is presented, will show how this Board's plan to rescue the airline, to take it forward, to  
10 ensure good governance and appropriate management systems being in place, then came to naught.

So the first important aspect is the setting the scene for the evidence that will come.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR SC:** The second important aspect is what Ms Carolus can tell us about the Mumbai route. She is both a corroborative witness therein in relation to the evidence that is previously being presented by witnesses and she takes that story further.

**CHAIRPERSON:** Yes.

20 **ADV KATE HOFMEYR SC:** The third aspect are the indications of the pressure that was placed on SAA, to place its advertising spend with the New Age and the extent to which that was resisted by her Board and the management that were in place.

Then finally, to deal with the events surrounding the mass resignation of 8 members of the Board which Ms Carolus chaired at the end of their term. That event itself shows, in the words of Ms Carolus in her statement, what seem to amount to

events of a constructive dismissal type, which would pave the way from a more compliant Board.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR SC:** So Chair it is against the background of those four areas of relevance that we present the evidence of Ms Carolus today.

**CHAIRPERSON:** Thank you very much.

**ADV KATE HOFMEYR SC:** I may request that she be sworn in?

**CHAIRPERSON:** Yes thank you.

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

10 **MS CHERYL ANN CAROLUS:** My name is Cheryl Ann Carolus.

**REGISTRAR:** Do you have any objection with making a prescribed affirmation?

**MS CHERYL ANN CAROLUS:** No I do not.

**REGISTRAR:** Do you solemnly affirm that the evidence you give will be the truth, the whole truth and nothing but the truth, if so, please say, I truly affirm.

**MS CHERYL ANN CAROLUS:** I truly affirm.

**CHAIRPERSON:** Thank you Ms Carolus.

**MS CHERYL ANN CAROLUS:** Thank you Chair.

**ADV KATE HOFMEYR SC:** Chair for the purposes of the record, I propose that we number Ms Carolus' evidence Bundle R, that as I have it is the next in the sequence.

20 **CHAIRPERSON:** Do we not already have "R"?

**ADV KATE HOFMEYR SC:** Do you already have "R"?

**CHAIRPERSON:** I seem to think we do have "R", I may be mistaken.

**ADV KATE HOFMEYR SC:** As I have it, we concluded on "Q" yesterday.

**CHAIRPERSON:** Oh is that so?

**ADV KATE HOFMEYR SC:** So "R" would be the next.

**CHAIRPERSON:** Oh it is "P" that we – we have "P".

**ADV KATE HOFMEYR SC:** Yes indeed.

**CHAIRPERSON:** Maybe "P" looked like an "R" to me.

**ADV KATE HOFMEYR SC:** "P" snug its way in, today we have "R". So if I may propose the ...[intervenes]

**CHAIRPERSON:** So this will be the bundle that has got Ms Carolus' statement will be marked EXHIBIT R thank you.

**ADV KATE HOFMEYR SC:** And then just to orientate you Ms Carolus in terms of what is in front of you, you have a copy of "R" and there is also a copy of another evidence  
10 number bundle N2, to which I will make reference in the course of your evidence.

Ms Carolus I understand from our discussions previously that there are one or two aspects of your statement which commences at page 1 of Bundle "R" in respect of which you would like to make corrections.

My proposal Chair is to deal with those corrections as we reach them in the evidence, because it is useful to place them in context.

**CHAIRPERSON:** Whichever, that is fine. If it is convenient to point them out at the beginning that can be done, if it is more convenient to deal with them as we reach the particular aspect of her evidence that is fine, so it is fine.

**ADV KATE HOFMEYR SC:** Thank you Chair. My proposal is that we do it as we reach  
20 them in the evidence. Ms Carolus if I could take you to page 1 of your – well of Exhibit R which is the first page of your statement and if we go in that bundle to page 29. Can you confirm that that is your signature on page 29?

**MS CHERYL ANN CAROLUS:** I confirm so.

**ADV KATE HOFMEYR SC:** And that this is the statement that you have prepared from pages 1 to 29 for your evidence today?

**MS CHERYL ANN CAROLUS:** I can confirm that too.

**ADV KATE HOFMEYR SC:** Thank you. But for the two corrections we will come to, do you confirm the contents of that statement as true and correct?

**MS CHERYL ANN CAROLUS:** I do.

**ADV KATE HOFMEYR SC:** Thank you. Ms Carolus if we can commence your evidence today with the background that you brought with you when you commenced as Chair of South African Airways in 2009, can you sketch for us where you came from and what you did before you entered SAA?

**MS CHERYL ANN CAROLUS:** Yes thank you and good morning properly Chairperson.

10 **CHAIRPERSON:** And good morning Ms Carolus.

**MS CHERYL ANN CAROLUS:** And to the house.

**CHAIRPERSON:** Thank you.

**MS CHERYL ANN CAROLUS:** I want to just start off by saying that I think – I believe I am part of a very lucky generation of people in South Africa. I am old enough to have lived through all the horrors of – not only institutionalised, but legalised racism, sexism and other forms of bigotry. I grew up under a system of apartheid that I think was neo-fascist and that really thrived on hatred and division. I am being old enough to have lived through the full horrors of that and still seen the consequences. I am very determined that I will never allow history to repeat itself on my watch. I am also old  
20 enough to carry the scars of having being an active participant in this struggle to end apartheid. I carry those scars as a badge of honour, the scars of detentions, or torture, of banning orders, of numerous forms of restriction.

But I am also very proud to be part of a generation as young enough to build a very different future for my country. I was born to poor parents on the Cape Flats with the first generation of families who were forcibly removed under the Group Areas Act

and I saw the consequences of that and much of that is still prevalent in my community and indeed in our society.

I joined my first political organisation at the age of 13 and it was really the only way that young black angry girl child could counter a system that sought to make me complicit in my own oppression. I spent my entire teenage years, and indeed my adult life consumed by militant participation and defines of apartheid through protests and through building organisations, democratic organisations. Much of which remains still today. I have held leadership positions in student organisations and in the woman's movement during the years of apartheid and like many South Africans I was inspired  
10 and drawn and given hope by the politics of the ANC of building a South Africa that was non-racial, non-sexist and democratic.

I served in the leadership of the United Democratic Front, which was an alliance of anti-apartheid civil society organisations during the years the ANC was banned, and at the unbanning of the ANC, I was elected onto an interim leadership of both the ANC and the SACP when these organisations were unbanned.

An element of huge pride for me today still is I was elected to be part of the ANC's first delegation that met with the then President de Klerk and his team to discuss how we would go into the talks, about holding talks in South Africa.

I should say Chairperson, the enormous pride I felt at the time of being part of  
20 a delegation that was so diverse and so much – represented so much of the vision for the future. On our side of the table and it was literally a table led by the then – by Nelson Mandela was a group of black people, white people, young people, older people, women, men, Christians, atheists, Muslims, Jews. On the other side of the table was a group of very aged white men from very similar backgrounds. It is a moment of great pride for me, because it represented where we wanted to take our

country.

I was also part of that processes of the team who did the negotiations. I remember so much and often when I feel disturbed about what is going on our country. I get very angry with people still who say, our country is worse than it was under apartheid, because it is not, even at the moment with some of our concerns.

Because I remember the time when we struggling negotiations and where tens of people were killed just routinely everyday in our townships as we were negotiating. I remember the murder of Chris Hani, someone I was very close to and respected deeply and his family. I remember how we had to pickup body parts of people who was  
10 slaughtered on trains everyday. I remember Boy pathogen how I was part of the ANC leadership who had to get go in there after that massacre and rapes of women in households that those soldiers moved through.

So it was with enormous pride and achievement that Nelson Mandela was sworn in and that we were associated with his example of enormous integrity and humility with which he served our country.

I was one of a small group, in fact I was the only member of the National Executive Committee of the ANC who decided to not make myself available for any Parliamentary positions.

**CHAIRPERSON:** I am sorry just repeat that, I did not hear?

20 **MS CHERYL ANN CAROLUS:** I think I was the only National Executive Committee member of the ANC who actively decided to not stand for any Parliamentary positions. But I am at great pains to say, I then and still remain very, very concerned about who runs our country in Parliament, because it is such an important role of trust that people are entitled to, or given.

So whilst not in formal Parliamentary service, I over a number of years served

in a number of functions to help Government and most unpaid functions. I served on a Commission with the first Minister of Education to look at what happens with the higher institutions. I have served in a number of capacities in chairing South African National Park's Board and I can go on and on at both national and provincial level of various ways in which I have supported our government, our newly elected governments to navigate that space.

I have also served in a number of non-governmental organisations, particularly in the areas of young people at risk, such as Soul City, Love Life. I have served in organisations of by diversity, I have served at the internal Boards of WWF and WWF  
10 South Africa and feel quite proud of how we have transformed those spaces. I also serve on international body dealing with international conflict prevention and I can say that I feel honoured to have served in organisations associated with the fights around HIV and Aids in our country when people did not have access to those. I also served in organisations that deals with gender violence and I have being a strong voice around rape, including that of our former President when many people were scared to do so, or felt we would be compromising the ANC.

I must say Chairperson, I am deeply disturbed by the events of the past 10 years or so in our country and initially we think we were quite – and I used an analogy once when I wrote an open letter to the then President Jacob Zuma of the  
20 "Toad in the Pot" syndrome where there is a candle burning under it, where you just adapt and you adapt your levels of tolerance until you finally realised you have reached boiling point.

But also I must say Chairperson that I do think that there was a very strong view amongst us ANC members of, we would harm the organisation and by implication the country if we spoke out. So I was part of a very august group of people that I am

very junior in, calling themselves the "Stalwarts and Veterans of the ANC" who made presentations over a period of about 2 years to the leadership of the ANC, to in fact say that we – to express our concern. It fell largely on deaf ears by the then leadership of the ANC.

But I was also proud to have been part of a handful of ANC leaders who – at the ruling of – the court ruling, the Constitutional Court ruling on Nkandla felt we had to speak out on the steps of the Constitutional Court. Many people were quite critical of us doing that, because they felt we would harm our organisation that we loved so dearly.

10 I hold a very different view, I believe that I am in the ANC because I believe I want an ANC that can serve my country and not serve itself. Because the freedom that we have today to vote and to have a Constitutional Court and a Constitution came at a huge cost and that is a matter of luck that we are here.

So I believe that we are perilously close to an abyss and that there is much work still to be done and which is why I am here today Chairperson, to in fact participate and share my learning's and experiences in the hope that as a nation, we can just realise how much work there is to be done and how perilously we actually took our country back to the brink of the abyss. Thank you.

**CHAIRPERSON:** Well thank you very much for what may be called an "opening  
20 remarks", but basically what you were doing is, you were telling us more about what you have done as a South African over the years in your life to make a contribution to the country and what you have said is quite important. So I must thank you once again for coming forward to give evidence, we really appreciate it.

You have touched on an issue that is important, namely that when certain events were happening in the country there would be a view within the ruling party held

by some that maybe speaking out on certain issues would harm the party and that some might feel that they should not speak out publically and that you hold a different view.

Now it may well be that that issue is still there in relation to certain people coming forward to assist this Commission. It may be that there are past and present Cabinet Ministers, Directors General and other Government officials who have knowledge of information that would be very useful for the work of this Commission, but who are not coming forward to Commission and assist the country, because they feel that they may be harming, or would be harming the party.

10 I would have thought that an organisation such as the ANC was established in order to bring about a certain type of South Africa and that therefore the country would come first and that if you are going to speak out in order to make sure that you contribute to ensuring that the country is on the right path to where it should go, you should not have a problem and that nobody should have a problem with that from the ruling party, you know.

So what you have touched on is very important, but I just hope that more and more people who may be staying away from coming forward to assist the Commission, you know, look at this and reflect on whether the party was not established in order to help the country to take a certain direction in order to create a certain acceptable  
20 society and that if the country – if things happen in the country which seems to have the result that the country deviates from the right path, they should come forward and contribute to bringing the country back to the right path. So thank you very much.

**MS CHERYL ANN CAROLUS:** Thank you Chair.

**CHAIRPERSON:** Thank you. Ms Hofmeyr.

**ADV KATE HOFMEYR SC:** Thank you Chair. Ms Carolus if we can go to page 1 of

Exhibit "R" at paragraph 2. You talk there about your initial appointment to the Board of SAA as Chairperson on the 28<sup>th</sup> September 2009. You were appointed together with a number of members of the Board and you traverse who they are over the page, at page 2. What I would like you to give the Chair a sense of is the levels of skills, expertise and experience amongst the Board members who were appointed with you in the course of 2009?

**MS CHERYL ANN CAROLUS:** Thank you ma'am. As I said I think there was a lot of thought that went into it and I discovered subsequently a lot of people who served on the Board with me, all felt equally strongly as I did at the time when approached by  
 10 Minister Hogan that we would only do this because of our love for our country. We understood SAA was on very shaky grounds, but we would also only do that if we felt there were the right people, with the right reputations and the right levels of skill.

Maybe if I can just go through ourselves, as I said in my own background is, I have had the privilege to be able to speak for myself a bit. I can also just say that I had served in other capacities. I had served the South Africa's High Commissioner to the United Kingdom which is one of our most important missions. I do think that I can say, at the risk of sounding immoderate that I think I did a reasonably good job in raising South Africa's profile in building our trade, in building our people to be [lowering voice].

Upon my return I chaired – I was the CEO of South African Tourism and I am  
 20 very proud of the fact that we turned it around quite significantly and particularly to turn it into a proper sector. That meant working with all the stakeholders, including of course South African Airways and the aligning the work of tourism, with that of trade and industry, with that of our foreign relations and indeed the role of financial carrier played a very important role.

So I got to understand that quite a bit. I will just go through the list just so that

I do not skip over anyone. Ms Hogan put together this. A person Mr Abel Bouchon, who subsequently resigned in midterm for no other reason he lived in Chile and it just became a bit of a nightmare, but he stayed with us while we were in the formative period.

Mr Bouchon had been a CEO of the Chilean National Carrier. He was at that stage the chief executive of Coca Cola in Chile and had served on a number of big companies. Mr Teddy Dakar and you are right these people's resumes are far too small. He is in fact an accomplished businessman who owns businesses that are global and in fact one of his businesses deals with the defence industry and  
10 manufacturing parts for components for the aircraft use in that, in defence industries. Today his company has one of the largest black ones listed on the Johannesburg Stock Exchange. Some of the things he is associated with.

Mr Tukela Jantjies he is in fact today still the, heads up a very successful rural dairy farming project out in the Eastern Cape. He had, what is not in his CV is that he was actually a shop steward in his life and in fact was the chairperson of the Boksburg Civic during the struggle years, but had gone on and got into management and HR functions. Ms Jacky Kwinana is a chartered accountant and is in fact, had her own company Kwinana and Associates which is still existing and she had served on a number of government bodies and so on Ms Kwinana as I said was a chartered  
20 accountant with degrees in computer science as well.

Mr Russel Laubscher at the time was the CEO of the Johannesburg Stock Exchange which as we know had I think for eight years running won the best award for the best run stock exchange in the world. Himself a business person and served in a number of capacities there.

Mr Bonang Mogale that stage was a member of SA Express which Minister

Hogan in particular and those of us who served felt had to create alignment or better alignment with SAA. He was also quite an important person in the whole sphere of marketing and communications in South Africa and he was the President of Shell South Africa at the time and served on a number of other business capacities.

Ms Duduzile Myeni, Ms Dudu Myeni herself was somebody who was the chair of the Jacob Zuma foundation at that stage, had done quite a lot of community associations that she was associated with and was in fact somebody who was studying in the field of administration and had been a teacher, but had also served on a few state owned entities and their Boards.

10           Mr Jabu Ndlovu was at that stage the executive for Microsoft South Africa and was quite a seasoned people and skills development person and had for a few years then run, sorry won our Microsoft South Africa the best employer to work for and at that stage there was the situation at a staffing level was very fractious and quite bad at South African Airways.

Advocate Lindy Thomas who is a practicing advocate in the court and in fact a seasoned commercial lawyer and somebody working in the field of litigation.

Mr Louis Rabbets had done quite a lot of work in the field of forensics and corporate governance and particularly in the areas of risk. He had served in a number of governments, both government but also big corporates like Sanlam in those  
20           capacities around risk and he comes with actuarial science qualifications.

Mr Zakele Sithole who is late today also chartered accountant was one of the first, I think one of the first eight black chartered accountants that qualified in South Africa and had served, done enormous and the most extraordinary civil service right up till his death. He had served, at that stage he was still serving on the audit functions of the Treasury, the PIC and in fact universities and so on.

There was Ms Maggie Whitehouse who was a marketer of note and in fact herself had very good qualifications and experience in that work. Worked for some of the top global and South African companies and then there were a few other people who joined the Board one of whom was Mr Dave Lewis who is not in the list that we have I think. Mr Lewis had in fact served as a leader in the trade union movement throughout the 80's and in fact built the non racial trade union movement, but he had just retired at that point as the head of the Competition Commission in South Africa and as you know that was one of the areas where there was a lot of problems for SAA.

I think I have covered everyone. I am not going to cover the executives  
 10 because they were employed for their skills. Maybe what I can just conclude with Chairperson is to say that Minister Hogan appointed initially nine of us and then in discussion with myself as the chair and me in discussion with the rest of the Board as we realised what the challenges were that was facing us we subsequently, she then appointed members like Mr Lewis who was clearly seasoned when we realised the quantum of the challenge that we were dealing with hundreds of millions of Rands worth of litigation in the areas of competition and some very bad practices in that area.

**ADV KATE HOFMEYR SC:** Thank you.

**COMMISSIONER:** Okay before Ms Hofmeyr continues I am just checking that people at the back are hearing everything. They are not, okay thank you and then Ms Carolus  
 20 I seem to remember that you did not mention it, but I think I seem to remember that at some stage you were also the Deputy Secretary General of the ANC, am I right or were you the Secretary General?

**MS CHERYL ANN CAROLUS:** No you are correct Chairperson. I was the first woman elected into the top five leadership positions in the ANC and I did indeed serve with great pride at the time of Nelson Mandela, Walter Sisulu and Oliver Tambo. Yes,

thank you.

**COMMISSIONER**: Yes. Which years were those by the way?

**MS CHERYL ANN CAROLUS**: They, now you have actually got me. I stepped down in '98 and I had served for four years before that and I served as the Deputy to Cyril Ramaphosa. He was the Secretary General and I was his Deputy and when he left the ANC to pursue business interest I took over up until 1998 as the Secretary General of the ANC.

**COMMISSIONER**: Okay, no thank you. Then just lastly although Ms Hofmeyr will be asking you the questions you are telling me your evidence.

10 **MS CHERYL ANN CAROLUS**: Yes. My apologies.

**COMMISSIONER**: Look at me.

**MS CHERYL ANN CAROLUS**: I shall do that.

**COMMISSIONER**: Thank you.

**ADV KATE HOFMEYR SC**: Thank you Chair. Ms Carolus at page 2 paragraph 4 you give us some insight into the role as Minister Hogan had it and as you implemented it at SAA between the shareholder, the Board and management. Can you explain to us how you saw the distinction between those roles and the emphasis that Minister Hogan placed on those different roles?

20 **MS CHERYL ANN CAROLUS**: Thank you Chairperson. Minister Hogan in fact when she approached me to serve as a chair she basically asked me if I am prepared to sign up to her understanding of corporate governance and that is the separation of those three areas of responsibility in relation to the airline and she saw herself very clearly as the shareholder representative who would set a clear set of outcomes and she hold the expectations with us and she outlined various processes that we would follow to make sure that there was clarity of understanding between herself as the shareholder

representative and ourselves as the Board who would then take responsibility for the areas of governance and that is we would oversee the development of policy and of strategy and of implementation thereof as well as the monitoring of the performance of the company and the management in its role in leading the team to achieve the objectives that our shareholder had set for us.

She explained to us very clearly that she would hold us accountable in fact to those matters. She then convened a workshop of all the chairpersons of all the state owned entities under her jurisdiction at the time and she, one of the important things that stood out in my head was the notion of progressing what used to be semi  
10 government departments of state owned enterprises into state owned companies.

I just remembered it was one of those things that stood out and that she expected us to adhere to the letter and the spirit of all the pieces of legislation and practices that governed the state owned companies and enterprises in general such as the PFMA, but also that she expected us to be familiar with and to execute and to legally operate within the framework of the newly adopted Companies Act which had come into force in 2008.

**ADV KATE HOFMEYR SC:** Thank you. If we then turn to page four of your statement in bundle R you capture from that page and the following the challenges that SAA was facing when your new Board took over. As I have it you identify five different  
20 challenges in the course of the next number of pages and I would like to take you through each of them. The first that you identify is a governance failure within SAA. Can you explain to the Chair what that was when you found SAA?

**MS CHERYL ANN CAROLUS:** Thank you Chairperson. Well there was quite a bit of violation around just straightforward illegal activities. Violations of the PFMA. Violation of procurement processes, of tender processes and there were in fact also a number of,

there was an investigation which our predecessor Board had just done which identified a number of those breakdowns and failures and that investigation was conducted by KPMG and when we arrived we were informed that we were bound legally to in fact review and act on those shortcomings. So we had a script of events that was already detailed for us. We reviewed it on, the report had just been produced. Our predecessors had not yet had a chance to fully act on it, but they had suspended the previous CEO on whose watch these violations and transgressions had taken place. So we came there, there was no CEO and there was an acting CEO at the time who was a member of the executive and so we then set about doing, acting on that. I, as a  
10 consequence we were advised to in fact lay criminal charges and a number of civil actions to retrieve the moneys that we believed were misappropriated or negligently spent at a management level.

When we received that advice all of this was quite new still and the NPA just was also quite new and Mr Menze Simelane was in fact the head at the time and because we were not clear how to do this I personally called him and sought his advice for how we should go about bringing lawful action. He then advised us that charges should be laid with the criminal, with the Commercial Crimes Unit and there were some, I think even he was quite new to the whole procedure and there was questions of domicile and so on, but ultimately charges were laid. I must say when I was compiling  
20 my presentation it suddenly occurred to me that I do not know what happened to these charges and they were pretty serious charges both because of the precedent they set and in fact the precedent of having to act lawfully on that. Mr Simelane has since gone and with him seems to have gone the charges. I do not know what happened to those charges. I said Chairperson that there had been major failures in the procurements systems and some, and poor adherence to the PFMA. We had also very disturbingly

the levels of capitalisation of the airline had been very-very poor yet the expectations and the opportunities for the airline had grown tremendously, but in a normal company the shareholder would, you know, when you have a factory and you want to grow the factory you would need new machines, because the market has opened up. Your shareholder would in fact be the person who would put up the money so that you can compete better and beat your competitors at their game, but that does not, had not happened at SAA and with quite big consequences, it is a big part of how things played out at SAA and in fact today there is a similar kind of setup.

There were also a number of criminal and civil claims against the airline for price fixing and anti competitive behaviour and some of them were settled only in the few, the last few years. Chairperson you may recall there was a settlement with Kulula about a few R100 million actually where SAA had behaved unlawfully and that had just somehow not been paid any attention to and we, that was one of the things we took on. We also found that the management was quite fragmented and quite disaggregated. So I will just say there was a very poor staff morale and with very, we thought very bad tones set at the top by some of the ways in which management previously had behaved which we thought needed to be corrected in terms of setting the tone at the top there. There was a union. There were pilots. There were – just between the different levels of the workforce there just was no team spirit and we also found that SAA in the process had really lost a lot of scale and competitiveness and that it all had to do with the fleet that we had.

There was you know a whole lot of modern aircraft that had come onto the market that was fuel efficient, much more fuel efficient. The whole offering on Board as the airlines had changed, in flight entertainment, the leg room, all sorts of things and SAA had just not held pace with that. That had not been dealt with.

But most importantly given the location of South Africa if the airlines flew anywhere outside of six hours of a flight there were two implications. The one was I think it is eight hours in the one instance you were what we called an end of hemisphere carrier.

Unlike Emirates or Kenya or Ethiopian Air who are in the middle of the world you could be much more nimble footed if there was any change in the global setup or in your strategy you could very easily fly up or down this way or that way whereas we were stuck at the bottom and there were so much dependant on a well functioning national airline and it is a matter which I still have a lot of passion about and I think  
10 there is a lot of disinformation but I will not bore the house with that.

But save to say that the airline was completely not with a fleet that would enable it to compete globally. It had lost market share and scale and in fact we were losing all the opportunities. So we really put forward a very strong request to the shareholder to in fact capitalise the airline properly.

We had a very weak balance sheet at the time which just meant that we were very bad there and if we wanted to borrow money in the market, in the financial markets to grow it would come at an extortionist rate because it is a very simple thing if you were bankrupt, virtually bankrupt you would have to – you pay much more than if you have a sound one and if you have a shareholder who indicates a willingness to in fact  
20 step up to the plate to enable you to grow to give you the tools and the money to be able to grow and expand you are much more likely to attract favourable terms for that.

We also thought that our fleet as it was were either very small aircraft that could only fly domestically or otherwise ones that could only fly to Europe to – to long haul whereas in fact at that stage it was very clear but not apparently had not become obvious but was very clear the growth for us was into Africa and the idea was to in fact

use Johannesburg in particular as a hub that will enable us to do shorter flights into Africa.

There was no one who could compete with us on the entire continent in terms of the access we had also into Latin America and at that stage we found the emergence of what has become BRICS and so our whole strategy was to have a fleet that would enable us to fly from the East, bring passengers from China and from India and surrounding countries there through South Africa and to connect them onward into Africa and into the Americas and that was a sweet spot that no one could beat us at not even Ethiopian or Kenya at the time and so but we needed a mix of aircraft that would  
10 enable us to do that.

Another part of our strategy that we identified as a weakness was in fact the fact that we needed to develop a very different approach to only seeing ourselves flying as we call it point to point and in fact develop Johannesburg as a hub.

The Mumbai route, Chairperson which is one matter I will just speak to a little bit very briefly was particularly important for us in that expansion of what we call the East West Corridor bringing passengers from Mumbai and Beijing were our two key markets where South Africa as a country was growing its own trade and those same people who were trading with our people were also trading into Africa and so it was a very important one for us to in fact connect major global flows of trade through  
20 Johannesburg as a hub and that was the significance for us at the time of building up the Mumbai route, Chairperson.

**CHAIRPERSON:** You referred to the CEO of SAA who was there before the time of your Board. I see in paragraph eight of your statement he is referred to as Mr Khaya Ngqulu. I think he was Khaya Ngqula.

**MS CHERYL ANN CAROLUS:** Oh.

**CHAIRPERSON**: Maybe that should be corrected.

**MS CHERYL ANN CAROLUS**: I apologise.

**CHAIRPERSON**: The surname would be spelt as N-g-q-u-l-a.

**MS CHERYL ANN CAROLUS**: Yes. Sorry. Sorry.

**CHAIRPERSON**: Not Ngqulu.

**MS CHERYL ANN CAROLUS**: It is a gremlin. Yes, my apologies, Mr Chair and to Mr Ngqula.

**ADV KATE HOFMEYR SC**: Thank you for that, Chair. Ms Carolus, if I can then move you to page six of EXHIBIT R. One of the challenges that you have mentioned in your  
10 testimony was the fragmented management team and processes that you found in place on your arrival at SAA and at the bottom of that page six you talk about one of your first tasks was the recruitment of a permanent CEO.

Tell us about that and who you appointed and why you thought that was one of the key first aspects of your duties as a Board.

**MS CHERYL ANN CAROLUS**: Thank you, Chairperson. When we arrived at SAA I had a bit of joke as I said. It feels a bit like we are at a drama school because everybody was acting in the executive. So many people were in acting positions and many of the people – with no disrespect but many of the people in those positions were just not people who were suitably qualified to in fact take over permanent positions in  
20 there.

But it really was not for the Board to recruit an entire team. We had to start at the top and the fact that Mr Ngqula was at that point – in fact had been relieved of his duties we thought we needed to appoint a leader, a CEO who would be capable of assembling a team that would be able to meet the challenges but for us more importantly be able to seize the opportunities that we thought offered enormous

potential for our country and we then decided to do the process properly and vigorously because it was important that we got the best person for the job and we had a huge amount of debate amongst ourselves and sometimes even outside of ourselves because what kind of a person were we looking for?

We said we were looking for a world class person who had international experience and respect and somebody who understood especially the markets where we wanted to grow like Africa and we did a global – we appointed Spencer Stuart an international head hunting firm because we thought that it had to be a proper process that a group who had access to a global pool of skills would be able to give us a set of  
10 options.

We had some debate and decided we were not going to limit the pool only to South Africa or indeed to Africa because the script very much had to be one of the key things was for somebody who understood the African aviation market and the airline market but not exclusively because Europe was a major trading partner, the Americas was under service at the time and so we went and we were quite surprised at the calibre of people who applied.

There was a Deputy CEO of a major Western European Airline who applied for the job. There was one CEO of one of our top competitors in Africa who had an exceptional track record who applied. It was a really stellar group of people from all  
20 over the world who were on the shortlist and at the end of that very vigorous process the person who emerged was Ms Zizakile Mzimela who in fact came out head and shoulders above the rest actually and she came out because of her background.

She was a banker by training but had spent most of her professional life in fact in South African Airways initially in a middle management position and subsequently in a few executive positions not only at the corporate level but in fact globally and had in

fact headed up a big piece of work around Africa.

She at that stage was the serving CEO of South African Express which in fact was a major partner – was in fact owned by the South African government as well and so she understood that alignment and the synergy so Ms Mzimela we really thought was a very good candidate and we thought that it was important that she goes through that process and that she emerges with the confidence knowing that she was the best in the world for this job that we had to offer.

**ADV KATE HOFMEYR SC:** Thank you and one of her key tasks you identify at page seven of EXHIBIT R at paragraph 18 was to lead the process for the presentation to the  
10 Board of a strategy to take SAA forward and over the page you start to describe in some detail what that strategy was.

Can I ask you first of all to describe for the Chair what the engagement was with Minister Hogan around that strategy, the extent to which you engaged with her department in its development?

**MS CHERYL ANN CAROLUS:** Thank you. We understood that it was very important for us to have our shareholder give us the inputs about what the expectations were and for us to be clear that we would be able to deliver against that and our shareholder expectations was obviously economic growth, job creation and transformation and to be able to do that we needed to work out what our most competitive offerings would be as  
20 the airline and so we understood that our contribution would not just be to carry people in aeroplanes.

It was in fact to contribute very, to the very hard benefits of trade and tourism and then in fact our foreign affairs as well but we understood it to be how do we create – how do we make ourselves part of the general transport mix for the effective and efficient transportation of goods and services and people in an economy in a country

that was positioning itself to become globally more competitive and in fact quite aggressively grow in that way.

So in terms of our engagement we – Ms Mzimela and her team went through all the processes. There was an aviation unit in the Department of Public Enterprises and in fact made sure that we all understood and were aligned on how we would contribute to these broader goals of our country and at the end of that Ms Mzimela and her team presented to the Board at a strategy session at the end of October 2010 this what was to become known as the New Growth Strategy central to which was identifying that we sharpen our areas of focus around where our country was going to  
 10 compete globally and our country at that stage as I was saying was placing far more emphasis and we saw the opportunities to align ourselves with what was the BRICS block.

To trade with India during my time as the CEO of South African Tourism we already started to in fact grow with huge success tourism markets in India and in fact in China and so on. We also agreed that given we needed to renew the fleet to be able to give us the kind of aircraft that we could actually fly into some of our African destinations which were not two hour flights between Johannesburg and Cape Town but now six, seven hour flights.

We did not have aircraft. The ones we used in domestically could not do that  
 20 and the ones we used to London it was just felt completely silly to do that. So we – in that development we all arrived at the same page that SAA is and how we arrive at the fleet – the sense of what fleet we were looking for and the levels of capitalisation that we needed was allied with Trade and Tourism and our people interaction as a country.

Minister of the Board felt comfortable. Minister Hogan and her team joined us in the last one and a half days I think of that session. We presented the whole strategy

to her but as I said that obviously she would have been consulted.

I do not know what the internal processes were but she was comfortable and her team were comfortable. Her experts, her advisors, her specialists in the department all signed off on that strategy.

**ADV KATE HOFMEYR SC:** And Ms Carolus I have it from your statement that it occurred in October 2010, is that correct? --- Yes that is correct, madam. It was literally the end of the month.

**ADV KATE HOFMEYR SC:** Indeed and then as you conclude on page eight of your statement immediately thereafter on 1 November 2010 Minister Hogan was replaced by  
10 Minister Gigaba, is that correct?

**MS CHERYL ANN CAROLUS:** That is correct, madam.

**ADV KATE HOFMEYR SC:** And so you go over the page at page nine to talk about the steps that you took to ensure continuity after Minister Gigaba took over from Minister Hogan. Can you explain those steps to the Chair?

**MS CHERYL ANN CAROLUS:** Chairperson, I of course knew Minister Gigaba. He served as the President of the Youth League during my tenure in the leadership as the ANC and so I just called him and I congratulated him and said to him I would just like to have a courtesy meeting with him to just update him in the work that we had done with his predecessor and to enable him to be familiar enough to engage with us because it  
20 was extremely important for us that there be that understanding.

As far as we were concerned whoever the Minister was you know was a representative of government who is the shareholder and but if that Minister was not aligned with the vision and the strategy that we had evolved it could create a lot of difficulty and it had taken us quite a long time to get the alignment through Minister Hogan and the DPE with trade and industry, with tourism to make sure that the airline

and where it was going would serve those objectives and so it was important that a successor needs to understand some of that. So, but we did not want to so I explained to him that we, what the process had been that literally the day before we had concluded and signed off with Minister Hogan and then the very next day she was replaced by Minister Gigaba and so I outlined to him that I did not expect him to sign off on it, but there was urgency, but he was obviously also becoming the Minister of the same teams in the DPE and we assumed that there would be continuity in departmental levels where the Ministers came and went, there should be there, because those plans which Ministers sign off on obviously are taken in processes in bilateral with their

10 colleagues as well as into Cabinet from time to time as is required like when we want to open a new route to [indistinct] in Africa it would have to go through a set of processes with Department of Transport.

So we assumed that when Minister Gigaba came that there would be the same teams would be familiar. So we explained to him that we understood that he, usually Ministers bring advisors with them to help them in that transition with the established officials in the relevant departments and I explained to him that we would get people to take his advisors. He had one person, a professor at UJ at the time whom he called in and would be one of his policy people afterwards, but it was just an introduction and we then said "please take the next few months and work through it, but

20 if there is any", I said to him we had just signed this off in October in order, in terms of corporate governance we now had to take it to a Board meeting for the SAA Board to sign off on it and that was going to happen in November and if there was anything at any point as his teams are being briefed that he needed clarification or that he was worried about he should just phone me and we will go out of our way to in fact clarify. He had indicated all along that nothing came up from him or his team that worried them

and as a consequence it was business as usual as far as the shareholder expectations at a high level. We, in all state owned entities we have what we call a corporate plan, you have to have a strategy which then becomes a corporate plan that works on a four year cycle and of course it is a rolling cycle. So every year you extend, you work out what year four looks like and so no concerns were raised by Minister Gigaba or the team under Minister Hogan. So we in fact went into the full budgeting process the following year of 2011 with that same corporate plan, with the vision which we had crafted with Minister Hogan's team who was still in Minister Gigaba's team as well. I do not know if that...[intervenes]

10 **ADV KATE HOFMEYR SC:** Thank you...[intervenes]

**MS CHERYL ANN CAROLUS:** Answers your question.

**ADV KATE HOFMEYR SC:** Indeed. One of the things that you did in the course of that engagement as I have it is presented a strategy to Minister Gigaba on the 18<sup>th</sup> of April 2011. That appears at the bottom of paragraph 22 on page 9. I would like to take you to one aspect of that strategy, because you attach it to your statement. Chair for your benefit it commences at paginated page 34 of EXHIBIT R but the relevant page I would like to take Ms Carolus to is at page 62. That is one of the slides which formed part of that strategy briefing to Minister Gigaba.

**COMMISSIONER:** Did you say 62?

20 **ADV KATE HOFMEYR SC:** 62 indeed.

**COMMISSIONER:** Okay.

**ADV KATE HOFMEYR SC:** Ms Carolus on that page you are summarising some of the operational challenges, sorry operational changes that you were proposing implementing. I would like to ask you a few questions about the first item on that page but just to underscore its relevance in the course, the latter course of your statement

and in your evidence today you will be testifying about the Mumbai route and the approaches made to SAA from Jet Airways and Minister Gigaba's involvement in those engagements. One of the issues that arises there is the question of the profitability of that route and it is in that context that I would like to ask you to speak to paragraph one on that page, because one of the things you summarise there as an operational change is that there will be routes restructuring in order to operate only profitable international routes. SAA will operate only profitable international routes by the 31<sup>st</sup> of March 2010 and network profitability must exceed any loss of an individual international route. Now can we explore that a bit? You mentioned in your testimony the difference between

10 point to point as compared with a network route. Can you explain that difference for us?

**MS CHERYL ANN CAROLUS**: Thank you madam. Chairperson I am glad that in fact Advocate Hofmeyr has introduced the airline jargon here and not myself, but it was a very important way, fresh way of looking at how SAA must see its own business. A point to point route is simply where you fly, let me use an example, London to Cape Town, it was point to point. So it was London to Cape Town. Johannesburg represented for us the centre of a new approach and that is of a network approach so that when you decide how you use your, how you deploy your limited aircraft that you have at your disposal because it was quite clear that we would have to shut down some

20 routes and we would have to open up new ones and the simple criteria was whether as a network it would be profitable. So when we speak about a network approach the Mumbai route was quite critical and it is true we were making losses and we were building up that route from Mumbai to Johannesburg. Although those losses during our tenure was greatly curtailed notwithstanding the fact that we were not in an optimal position. We had four flights what we call frequency in the jargon. We would have liked

to have had seven because you make your money out of business people, but where we made that money out of the Mumbai route was in fact pushing those, where many of those travellers were people who sought to travel into Africa or into Brazil to do business in Brazil or in Chile or in Latin America.

Now anyone in this room who has ever flown on the routes to Africa would know that we were charging an arm and a leg and the simple hard nose business of supply and demand applies. No one had the connectivity that we had. So as a consequence those same travellers we started to say we must not just look at what people, how we can, we must not just stop marketing to people Mumbai to  
10 Johannesburg we must actually start marketing it as a package that you can move on. So that was why it was so important for us to not just measure it and sometimes in business people talk about, even about loss leaders. You know you take a bit of a pain here, but you know you make that money many times over. So the ticket you sell to somebody is in fact the ticket to Sao Paulo or a ticket to the Congo. So I think that was quite a big change in how we looked at that. Perhaps the other side of that coin Chairperson with your permission was when we shut down the London to Cape Town both then the Premier and the Mayor two women I knew quite well Helen Zille and Patricia De Lille were absolutely apoplectic about the fact that we had done that and we were making losses on it as well. So similar loss making route, but the difference there  
20 was we were not pushing people on from Cape Town anywhere and if we have only X number of aeroplanes and suddenly there were opportunities for us – you will see somewhere in the paperwork Chairperson that in our tenure in one year we in fact opened seven new routes into Africa and it was because of that. Another, because we could take that aircraft that was flying people mainly leisure travellers who travelled in the economy class and then that is all you do you put them down there whereas in fact

we could use that same aircraft to fly into other destinations that in fact we would push them on out of South Africa.

We would also, we did the same thing with, but maybe let me not get too caught up. Another important aspect of the network process Chairperson was it was not just about the tickets and the bums on the seats as we call it. It was also about the more people we bring through Johannesburg and therefore South Africa as a hub we are growing ACSA with the landing, because every passenger in that ticket there is a price that goes towards ACSA our airports company. Everybody who stops here there is in fact food that air chefs provides. There is in fact the South African Airways  
10 technical services which is sadly diminished and I make a very cursory comment, but it is actually a big problem that it has been so driven into the ground as part of this whole goings on at SAA over the past few years, but so using a hub strategy creates benefits way beyond the ticketing process and the benefits there, because it creates air chefs jobs, it creates supplier demands of people who provide the food. It provides cleaning services for people who transit here. So when we lose, every flight we lose that lands in Johannesburg it has a huge knock on effect of a set of economic benefits for our country.

**ADV KATE HOFMEYR SC:** Thank you Chair I note that we have passed the usual time for the tea break. If it would be convenient to take the adjournment now?

20 **COMMISSIONER:** Yes we will take the tea adjournment now and we will resume at 11:35. We adjourn.

**HEARING ADJOURNS**

**HEARING RESUMES**

**COMMISSIONER:** Yes Ms Hofmeyr?

**ADV KATE HOFMEYR SC:** Thank you Chair. Ms Carolus before the break you were

giving us insight into the distinction between a point to point route as opposed to from a network perspective. For those of us who are uninitiated in this jargon would you confirm that it is a fair summary to say that a route could be unprofitable on a point to point basis, but nonetheless retained because of its link from a network perspective? Is that, is that a fair summary of your evidence?

**MS CHERYL ANN CAROLUS**: That is absolutely fair and correct, thank you.

**ADV KATE HOFMEYR SC**: Thank you. If we go to page 10 of EXHIBIT R you start there at paragraph 24 to describe the unease as you have it in that paragraph 24 of the developing relationship between the Board members and Minister Gigaba. Can you tell  
10 us about that strained relationship and how it developed?

**MS CHERYL ANN CAROLUS**: Chairperson we, we would just find that the Minister would at various public for example at the Cape Town Press Club or in media statements would on quite a number of occasions make utterances which were quite we thought inappropriate and unfair and annoying about where the Minister would question the competence of the Board and then sometimes even misrepresent some facts. Like the Minister at times would say on a few occasions and quoted in the media saying SAA has no strategy or no vision and it is impossible for a state owned entity to not have a written down strategy, because you have, that has to get signed off every year. It is in fact part of your submissions of your annual report, your financial  
20 statements which you submit in the first instance to the DPE and then through the DPE as part of its composite report to cabinet as a whole. So in the first place it is incorrect to say that SAA did not have a strategy because that was signed off on the basis of which our budget is allocated and the basis on which we are audited. Secondly the Minister chose to do this generally in outside fora where we just had no means to defend ourselves and it would have been quite an awkward position for us to start

taking exception to our Minister, our shareholder representative. So it was quite an awkward position, but we did feel offended and we also thought it undermined the airline. Where we were trying to build up confidence in the market ranging from our passengers to the financial institutions from where we would seek money and where the competence of a Board is seen as a key indicator in terms of risk and therefore it will have an impact on whether how available money would be for you or at what, on what terms it would come and if it is perceived as a Board that was incompetent and that was just floundering around the place of course you cannot lend money to an institution like that because it is not going to – you are never going to see the return on

10 your money that you lend to them.

So it really irritated us and then the other thing was also the Minister would often accused us of being unpatriotic and not caring in matters that really we had, he had ample opportunity to address through the structures that we had. The question of strategy for example there are regular meetings between the department and each state owned entity with specialist teams where they interrogate, monitor and evaluate, you know, the strategy, the corporate plan on a quarterly basis. There were actually formal meetings and then on all the occasions when we met with the Minister in fact he spoke quite highly to us about our own capabilities and his confidence and I think some people really were quite concerned about this very early on. I must say initially I

20 shrugged it off coming from my own background in politics that politicians will just always be politicians. They will always populist in their utterances and they will always try to blame everybody except themselves for anything under the sun, but we did feel quite aggrieved and I say initially it was mild irritation and eventually we felt quite aggrieved because it was starting to question the integrity of the group as, in our individual capacities as well as that of us as a collective.

**ADV KATE HOFMEYR SC:** Thank you Ms Carolus and still at page 10 paragraph 25 you talk about one of the incidents around this negativity in relation to the Board and in so doing you introduce one of Minister Gigaba's advisors Mr Siyabonga Mhlangu. Can you tell us what role he played in relation to the Ministry?

**MS CHERYL ANN CAROLUS:** Chairperson Mr Mahlangu was introduced to us in the course of events by the Minister as one of his advisors and his legal advisor in particular and he was part of the team, but we got particularly concerned and why I mention Mr Mahlangu because Mr Mahlangu himself started to adopt a more and more prominent role in ways that worried us, because it was not for the Board to have a  
10 relationship with advisors or indeed even with any of the Minister's staff. Our relationship with the Minister was through myself and the Minister and we relayed to our teams and so, but Mr Mahlangu had just displayed the most extraordinary lack of understanding of those kinds of boundaries in ways that made us quite uncomfortable. He often purported to act with the authority of the Minister in some of these matters and there were a number of little ones and I am sure if you ever have an opportunity to interview members of management of South African Airways during our tenure and afterwards there were some really disquieting things, but as far as the Board was concerned as he would just pop up and his behaviour and in fact his roles we thought were completely inappropriate and inexplicable.

20 One such occasion that was extraordinary was one of the directors Mr Jabulani Ndlovu was called by an acquaintance and...[intervenes]

**COMMISSIONER:** And Mr Ndlovu was a Board member?

**MS CHERYL ANN CAROLUS:** He was a Board member.

**COMMISSIONER:** Yes.

**MS CHERYL ANN CAROLUS:** Yes Chairperson and he was in fact called by a

Mr George Sabelo who is a lawyer to his office and they were acquaintances and I am not sure how they became acquainted and was specifically called to his office and at this or in their discussion Mr Sabelo pointed out to him that was he aware of the fact that the South African Airways, South African Board was clearly an incompetent crowd of people. They were, and he was saying this apparently in a very passionate way that we were way too big for our boots, that I in particular had the audacity to consider myself to be the Minister's political superior. This mistaken impression that I was in fact the Minister's political superior and that in fact the CEO herself was a particularly incompetent person who was only accountable to herself and conducted herself as

10 such. He then concluded this bit of conversation with Mr Ndlovu by saying well the Minister was going to sort the whole lot of us out for this sort of inappropriate big for our boots and lack of accountability to ourselves. Mr Ndhlovu was obviously quite shaken by the fact that some third party could speak so assuredly and he assured Mr Ndhlovu that these were, these views were communicated by him, to him by Mr Siyabonga Mahlangu and that Mr Mahlangu was in fact when he was speaking to him, Mr Sabelo, these were the views of the Minister and Mr Ndhlovu was understandably very disturbed about this and he called me immediately at the conclusion of this matter. He told me about this exchange and he said he had said to Mr Sabelo that he viewed this matter so seriously that he felt he was obliged to inform me as the Chairperson of the

20 Board of these views that purportedly came right from the Minister through his legal advisor to this person whose ties to Mr Mahlangu I am not sure what they were. Upon hearing this I said to Mr Ndhlovu, I asked him if he, I viewed it seriously enough to think these should be brought to the Minister's attention and the Minister should have a chance to respond to these views which were attributed to him by a third party completely outside of both our structures.

Mr Ndhlovu said no of course he was quite prepared and I said would he be prepared to repeat this in front of the Minister and Mr Mahlangu and he confirmed. I called the Minister immediately and the Minister granted us an audience the very next evening and I indicated to the Minister beforehand that it was a matter which involved Mr Mahlangu and that I thought it would be appropriate to have Mr Mahlangu in that conversation. So I briefed the Minister just on a one on one while Mr Ndhlovu and Mr Mahlangu did not join us and because I did not want the Minister, I thought it could be awkward for him if we suddenly start that kind of confrontation and I informed him and I said to him that that is why I thought it would be appropriate for him to have an

10 opportunity to hear what people were saying in his name and for him to say to me now without Mr Mahlangu if these were his views. He assured me they were not and that I thought Mr Mahlangu should be confronted for putting out views and speaking in the name of the Minister to complete strangers and he agreed that that was how we should proceed. We then called Mr Mahlangu and Mr Ndhlovu into the room and I then explained why we were there and asked Mr Ndhlovu to repeat what he had told me and then asked through the Minister for Mr Mahlangu to indicate whether he had any knowledge of these views and whether these views were views that he had indeed communicated to Mr Sabelo and that he had given Mr Sabelo an indication and some kind of authority that he felt he could and should call members of the Board to

20 communicate these views. Mr Mahlangu in fact confirmed in the meeting that he did have this conversation with Mr Sabelo, but he did say those were his views. He explained that. The Minister in that gathering, I asked the Minister whether these were his views and the Minister indicates that

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**MS CHERYL ANN CAROLUS:** And the Minister indicates most strenuously that those

were not his views and in fact he then berated Mr Mahlangu quite severely right there in our presence and he went to the extent of saying to Mr Mahlangu that he considered me as one of his leaders and that does he know who I am and he never ever wanted a repeat where Mr Mahlangu or any member of his staff brought into any question the integrity of myself and he went further and in fact said he has absolute confidence in our Board, in their competence, in their integrity and he then again said to Mr Mahlangu he does not ever want him to repeat this behaviour where in fact he goes outside to a) speak on his behalf or communicate negative perceptions about any Board or structure that formed part of the Ministry or the Department and the Minister went further and he  
10 said he felt so strongly he was prepared to write a letter to the Board to in fact communicate these views and I said to him no I thought that was quite unnecessary.

I did not think that it was appropriate for a Minister to write to a Board to say this and we were happy and we then left it at that.

**ADV KATE HOFMEYR SC:** And did Mr Mahlangu heed the Minister's warning that he should not again repeat the conduct of talking to third parties about matters in relation to SAA and its shareholder.

**MS CHERYL ANN CAROLUS:** No, Chairperson. In fact the very next morning after the Minister had communicated in no uncertain terms and quite strongly in fact told Mr Mahlangu that this was inappropriate to talk outside of any of the government  
20 structures and particularly to parties who had no accountability or was not part of anything to do that and I thought it was quite clear that what the Minister meant.

Well Mr Sabelo phoned Mr Ndhlovu the very next morning and then berated him for having repeated what he told me so quite clearly Mr Mahlangu had phoned Mr Sabelo and informed him of a confidential meeting between the Minister and his Board notwithstanding and I found it quite astounding that an employee of the Minister

actually felt that he could go up against the Minister so flagrantly within hours of having been instructed specifically not to do so.

**ADV KATE HOFMEYR SC:** Ms Carolus Mr Mahlangu from your statement plays a further key role in relation to both the Mumbai and Johannesburg route as well as the overtures that were made to SAA by The New Age newspaper.

We will come to those in due course but we are now at page 12 of EXHIBIT R and at the bottom of that page you begin to talk about the Mumbai route under Minister Hogan's tenure. Can you tell us about how the issue of the Mumbai route first came to SAA's attention and deal first specifically about your interactions on it while Minister  
10 Hogan was the Minister.

**MS CHERYL ANN CAROLUS:** Thank you, madam. Fairly shortly into our tenure, Chairperson as a Board the then Acting CEO Mr Chris Smythe came to us with a proposal that we should drop the Mumbai route. We were quite open minded about all matters at the airline and we – but we did indicate to him that you know you do not just change a route overnight and we thought that we obviously must review particularly our loss making routes but also opportunities and we thought that that ought to be dealt with as part of a broader strategy and not on a case by case basis, a piecemeal basis and so we heard him out but we thought it was not appropriate for us to look there and we would agree.

20 We also further thought that you cannot make strategy on the hove and we needed to evolve a strategy when we ourselves were further down the line. This was within I think the first quarter of our being there.

I think even in the first month of us being there and so we said we also thought that the question of a new strategy had to be developed by a new CEO and team that we could not sit in a Board room and start evolving this that we would wait, so we would

wait and we did not think there was the kind of urgency that we had to because it was no different from any other routes.

So this strategy was eventually developed and as I said Chairperson adopted by the Board but so in our conversations with Minister Hogan this was obviously in the route there is a structure between the DP, the DP has an Aviation Unit and then the other ones who look at just the question of expenditure and reports to Treasury on the state owned companies under their watch, tracks the budget and so therefore things like loss making routes was routinely reported on in these quarterly meetings that there was.

10           Excuse me, and so the matter of the Mumbai route never was initiated by us with Minister Hogan initially. Excuse me. I just have got terrible hay fever so I get into these sneezing phases where I just start coughing.

**CHAIRPERSON:** Are you fine?

**MS CHERYL ANN CAROLUS:** I am just going to pour myself a little bit more water, with your permission Chair.

**CHAIRPERSON:** Okay alright.

**MS CHERYL ANN CAROLUS:** As I said, so these – loss making routes were discovered routinely at quarterly meetings with the DPE and in fact evaluated. We also in those structures, it is a very clear thing that you know one is open to all kinds of  
20 options always and collaborations with other airlines and where you, at the end hand you compete, but on the other hand you cannot have destructive competition on any of the routes.

The Mumbai route particularly, we could only have, what we call "an airline jog and four frequencies" but it is a simple thing, four flights a day, four flights that we had a week. Which is not optimal, because you particularly want to fill in anyone in the room

who travels business class Chairperson would know. The difference between a business class ticket and an economy class ticket is huge. So we anecdotally speak about the front of the bus cross subsidises the back of the bus. The back of the bus plays other roles in terms of tourism, who then spend their money in country and so, if they save on the airline ticket they do that.

So having four flights a week was not optimal, because we wanted business travellers and indeed tourists too, but everybody to understand, especially premium clients that everyday between Johannesburg and Mumbai there is a flight. Whether you achieve that by collaborating with another airline, but not colluding, but collaborate, because we only had enough aircrafts to fly there. If we could find a way that – if I wake up in Mumbai today and my business cannot conclude, I know I can stay another day and tomorrow morning I can get that, my voyager miles will, you know, whether I – it does not matter what aircraft I sit on and so on. The service is more or less the same and so if we can both build-up that route in the minds of the travellers that the Johannesburg/Mumbai route is the most reliable one.

So we do that so you compete, but you cannot compete destructively, but you also do not collude. So the process for how you work on that particularly if you want a strategy of building Johannesburg as a hub, was one that we needed to further.

So we continue with Minister Hogan, as I said nothing comes up in the process. But somewhere along the line we find that Jet Airways is proposing that SAA should drop the route.

We were – it was obviously not going to, it was not working for us. It was a strange request. It was not the request of, "can we build this route in the minds of travellers as the most reliable route." Then once we have established it and established enough demand, we would be able to then just compete and may the best

airline win.

I think what a lot of people do not realise and I must say, it irritates me now with the discussion even now with SAA. The airline margins are very tight and I do not know how any businessperson would go into airline business. It is between one and three percent. I say, as a businessperson myself I will never go into a sector where that is your profitability. If one thing goes wrong, as indeed it does and the biggest thing with us – and I will come to that later. But if one thing goes wrong you are making a loss and so you just cannot afford to have silly competition whilst you avoid collusion you actually cannot do that.

10 But we find that we have this conversation in Jet Airways seems to think that we should get off the route and we decide we are not going to do it. We are happy to discuss collaborations with them, but they are not wanting to do this. They then decide to go on an aggressive strategy against SAA and they decide to put seven frequencies on the route as opposed to our four. But what they did not have, what we had, was the onward connection and it relates to scheduling. If somebody is flying onto Sao Paulo or from our side, we had to make sure the Mumbai route lands at the time that there was minimal disruption in the connection over to there.

So in these efforts of Jet Airways, they try various channels, they call my office for example, and they say the President of Jet Airways wishes to discuss this. Now at  
20 this stage, this was not even a matter that the Board discussed. So my knowledge of it was, what came to the Board meeting and as far as we were concerned this was ongoing business, it was a working progress.

So he phoned, and my office just had a very good routine response. When anybody phones they are very open to it and they just said, what is in connection with and is there any documents that we can peruse to decide whether we are appropriate.

They said, no the Jet Airways President wanted to discuss the Mumbai route with me. The PA said – came to me and I said, but I do not discuss routes, the Chairperson and the Board does not. It is a matter which really should be discussed with management and the request should be channelled through the CEO.

Well subsequent to that, we also heard that – and there were a few attempts that the President of Jet Airways made. But I did not think much of it at the time and I did not even do it with attitude or anything. It was just inappropriate, it was not a matter that the Board should be discussing. It was not even a matter that our CEO would raise as an issue for the Board to consider the time.

10           Then at some point it came to my attention that – and I cannot even remember how this happened, but somebody said to me, am I aware of this and that the President was now going to escalate the matter to the Minister. Chair it was quite peculiar, but I was not too fussed about it. I just thought, you know you do not want the Minister to be embarrassed by something. So I just picked up the phone and I called Minister Hogan and I said to her, look there is this matter of the Mumbai route and Jet Airways and I do not know if you are aware of it, but it is an ongoing discussion between our teams on a quarterly basis and are you aware of this. She said, she is aware of it, there have been some efforts around this. So equally like myself had being aware of it, but did not think it was appropriate. She thought, if it reached the level where it now needed her input, it  
20       would come to her, through her staff and the appropriate channels.

So she also had this – and asked me is there any truth in it. So I said no, no, no it is not a matter, it is obviously a matter for discussion as the loss making route. But I explained to her in very brief terms that what our strategy was we were working and she was comfortable about it and comfortable with the fact that, if it became an issue of closure or anything other than that, we will come to our shareholder and in fact

share with her and we left it at that.

**ADV KATE HOFMEYR SC:** Ms Carolus can I just clarify. When you conveyed to her your strategy in relation to the route at that time, was it a strategy that contemplated closing the route?

**MS CHERYL ANN CAROLUS:** No it – thank you ma'am. We in fact made it very clear to her that no, in fact we were growing the route and that all that the indicators were. But firstly, the whole concept was one that she was perfectly at ease with and we had the numbers which were reported into the system through the department that we were looking this as a network strategy and not just at – if you look at the ticket that someone  
10 buys in Mumbai, it is a ticket that goes to Sao Paulo or that goes to Angola or that goes to the Congo. So, and clearly we could demonstrate that not only were we minimising the loss making part. So we were in fact closing that gap. But we were continuing to in fact build the reputation of Johannesburg as a reliable hub through which you could go on a reliable, the most awarded airline in Africa to anywhere in Africa with connectivities that nobody else, no other airline could offer at that stage.

**ADV KATE HOFMEYR SC:** Thank you Ms Carolus. At the bottom of page 15 of Exhibit "R", you talk about one of the interactions you had with Minister Hogan and at the bottom of that page your statement reads:

20 "That she called you around August 2010, when she was on a visit to India regarding rumours in India that SAA was about to vacate the route."

Now Ms Carolus that is one of the aspects of your statement as I have it in respect of which you want to make a correction.

**MS CHERYL ANN CAROLUS:** Yes.

**ADV KATE HOFMEYR SC:** And the correction is a product of having considered the

evidence of Minister Hogan in relation to this interaction with you. Chair, Minister Hogan's bundle was Exhibit L1. I have made copies of the relevant pages of the bundle so that we did not have to belabour ourselves with the entire. If I may just beg leave to hand that up?

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR SC:** And to give a copy to the witness. Ms Carolus this is an extract from Minister Hogan's bundle which was Exhibit L1 and it is paginated page 21. There you will see at paragraph 93 on that page, Minister Hogan talks about an event in early June 2010, where she was part of an official South African state visit to India.

10           In the light of that, do you have any correction to that last sentence on the page of your statement?

**MS CHERYL ANN CAROLUS:** Sorry?

**ADV KATE HOFMEYR SC:** Your ...[intervenes]

**MS CHERYL ANN CAROLUS:** Yes, no, no I am prepared to correct it. I know Chairperson it was somewhere in the middle of the year, it is a long time ago, so somewhere between June and August. So I am comfortable to accept Minister Hogan's date.

**ADV KATE HOFMEYR SC:** Thank you. You will see that on that page 21 from her exhibit, she talks about the interactions that she had with you and the messages that  
20   you sent between each of you. Can you confirm that that is correct?

**MS CHERYL ANN CAROLUS:** Yes I can confirm that that is correct.

**ADV KATE HOFMEYR SC:** Thank you.

**MS CHERYL ANN CAROLUS:** I think she kept the phone and I did it.

**ADV KATE HOFMEYR SC:** Indeed. Then if we go over the page at page 16 of your statement, that is Exhibit R. You will see there you now move to a discussion of the

Mumbai route under Minister Gigaba's tenure. You talk about an interaction at the end of 2010. That is shortly after Minister Gigaba has replaced Minister Hogan. If you could take the Chair through that interaction?

**MS CHERYL ANN CAROLUS:** Thank you ma'am. Chairperson, Minister Gigaba was appointed on the 1<sup>st</sup> November to his position as Minister and at the – within in December, so within weeks of his appointment, other than our general exchanges where I had initiated to get the continuity, one thing that he asks us for a meeting for specifically, is a meeting to discuss the Mumbai route. So within weeks of arrival he makes this a priority. He calls for a meeting with myself and the CEO to discuss this route.

10

I unfortunately – it was very short notice, unfortunately I was not able to extricate myself out of my difficulties which I explained to the Minister. Then in my state I sent the Chairperson of the Audit Committee, the then – well the late Zakele Sithole to in fact the company Ms Mzimela. Ms Mzimela sent a document ahead, to in fact explain, we knew it was going to be the Mumbai route, she sent that ahead to the Minister and I think she may even have briefed – spent sometime with the Minister before to ask him if he had any questions that he wanted to clarify, to just explain what our approach to the route was and our sort of vision around how – why we think it is important for us to stay on the route.

20

They did that. Something – so subsequent to them having been to the meeting, they then came and gave me a report back seeing as they were there representing myself and they gave me a report of what transpired at the meeting.

The one thing which struck me and I think them at the time that was quite extraordinary, Minister Gigaba tells them that he is expecting some more people. Not an unusual thing they wait. Minister Gigaba his Deputy is there and then Mr Mahlangu

is also in the meeting.

They then proceed to sit and wait for these identified people. The Minister does not share who they are and they wait for 3 hours in the Minister's office they are waiting. The Minister is not sure when they are arriving.

**CHAIRPERSON:** And all along they do not know who the people are that they are waiting for?

**MS CHERYL ANN CAROLUS:** They do not know who they are waiting for, but it was quite ...[intervenes]

**CHAIRPERSON:** Yes obviously the Minister knew?

10 **MS CHERYL ANN CAROLUS:** Ja the Minister knew.

**CHAIRPERSON:** Yes.

**MS CHERYL ANN CAROLUS:** But it was quite extraordinary that a whole Minister would sit for 3 hours and just wait, no we do not know when they are coming, we are just waiting, we are expecting them.

So they arrived, there were two gentlemen apparently, one of whom was the President of Jet Airways and another person from Jet Airways. Then the Minister apparently just took a backseat, and the entire discussion was led by the President of Jet Airways who is quite discourteous to Ms Mzimela and started to interrogate her about why South African Airways was not getting off the route and that they should be  
20 getting off the route. This carried on for a while.

Minister Gigaba did nothing, said nothing and eventually Deputy Minister Ben Martins, he was then the Deputy Minister, he in fact berated this gentleman and said to him that he had no business coming into our country telling us what to do with our airline. In fact clearly, not only that, he was speaking from a complete position of ignorance and a sense that we were accountable to him for what

our strategies were.

**CHAIRPERSON**: So it was the Deputy Minister ...[intervenes]

**MS CHERYL ANN CAROLUS**: Deputy Minister.

**CHAIRPERSON**: Who actually intervened?

**MS CHERYL ANN CAROLUS**: He jumped in.

**CHAIRPERSON**: Minister Gigaba did not intervene?

**MS CHERYL ANN CAROLUS**: No he did absolutely nothing.

**CHAIRPERSON**: Yes.

**MS CHERYL ANN CAROLUS**: In fact he just let this exchange and in fact he allowed  
10 the gentleman from Jet Air to lead the discussion and set the tone and interrogate.

**CHAIRPERSON**: Yet the understanding was that this was a meeting wanted by the  
Minister?

**MS CHERYL ANN CAROLUS**: Yes.

**CHAIRPERSON**: Yes.

**MS CHERYL ANN CAROLUS**: Yes sir, our shareholder. So we – SAA you know it was  
awkward for Mr Sithole and for Ms Mzimela, but they just felt that they should once  
again recommit to say, we are open to – our presence on the route is not optimal, we  
would say that and there were two parties who were both trying to build the route. So  
SAA would consider all reasonable proposals that made business sense to us and that  
20 in fact followed our due processes, so whatever proposals they have they should do  
that and the Minister asked them all to find one another that they should do this.

So I do not know if you want to go onto the airways.

**ADV KATE HOFMEYR SC**: Thank you.

**CHAIRPERSON**: Well maybe let me ask you a question. SAA was running this  
Johannesburg/Mumbai route for itself. Now you have people outside of Government,

actually from another country coming and effectively saying, you people must terminate this route, you must stop being involved in this route in effect. Is that right?

**MS CHERYL ANN CAROLUS**: No that is indeed correct sir.

**CHAIRPERSON**: Is that not very strange?

**MS CHERYL ANN CAROLUS**: We certainly thought it was most peculiar. I mean it just did not make sense. Here was our shareholder just – and that is what Deputy Minister Ben Martins apparently pointed out to them was that, yes.

**CHAIRPERSON**: I mean this was not – and you must just tell me if I have missed something. This is was not like a case where you – SAA might be having some  
10 projects that needs to be done and might be looking for people who might offer those services and then somebody comes and says, you must give the job to me. This was simply a situation where SAA was running this route and then somebody says, you must stop because they want to run – to be involved?

**MS CHERYL ANN CAROLUS**: That is correct sir. And in fact, more than that about this, there was some history where SAA had being having some collaborations with them and which preceded us. So I will not speak about it.

But not only were we – were people asking us to get out of what our business was and that is to run an airline and to open routes. But I remember that, and you can maybe clarify this more if you see some other members of management. But Jet  
20 Airways had done business with SAA and quite frankly just refused to pay at some point as well. So there was a bit of that as well.

But for us it was very clear that if Jet Airlines come up with a proposal that would help – that would serve both of our interests, we would be quite happy to discuss this and consider, it just had to go to the process. It had to go into the structures of the airline in the first instance and then into the DPE should the need arise, to evaluate

whether what they gave us made business sense. We were actually a company and so – but Chairperson if you are puzzled I can assure you I am as puzzled to this day. It was most extraordinary that people could ask you to not – to ja, to close the route.

**CHAIRPERSON:** It is like you do not know what you are doing.

**MS CHERYL ANN CAROLUS:** Yes, yes.

**CHAIRPERSON:** So we have to tell you that this is not be doing this, so stop it.

**MS CHERYL ANN CAROLUS:** Yes and that is what Deputy Minister Ben Martins apparently effectively had to do that this man was just carrying on and on and really speaking in the most disrespectful and discordial (?) manner to Ms Mzimela.

10 **CHAIRPERSON:** Ms Hofmeyr.

**ADV KATE HOFMEYR SC:** Chair just before we continue – and Ms Carolus I will take next to paragraph 46 of your statement at page 17. We would just like to clarify for your benefit Chair. There is every intention to call the members of the management team of SAA at the time in due course in the evidence. So while Ms Carolus is giving the version of the story from her perspective, because it was reported to her, there will be further evidence which will speak to these issues by the relevant individuals.

**CHAIRPERSON:** No thank you for saying that, because I was going to ask you in due course to confirm that people who were at the meeting will come and qualify in what she says.

20 **ADV KATE HOFMEYR SC:** Indeed. Importantly on that aspect Chair, the analysis of the profitability of the route of whether SAA should get off the route or not, whether the Jet Airways demand that they relinquish it, should be entertained with the subject of a detailed analysis by the management team and that will in due course be presented to the Commission.

So at this level Ms Carolus is dealing with it from the Board perspective, but

the detail, the profitability, the analysis.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR SC:** The failures of Jet Airways to pay in previous interactions with SAA will be traversed.

**CHAIRPERSON:** Will come from management?

**ADV KATE HOFMEYR SC:** Indeed.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR SC:** Ms Carolus at paragraph 46 you talk about another strange event that occurred on that day of the meeting with Minister Gigaba, where the  
10 representatives of SAA were required to wait for 3 hours. Can you please take the Chair through that odd interaction that occurred?

**MS CHERYL ANN CAROLUS:** Thank you ma'am. Chairperson whilst – upon a return to the office, Ms Mzimela's office informed her of another thing that was quite odd that still puzzles to this day. Whilst Ms Mzimela and Mr Sithole were in the Minister's office, a gentleman called Ms Mzimela's office saying that there was an agreement which Ms Mzimela had to sign. The gentleman informed Ms Mzimela's PA that it was an agreement with Jet Airways and she – Ms Mzimela's PA informed him that Ms Mzimela was not in and he apparently behaved in quite an aggressive way and said, well this is quite urgent and he was quite irritated that Ms Mzimela was not available to sign and  
20 Ms Mzimela's PA ...[intervenes]

**CHAIRPERSON:** I am sorry, I missed out who was being aggressive?

**MS CHERYL ANN CAROLUS:** The person – the caller who purported to be from Jet Airways.

**CHAIRPERSON:** Oh okay.

**MS CHERYL ANN CAROLUS:** And said he had an agreement from Jet Airways that

Ms Mzimela was required to sign. Then was quite irritated that Ms Mzimela's PA was insisting that she is not there. She eventually – because it was an agreement that this man was – this gentleman was referring to, she then put him through to the company legal counsel, Advocate Sandra Coetzee. He explained himself to Advocate Coetzee and Advocate Coetzee said she had no knowledge of such an agreement. Because she would know, when by the time it reaches the level where the CEO has to sign off. She assured him she would have known and so therefore she did not think this was possible.

The gentleman was quite insistent and aggressive and eventually  
10 Advocate Coetzee urged him to send her the documents, that if there was something that she had missed, but she was quite clear that if it reached the level where the CEO now had to sign, she would know about it.

So apparently there was some email correspondence between herself and him, but I do not know the detail of that. But nothing came and eventually no agreement was signed between Jet Airways and South African Airways.

**ADV KATE HOFMEYR SC:** Just to be clear on the timing. This approach happened at the time that the meeting that have been called by Minister Gigaba was underway, is that correct?

**MS CHERYL ANN CAROLUS:** That is correct ma'am.

20 **ADV KATE HOFMEYR SC:** Thank you.

**CHAIRPERSON:** Did you get to know why the two gentlemen who kept everybody waiting for 3 hours at that meeting – when they came to that meeting, did you ever get to know what was so special about them that the Minister and the Deputy Minister and of course everybody had to wait for them for so long? You might not know, but I just want to know in case you got to know at any stage, what was special about these

people?

**MS CHERYL ANN CAROLUS:** I did not know Chairperson. As I said, it was just peculiar that a whole Minister will sit for 3 hours and it seemed to be an indefinite wait. No one knew, including the Minister when these gentlemen were going to pitch up. It turned out that, as I say, one person was the President of Jet Airways and so it was clearly a special treatment for – I do not know, for the individuals of the Jet Airways. But no we did not know.

**CHAIRPERSON:** From the report that you were given, the Minister hardly made any contribution to the discussion?

- 10 **MS CHERYL ANN CAROLUS:** No he made no contribution to the discussion. He just allowed the President of Jet Airways to effectively lead the meeting and the charge and he just sat. The only person who eventually stepped in when it was apparently really getting quite undignified and really impugning the dignity of Ms Mzimela, was Deputy Minister Ben Martins who rose to her defence and asked the gentlemen to desist from this Mr Naresh Goyal who is the President of Jet Airways.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR SC:** Ms Carolus just to clarify in time again, this is a matter of weeks after Minister Gigaba takes over the ministry from Minister Hogan, is that correct?

- 20 **MS CHERYL ANN CAROLUS:** That is correct man.

**ADV KATE HOFMEYR SC:** Thank you. I then would like to go to page 18 of your statement Exhibit R. Because you there talk about a second interaction that occurs over the Mumbai route. It is a meeting that was called in April 2011. Can you take us through that interaction?

**MS CHERYL ANN CAROLUS:** Yes Chairperson. So, sometime in 2011, I again

received a request that Minister Gigaba wishes to meet with us in Cape Town. Now this, I think anybody who has worked with State Owned Entities or Government at large would know one often gets a request at very short notice to present oneself and because of the respect for the office and the institution, you go.

On this occasion again, I was unfortunately unable to change my prior commitments and I communicated this to the Minister, but I instead sent Mr Teddy Dakar another Board member to accompany Ms Mzimela to the meeting.

At that stage we were all – we were in quite advanced discussions with the Minister. Because remember I did indicate Chairperson that we started to discuss, to in  
10 fact immerse the Minister in where we had arrived. And ultimately the question of the recapitalisation so that we could acquire a new fleet and a whole number of things. So we assumed it was that.

So Ms Mzimela and Mr Dakar went off and they reported that – and when they came back they reported back to me that upon arrival the Minister indicated that he had a few matters that he wish to discuss with them, one of which was the Mumbai route. So everybody sort of accepted that. Then the Minister stopped his interaction.

**CHAIRPERSON:** So this was now the second time?

**MS CHERYL ANN CAROLUS:** This is now the second time.

**CHAIRPERSON:** He wanted to discuss the Mumbai route?

20 **MS CHERYL ANN CAROLUS:** Yes, yes sir.

**CHAIRPERSON:** Ja.

**MS CHERYL ANN CAROLUS:** But as I say, then the Minister opens the meeting he declares he has a few matters he wishes to discuss and it seems almost just peripheral you know. One, let us just start with the first matter I want to discuss with you, is the Mumbai route. Then the Minister keeps and then Mr Siyabonga Mahlangu starts to

interrogate.

**CHAIRPERSON:** That is his legal advisor?

**MS CHERYL ANN CAROLUS:** This is the Minister's legal advisor, the same one who called another Board member, whose friend called another Board member to indicate the Minister's displeasure and the Board's arrogance and so on. So Minister Gigaba makes no further contribution.

But Mr Mahlangu now proceeds to – or then proceeded to berate Ms Mzimela for SAA's refusal to close the Mumbai route. Amongst other things he says to her that, you know we are wasting Government money, you could have been building lots of RDP houses with this. Remarks which are quite inappropriate for a legal advisor.

**CHAIRPERSON:** This is now in front Mr Gigaba?

**MS CHERYL ANN CAROLUS:** In front of the Minister, the Minister is saying nothing.

**CHAIRPERSON:** Yes.

**MS CHERYL ANN CAROLUS:** Mr Mahlangu is now leading the conversation around the Mumbai route and in fact taking Ms Mzimela to task for this. As I say, amongst other things saying, this money could have been used for RDP housing, entirely inappropriate conversations. We have got a meeting every quarter where we discuss and we motivate why, what we are doing and you know where there are changes are necessary and so on.

20 At this point Ms Mzimela apparently asserted firmly [laughter] I am told by Mr Dakar that she took exception to being addressed in that manner. Mr Dakar also in fact appealed to the Minister to please contain Mr Mahlangu and to ask Mr Mahlangu to behave himself in an appropriate manner.

In fact, in other words this behaviour by Mr Mahlangu, notwithstanding the previous two occasions, one wherein the presence of the Minister, the Minister

indicated to him his behaviour was inappropriate.

The next morning he is phoning – his friends are now phoning, so he is speaking to his friends, notwithstanding the fact that the Minister had warned him and asked him. Now he stands in front of the Minister and he starts behaving in an inappropriately. At that point ...[intervenes]

**CHAIRPERSON:** Then what was the Minister's response, Minister Gigaba's response to the suggestion that he should rein in Mr Mahlangu or contain him?

**MS CHERYL ANN CAROLUS:** I do not know what the detail was. But the Minister then at that point, I do not know whether he said anything. But at that point he then  
10 said he has got some people he wants to invite to join the meeting.

**CHAIRPERSON:** He said he wants?

**MS CHERYL ANN CAROLUS:** He wants to invite some people to join the discussion.

**CHAIRPERSON:** Oh okay.

**MS CHERYL ANN CAROLUS:** The Minister now says. So at that stage the Minister then invites two gentlemen joins the meeting, one of whom is again the President of Jet Airways. The SAA team at this stage had not been informed at all by the Minister or anybody that in fact these were Jet Airways. They did not know anybody else was joining the meeting in the first instance and secondly; that these were Jet Airways people. So the Minister just brings them into the meeting at that point.

20 Then the Minister says, he concludes and so there was no further discussion, either with the Jet Airways people or whatever. Because by now both Mr Dakar and Ms Mzimela had asserted how – the fact that we are not getting off the route, we are on track as discussed.

Then the Minister concludes and says, can South African Airways and Jet Airways please fine one another. Now as far as Ms Mzimela and Mr Dakar were

concerned it was not satisfactory that as far as we were concerned, we had discussed this matter with the Minister on his own, with the Jet Airways people in December. We had done a presentation to the Minister on the matter. We were in discussion with the department and their officials and in fact why we were on the route and what the strategy was around it and the Minister now asking us to find one another. But they nevertheless committed and said, look if – we are really open to any proposals that makes business sense to us, that fits in with our strategy and if it goes through due process.

**CHAIRPERSON:** That is basically what they had said in December as well?

- 10 **MS CHERYL ANN CAROLUS:** Yes that is basically what they had said in December and we were discussing the route in the quarterly meetings, along with all the other routes, loss making or profitable with the Minister's officials every quarter. So the Minister then says, okay we will conclude this conversation, can you people please find one another.

Now Minister Gigaba then did not raise, despite him having opened the meeting to say, I have a few matters to discuss with you. He then has nothing further to discuss with the team. It was quite clear that Minister Gigaba had requested myself and the CEO to fly to Cape Town in order to discuss the Mumbai route at the behest of Jet Airways once again.

- 20 Chairperson we ...[intervenes]

**CHAIRPERSON:** But also not only that, but in circumstances where nothing new would transpire compared to what you had discussed at the meeting in December, am I right?

**MS CHERYL ANN CAROLUS:** No absolutely Chairperson and without any indication to us that, you know, no indication whatsoever about it. So in fact we found it quite peculiar and puzzling at the time and I can really say this, it is just peculiar that the

Minister is our shareholder. If you own a business, you know he was our shareholder and he seemed to be quite persistent to assist Jet Airways and SAA to find one another. When you are competing with a competitor you are competing and as a shareholder you actually not about to help the other side.

**CHAIRPERSON:** Ja.

**MS CHERYL ANN CAROLUS:** And it is clear that the Minister is in conversation with Jet Airways in a way that he is not with us. It is clear he wants us to find and support Jet Airways.

**CHAIRPERSON:** Talk and ...[intervenes]

10 **MS CHERYL ANN CAROLUS:** He was never asking us how he can help us on the route.

**CHAIRPERSON:** Yes.

**MS CHERYL ANN CAROLUS:** And in fact there were a number of issues around the route which I am sure the management team can maybe recount more fully. But you know in moving people on and through into Africa, I recall vaguely there was real hassles that the Minister could have helped us on, like assisting us with visas, because they suddenly started to introduce a barrier that people who were travelling from Mumbai would need a transit visa to get to Africa. We thought this was silly, because there was no security risk for somebody who was contained in our airport, but you  
20 make them pay. So you are introducing a fresh barrier in fact to advance our strategy of the network into Africa. So specifically for people travelling to Africa.

So that is why I said, we found it most peculiar that the Minister, with no briefing of us, like calling me, the Chairperson and the CEO to yet another meeting without telling us that it is this. But even the very thought that he would be so persistent to help them out when he never showed the same – he never called us to

say, right SAA tell me what can I do to help you on the Mumbai route. But he was clearly talking to Jet Airways how he can help them to us on the Mumbai route.

**CHAIRPERSON:** At that meeting the Jet Airways representatives did not say much at the second meeting?

**MS CHERYL ANN CAROLUS:** No they did not, because Chairperson, I think at that stage the Minister – it was quite clear to the Minister that the SAA team were not – did not have any mandate to discuss anything outside of our discussions with the department and they indicated their discomfort to in fact discuss, you know revive the discussion that we had had in December. So I think you will have ask for more detail  
10 from the team when they get here. Ja, no so there was no further discussion on the matter.

**CHAIRPERSON:** But what I find ...[intervenes]

**MS CHERYL ANN CAROLUS:** But Mr Mahlangu was quite clearly interrogating he took it upon himself to do the speaking on behalf of whatever.

**CHAIRPERSON:** Well what I find strange is that in the first meeting, the Jet Airways representatives, apart from arriving 3 hours late, came and basically led the discussion instead of the Minister leading the discussion. Then in the second meeting you are not told, that is SAA is not told that Jet Airways would be there and they are not there when the meeting starts. But they are brought in when it is about to end and basically do not  
20 make any contribution. So I am wondering whether the problem was simply that this time the meeting started without them, whereas the first time the meeting had to wait for them and that maybe this second time they were just arriving and the Minister was not prepared to continue and just close the meeting – or whether they had been waiting in some other room all along, and why they were brought in if they were no longer going to make any contribution to the meeting before it closes.

**MS CHERYL ANN CAROLUS:** Chairperson I think you would need to ask the two parties who were there.

**CHAIRPERSON:** The people who were there ja.

**MS CHERYL ANN CAROLUS:** But what Mr Dakar – I did not want this to sound like a chatty thing. I took this very seriously, what I put in my statement. But Mr Dakar ended up having to fly with his child to Cape Town and the child was being looked after some members of staff in the reception area. At some point he stopped for the child to – he was going to the bathroom, so he just checked that his daughter was okay.

He of course did not know the President of Jet Airways because he was not in  
10 the previous meeting and he saw this gentleman who was there.

**CHAIRPERSON:** Oh.

**MS CHERYL ANN CAROLUS:** And he was playing with his daughter outside. So they were clearly there. They had clearly were now waiting to be called into the meeting. Why they did not have a discussion, but it was not because they had not arrived and that is why the – the Minister clearly knew they were outside. But I think it went – the conversation went a bit different to what it may have been intended with Mr Dakar and Ms Mzimela in fact asserting the fact that we were – we have nothing new to contribute and then Mr Mahlangu was in fact setting the tone and leading the conversation in this instance with – and his approach to the meeting was quite clearly to communicate to  
20 Ms Mzimela and for his benefit Mr Dakar too and it would have been me. I do not know if he would have done the same to effectively say, his follow-up was, now why have you not gotten off this route. I think Mr Mzimela and Mr Dakar are quite clearly asserted a) that we were not – there was nothing that had changed.

So I do not know, you might have to ask them whether they knew, I also cannot say Mr Chair.

**CHAIRPERSON:** But as you understand it from the December – oh no, was it December.

**MS CHERYL ANN CAROLUS:** December yes.

**CHAIRPERSON:** From the first meeting.

**MS CHERYL ANN CAROLUS:** Yes December.

**CHAIRPERSON:** From the first meeting if the basis on which the meeting ended, contemplated that if Jet Airways wanted SAA to do anything, maybe to stop this route, they would have needed to put in some proposal or something that would make business sense to SAA and they had never done that between the two meetings?

10 **MS CHERYL ANN CAROLUS:** That is correct sir, in fact it would not have gone – the appropriate way in which it happens, like in any business, you know that one business approaches the other business. It would not have gone – it should not have gone to the department.

**CHAIRPERSON:** To the shareholder yes.

**MS CHERYL ANN CAROLUS:** Because the department is not the trading partner.

**CHAIRPERSON:** Yes.

**MS CHERYL ANN CAROLUS:** The department, like the Board would get involved much further down the road if it was necessary, depending on the nature of that agreement.

20 **CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR SC:** Thank you Chair. Ms Carolus you give us some perspective on the unusual nature of this interaction with Minister Gigaba in April of 2011, because you draw a contrast in paragraph 51 of your statement, with the approach that had been taken in relation to a requested route that SAA that sought to seize and close. Can you tell us about that, it relates to Botswana?

**MS CHERYL ANN CAROLUS:** Yes Chairperson. We were losing quite a lot of money on the route to Botswana. In fact when you think about it, you can think again even people like ourselves. If we go to Botswana – if I go to Botswana, let me speak for myself, I drive. You know it is just not a route that makes sense that people would do and I mean even business people. So we were making even bigger losses on that route.

So we wanted to close the route down and not least for all, because that aircraft could be used much more profitably on a different route. We were now reconfiguring what routes we were on. But we have to get the permission of the  
10 shareholder in terms of the PFMA to actually – and it is not the shareholder, it is a process that has to go through. But ultimately Government, we have to get Government permission to open or close a route in terms of particularly significant financial transaction and events. So we needed Government's permission to close that down. They really dragged their feet on it and in fact we sustained quite heavy losses and there was no reason given ever. It was not because they thought, you know, there was no questioning of it. There was just a total lack of focus and a sense of urgency and as a consequence we were just bleeding. So we really felt it was irrational and we were quite miffed about that. Because he said, why are they carrying on about this Mumbai route and they are not doing anything on the thing.

20 Ja, then not least of all, it is the only route that the Minister ever called us specifically to have a discussion about with the Mumbai route.

**ADV KATE HOFMEYR SC:** Chair just to complete this aspect. You will find at page 159 of Exhibit R just an excerpt from the PFMA. It is Section 59 and the relevant section there is (2) which in essence requires public entities who are going to enter into a series of transactions to ...[intervenes]

**CHAIRPERSON:** I am sorry Ms Hofmeyr, what page?

**ADV KATE HOFMEYR SC:** 159.

**CHAIRPERSON:** Of "R"?

**ADV KATE HOFMEYR SC:** Of "R" yes.

**CHAIRPERSON:** I have up to 152.

**ADV KATE HOFMEYR SC:** You should have the updated version. If I may just beg leave to hand a copy to you? I do have an extra one.

**CHAIRPERSON:** Well I think what you should do is, you know if you have given me a bundle earlier, I work on that one.

10 **ADV KATE HOFMEYR SC:** Indeed.

**CHAIRPERSON:** Then when it is updated that one should be updated rather than giving me a new one.

**ADV KATE HOFMEYR SC:** Indeed.

**CHAIRPERSON:** So okay let me have those pages.

**ADV KATE HOFMEYR SC:** Here are the pages. As I understand it, there were efforts made to update yesterday, but it may be that there were some error in that regard.

**CHAIRPERSON:** I think there may be a file that is updated.

**ADV KATE HOFMEYR SC:** It is not your original one.

**CHAIRPERSON:** But I have not been working one.

20 **ADV KATE HOFMEYR SC:** Indeed.

**CHAIRPERSON:** Do I work on the first one you give me? So the best thing is to update that one rather than give me a new one.

**ADV KATE HOFMEYR SC:** Indeed Chair, we will ensure that happens in future.

**CHAIRPERSON:** Okay alright thanks.

**ADV KATE HOFMEYR SC:** If we go to page 159, you will see that that is a copy of

Section 59 of the PFMA. It is just to locate the evidence of Ms Carolus in the relevant legislative context. As I understand Ms Carolus' evidence, there was a need in respect of closures of routes to obtain approval from the Executive Authority and in this case that would be the Department of Public Enterprises. That is because, the closure of a route qualifies as a 54 (2) (e) event. It is a transaction which involves the commencement or cassation of a significant business activity. Is that correct Ms Carolus?

**MS CHERYL ANN CAROLUS:** That is correct ma'am.

**ADV KATE HOFMEYR SC:** So it is in the context that you were seeking, as I have it,  
10 approval for the closure of the Botswana route, you were not receiving it however, and at the same time you were being pressured to close the Mumbai route. Is that a fair summary?

**MS CHERYL ANN CAROLUS:** That is a fair summary Chairperson.

**ADV KATE HOFMEYR SC:** If we then go to the bottom of page 19 to conclude this aspect, you conclude at paragraph 54 on the basis that SAA did not receive any proper proposals regarding the closure of the Mumbai route. You go over the page to talk about what happened after your term at the Board of SAA. If you can just take us through that. What then happened to this Mumbai route?

**MS CHERYL ANN CAROLUS:** Thank you Chairperson. Jet Airways then put – we had  
20 four frequencies so they put seven on and as a consequence, both airlines SAA and Jet Airways suffered even bigger losses, because it became quite negative competition.

But SAA, however, managed to survive on the route because of our hub strategy, of the fact that we made money by connecting people on with in a way that Jet Airlines could not compete with us on it.

So eventually Jet Airways abandoned the route, they could not continue with

the route.

Well thereafter Chairperson, Etihad Airways bought a stake in Jet Airways. SAA also gave up the route and I cannot remember what preceded what. I have no indication of why SAA gave up the route. Because as far as I was concerned that in fact the route kept on growing, we kept on closing the losses and in fact we – there is another technical word that is used in airlines speak, and it is called "load factors" and that is basically just what proportion of the plane is full. We got, I think up to about 80 percent, you know full of seats, bums on seats.

It does not necessarily translate straight into profits and I am sure if  
10 Ms Mzimela comes she can speak better to this. But I think again you do not need to be too much of a rocket scientist or a businessperson even. But when you are building a route with four frequencies, your pricing is sensitive to that, but your pricing at the back of your head is also, your money is made in that connection thing.

So we were still making losses but our load factors were increasing I think in business terms, once you have built that client base, you can increment an increase, you know with a longer term vision to it. But sort of, from a network perspective we were still doing well.

So I have got no idea why eventually SAA gives this route up. SAA does not conclude anything with Jet Airways. Jet Airways then gets into a thing with Etihad and  
20 then Etihad Airways now hubs everything through their hub of Doha into Africa, so they are getting that whole benefit of the onward distribution of the network distribution.

SAA now coaches with Etihad and so in fact all the business that SAA has and has built up now goes through Doha and Etihad. Access lost that business of coming through Johannesburg. The Air chefs' business, the cleaning staff business, the suppliers of food, everything that used to come.

In addition, we now no longer have a direct flight. So South African business travellers and tourists on both sides, what used to be a 6 hour route is now 9 and a half hour flight. So why would anyone even want to catch that SAA flight to Etihad if you can just go direct to Doha rather than come through Johannesburg.

We have also lost that onward connection into the Americas that we offered the seamless routes. So it is Africa and in fact that West Corridor that we were paying stackingly building up.

**ADV KATE HOFMEYR SC:** Thank you Ms Carolus. I would now like to move to a second topic which is the New Age and that approaches that were made to SAA in that regard. That commences at page 20 of your statement.

**MS CHERYL ANN CAROLUS:** Yes Chairperson.

**ADV KATE HOFMEYR SC:** You begin at paragraph 55 to talk about the approach that was made to SAA from New Age newspaper and the attitude of the Bid Adjudication Committee, to that initial approach. Can you please tell the Chair what that was?

**MS CHERYL ANN CAROLUS:** Thank you Chairperson. I must say Chairperson that I never got involved in all the nitty-gritty's, so I cannot give you the exact detail process. But all I can say, one of the things which Ms Mzimela established as part of her mandate to restore the governance was in fact the bid adjudication. So just better transparency, more rigour and steps to be followed that was more compliant with the PFMA.

So it was not anything extraordinary, it was just making sure that those processes with their fairness, transparency and lawfulness. So this structure called the Bid Adjudication Committee, every time there was tenders and stuff that were below a certain quantum. Even the CEO did not see these. They just went through, according to the delegation of authority, they would then go there and be adjudicated.

All I know there was a process and ultimately the outcome of this was that it did not meet the business criteria of SAA and so it was turned down. The CEO, the Board were not cited to this, because there was a clear process that had to be followed.

Somewhere along the line – I did not even know about this. This I got to know with hindsight, because matters like newspapers do not come to the Board and as I say they really come to the CEO, because it is an established process and delegations of authority.

Then I got a call from the then Director General somewhere out – so my first knowledge of this is, I get a call Mr Tshediso Matona to say to me that he requested an  
10 urgent meeting to discuss this matter. So I had no knowledge and I said to him, no I have no knowledge and I have no interest and no authority. This was a management matter if it concerned a newspaper. I said to him, was there a complaint. Because I thought sometimes if you know a newspaper is treated badly, it is useful for the Chair to know and then just to give the reassurance that look I will raise this matter with management and make sure they address it. Which was what I thought how we would deal with this. He then said, no, no, no it was actually a matter that management had not handled satisfactorily and could I come and meet with him.

So I thought I a) know nothing, and b) have no business discussing newspapers. I called the CEO and I said to her, do you know anything. I eventually  
20 agreed to meet with Mr Matona, because he was clearly quite agitated and felt it necessitated my having to do this. I then called Ms Mzimela and I said to her, do you know anything about this matter. She then briefed me about her own knowledge of it, which was not fulsome. I think at that stage for the simple matter that she does not deal with newspaper matters either and there were processes which were dealing with it.

**CHAIRPERSON:** The Director General at the time was?

**MS CHERYL ANN CAROLUS:** Mr Tshediso Matona.

**CHAIRPERSON:** Mr Tshediso Matona?

**MS CHERYL ANN CAROLUS:** Yes.

**CHAIRPERSON:** Okay.

**MS CHERYL ANN CAROLUS:** So she gave me a briefing. Because I said to her, can you please bring me up to speed to this, because I do not want to walk into a meeting to discuss newspapers that I knew nothing about.

So we get to the meeting and there is Mr Mahlangu in the meeting with  
10 Mr Matona. Now I mean it was also very strange, because we were not discussing a legal matter and even if we were, the Minister's advisor would not be present and the Chair of the Board certainly would not be present. It would be our legal counsel from SAA if it was even necessary for somebody at her senior level. Normally lawyers and lawyers in the DPE and SAA would meet. So what the Minister's legal advisor was doing in that meeting was odd. It was the first thing that struck me was, it was most peculiar for him to be there from all angles.

So when Mr Matona explained, I said why am I here, why is Ms Mzimela here and I was quite irritated because I actually had to leave something else that I was doing. But I thought if the Director General of the Department calls me, it must be at a  
20 sufficiently senior level and if he calls me to say, the response from the CEO was unsatisfactory. Because normally the Board Chair would relate to the Minister and the Director General would relate to the CEO.

He now clearly felt the matter was of such an order that he had to escalate it to me, because he was not getting the satisfaction. So I honoured it and I was quite intrigued and annoyed that I was called out of something else to be told that there was

whatever.

Anyway, so when Mr Matona – I said I still do not understand why am I in this meeting, or for that matter why the CEO is in this meeting.

**CHAIRPERSON:** I am sorry, I may have missed something.

**MS CHERYL ANN CAROLUS:** Yes sorry sir.

**CHAIRPERSON:** You are now at the meeting.

**MS CHERYL ANN CAROLUS:** I am now at the meeting.

**CHAIRPERSON:** And somebody has raised an issue of why this meeting was called?

10 **MS CHERYL ANN CAROLUS:** No I am saying, thank you, can you explain to me why am I here.

**CHAIRPERSON:** Yes.

**MS CHERYL ANN CAROLUS:** And Mr Matona says, it is discuss the matter of this New Age Newspaper. So I said, I still do not understand.

**CHAIRPERSON:** Yes okay, okay.

**MS CHERYL ANN CAROLUS:** I know nothing about newspapers it is outside of my competence or indeed outside of my area of response. It is inappropriate for me.

**CHAIRPERSON:** Yes.

20 **MS CHERYL ANN CAROLUS:** In fact I also think it is inappropriate for the CEO even to be here because this is not a matter that is her – she is going over somebody else's head to do this. And then the DG explains that well the New Age is a new entrant in the media scene and you know he thought that in accordance, you know that to encourage media diversity that they should be supported, the New Age should receive some support.

I assured the meeting that certainly from my perspective I am sure it is a laudable thing and I am sure that from our developmental mandate, which is part of our

mandate as SAA ...[intervenes].

**CHAIRPERSON**: Well I just want to say you may or may not have listened to Mr Manyi's evidence a few days ago but he told us that he spoke to his fellow DGs from other Government departments in whatever forum they had, that there was the New Age and that had – was new in the market, and he said to them it should be supported. So I am hearing something similar.

**MS CHERYL ANN CAROLUS**: And I assured the meeting that, Chairperson, that obviously it had been a matter of concern in South Africa that you know media ownership also concentrated and so it is a laudable thing in any democracy, even in  
10 mature democracies that you know diversity in media is a healthy thing.

What I did question was that whose job that was. So in principle I am sure that you know both the Board and the company would, at the high level say of course media diversification is a good thing, the question was whose mandate. Because what we were being asked had a financial implication. It was around matters, and again Chairperson, I wish to just put a disclaimer upfront, the detail of it I was not interested in but save to say that SAA spends money when – as far as newspapers are concerned, it is in fact to create visibility for the airline, so we sometimes run campaigns or the airlines, like any company you know, you publicise and especially when it comes to buying space to place an advert, it is to meet a particular economic objective.

20 So in the case of SAA it is in fact to increase your profitability so you are passengers in it, you would – I would know from my days at South African Tourism we would like up all the stakeholders, airlines, hotels and everyone to promote low demand periods like winter, and that is where things like the Short Left campaign came in where it carried south Africans at a hugely discounted rate to do that. We would never run a campaign in December, when everybody was fighting to get a seat on an aeroplane of

even at seasonal points like the opening of Parliament, when there is a high demand, you would not run a campaign during that time.

Similarly we would pay for advertising space for advertisements. I think this is in the public and the private when you say these jobs. All those works, whether they were campaigns or whether they were adverts, were very specific to reach your target market. For example if you were advertising seats to an expensive destination, you would not place those adverts in a newspaper that was - specifically their target audience was a segment that was not that group of people, whereas if you ran the Short Left campaign it is highly unlikely you would do most of your spend in the  
10 Financial Times.

And so you had to target very specific segments when you place advertising, and talking paid advertising not coverage. And then you would also spend your money where there was a proven track record that that newspaper had the circulation in the segment that you were [indistinct]. So you were not just spending money with newspapers willy-nilly, there was actually – you had to have a proven track record.

The New Age at that stage was new and whilst one had sympathy for the developmental mandate of media diversity for a democracy to have a healthy spread of opinions, there were State institutions whose job it was to help new entrants in all sectors. For example the IDC, the PIC, so that if you wanted to build a new company  
20 against big competitors who were well established, that is where the Development Finance Institutions came in. That it was inappropriate and we considered in fact a violation of our mandate as a company, to see our role to effectively do CSI distribution of [indistinct]. And this was particularly also applicable for us with an activity, and I am not even sure how much, we did not – I did not even think it merited an intense discussion in SAA. We were invited and even people like myself you know, as

Chairpersons were invited to pay for seats at breakfasts. SAA never participated in the breakfasts of the New Age because we thought it was a violation of what we were authorised to spend our money on, that we could not spend millions on breakfasts of that kind.

So Chairperson, that is just where some of our media – and so as a consequence, sorry if you will indulge me Chairperson, we then did offer – so it went through the whole processes in SAA to my knowledge, and we then offered the New Age, during our term, the same terms with a little bit of leeway perhaps to encourage them, but on the whole we also felt from a fairness perspective we could not just offer  
10 them prices or opportunities that was not available to every South African company, that we could be taken to court for that matter if we give company X, for no discernible reason that we could explain in terms of our mandate, we gave opportunities or a pricing structure for whether it is advertising or any business that we conduct with them, that was out kilter with the normal transparent opportunities available to every company in South Africa, and there are a number of newspapers in South Africa.

**CHAIRPERSON:** So the New Age as you understood the position from the CEO when she briefed you, had approached the relevant people at SAA in order to get some business but the answer had been no, and then there was a request for this meeting is that right?

20 **MS CHERYL ANN CAROLUS:** Chairperson the answer was that some aspects were turned down and some opportunities were offered.

**CHAIRPERSON:** Oh before this meeting was requested?

**MS CHERYL ANN CAROLUS:** Before this meeting.

**CHAIRPERSON:** Okay.

**MS CHERYL ANN CAROLUS:** So I surmise that clearly the ones that were accepted

was not good enough, that the material ones that they were trying to push and promote ...[intervenes].

**CHAIRPERSON**: Yes, were not promoted.

**MS CHERYL ANN CAROLUS**: Were the ones which were noncompliant.

**CHAIRPERSON**: Yes.

**MS CHERYL ANN CAROLUS**: In terms of our procurement procedures and in terms of our mandate.

**CHAIRPERSON**: Yes.

10 **MS CHERYL ANN CAROLUS**: So they were offered the same opportunities on the same, more or less the same terms.

**CHAIRPERSON**: Ja.

**MS CHERYL ANN CAROLUS**: Because as I said from a fairness perspective and from a competition perspective we could not be seen to be favouring one entity over another.

**CHAIRPERSON**: Yes. Ordinarily if they were not happy with a decision by whoever, that not to give them the other aspects, would there have been somebody else within SAA that they should have gone to ordinarily or is that something that management would know?

20 **MS CHERYL ANN CAROLUS**: I think it is something that management would know Chairperson, so I will just use my normal business experience, and that is that there is always a way in which things get bumped up.

**CHAIRPERSON**: Yes.

**MS CHERYL ANN CAROLUS**: I think that even the fact that it came – went as far as the SAA processes, some of that was because there was questioning and contestation of it, but if I go to Woolworths to sell my lettuce leaves, there is always a process of appeals. At that stage it had not even reached the desk of the CEO you know.

**CHAIRPERSON:** Ja.

**MS CHERYL ANN CAROLUS:** So there was not a due process that was followed but again Chairperson, I speak under correction, and you should clarify this with management.

**CHAIRPERSON:** And am I right to think that effectively what the Director General was doing was to plead their case to you?

**MS CHERYL ANN CAROLUS:** Yes sir.

**CHAIRPERSON:** Yes, and did you regard that as appropriate?

10 **MS CHERYL ANN CAROLUS:** I certainly did not regard it as appropriate. It was inappropriate but I was just [indistinct].

**CHAIRPERSON:** Yes.

**MS CHERYL ANN CAROLUS:** That I was being asked why. I am pulled out of my work to look at things that is really not my business, and in fact I informed, I assured the DG that the broad principle of media diversity for sure, entertaining a new entrant into our business, giving them some of our business, there were adequate processes and they must exhaust those processes, that in fact it was inappropriate. I had no desire nor any legal standing to enter into discussions with them. So I communicate that. I thought it was inappropriate.

**CHAIRPERSON:** And you said Mr Mahlangu was there?

20 **MS CHERYL ANN CAROLUS:** Yes in fact Mr Mahlangu ...[intervenes].

**CHAIRPERSON:** Did he play any important role at the meeting?

**MS CHERYL ANN CAROLUS:** Yes, Mr Mahlangu indeed did, and in fact was – I cannot even remember the details because as I said I ended the meeting quite soon.

**CHAIRPERSON:** You were upset about being ...[intervenes].

**MS CHERYL ANN CAROLUS:** I was just ...[intervenes].

**CHAIRPERSON**: Made to stop what you are doing.

**MS CHERYL ANN CAROLUS**: I kept on thinking why am I here?

**CHAIRPERSON**: Ja.

**MS CHERYL ANN CAROLUS**: Why is the CEO even here, because when the Chairperson calls the CEO she had to leave, and I know she was a little bit annoyed but she came because the Chairperson of the Board felt that in fact she should [indistinct].

**CHAIRPERSON**: Okay thank you, Ms Hofmeyr?

**ADV KATE HOFMEYR SC**: Chair, I do note that we have gone slightly past the time of the lunch adjournment, if it is convenient maybe we should take that now. There is the  
10 one final topic which I propose to address, which is the events leading up to the resignation of the Board in September 2012, when we return.

**CHAIRPERSON**: How long do you think we might take on that one?

**ADV KATE HOFMEYR SC**: I think probably half an hour to do it properly.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR SC**: I do need, in that context, to make reference to some of the further documents that we obtained from National Treasury.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR SC**: In relation to the interactions between DPE and Treasury.

**CHAIRPERSON**: Yes.

20 **ADV KATE HOFMEYR SC**: So the better part of half an hour.

**CHAIRPERSON**: Oh okay, maybe let us take the break. Maybe let us take the break and I would have liked us to finish but maybe we must wait and do it properly.

**ADV KATE HOFMEYR SC**: Indeed, thank you Chair.

**CHAIRPERSON**: Ja. Okay we will take the lunch adjournment and we will resume at 14:05. Thank you, we adjourn.

**COMMISSION ADJOURNS**

**COMMISSION RESUMES**

**CHAIRPERSON:** Yes Ms Hofmeyr?

**ADV KATE HOFMEYR SC:** Thank you DCJ. Ms Carolus I would like to begin at page 23 of your statement, just to orientate ourselves in the chronology. At this stage of your statement you have entered 2012, so you are in the final year of your term on the Board of SAA, and you begin at paragraph 65 on that page, to talk about a presentation that was made to the Minister about the capitalisation requirements for SAA and you start to speak there about the need for a guarantee for SAA. Could you please tell the Chair  
10 about why the guarantee is necessary and what the position, the financial position of SAA was at that beginning of 2012.

**MS CHERYL ANN CAROLUS:** Thank you Chairperson. I must say at that stage for two preceding years SAA had actually posted a small profit. Not a big one but it was very different from probably about two decades before then when there was consistently being paid a bailout, and I think there is a difference. It is perhaps appropriate Chairperson, to indicate the difference between a guarantee and a bailout. A bailout is to pay for the fact that you have losses that you have incurred because of bad things that you did or happened in the past. So it is after the fact. It is historic.

A guarantee is in fact just a request from a shareholder to say that should  
20 unforeseen circumstances happen that your shareholder backs you to a certain extent. The necessity for the guarantee at this stage was twofold. The one was – and sorry for both of those two instances I shall refer to was to in fact enable the airline to give comfort so that SAA could go into the regular financial markets to go and borrow money. Up until then people were quite shy to put up money for SAA because they all thought it was a black hole and that the chances of recovering the money would be quite unlikely.

And so now we were in a much better place and the financial institutions were beginning to look at us again.

We had – we wanted this specifically because of the recapitalisation needs for the fleet, so that when we go and borrow money in the markets we would be able to have that backup by the shareholder to say that should anything go wrong we will back them. But it was also because at that stage when the financial services institutions looked at the business plan that SAA had, they saw it was a bankable proposition otherwise there would be no appetite because sometimes banks accept the opportunity to offer you the financial instruments or sometimes they do not, because they just think  
10 this is too high risk.

So the fact that there was actually appetite for that but because we had such a weak balance sheet at that stage it was quite a difficult situation for SAA, and we discussed this with the Minister, and when we made this presentation we actually said there were a set of options for what we could do, and obviously the most desirable one is if our shareholder, like shareholders normally do, say we will guarantee that in the unlikely event of unforeseen circumstances we will back you. So it is not like saying – I just think that is important because people confuse it often when they look at State bailouts of State owned entities versus guarantees. The State is not required to put the money upfront, it is just in case.

20 And in that year in 2012 we had a particularly bad year after these two years of small ...[intervenes].

**CHAIRPERSON:** So the guarantee is about the future, the bailing out ...[intervenes].

**MS CHERYL ANN CAROLUS:** So yes, also the – it is about the – that is correct Chairperson.

**CHAIRPERSON:** What has happened already.

**MS CHERYL ANN CAROLUS:** That is a very succinct way of putting it, thank you Chairperson. So the reason – so we were looking at having, being able to get overdraft facilities. Now like any one of us, if you are in debt, if you are highly indebted the bank will be much more punitive in the rate at which they give you an overdraft facility or a bond, anything that you are go into debt for.

So similarly with SAA if we had some injection and backup from the shareholder, the interest rate that they would charge for those loans that we would incur to purchase a new aircraft would be more favourable, the terms would be more favourable. But in 2012 the whole world was hit by a situation which even in today's  
 10 terms, with the fuel price going up like that it seems – today seems almost laughable. The fuel price went up to 122 Dollars a barrel in that year and so for that year SAA's expenditure went up by R2 billion. So there was absolutely nothing. It was completely outside of our control, just the fuel charges. And fuel is in fact one of our biggest expenses, and on top of it SAA was flying very fuel inefficient aircraft which Etihad and Air Kenya were not flying it. So the aircraft SAA was still sitting with was much heavier, the weight of them. So the fuel consumption, they had four engines, sadly many of them are still in the fleet because of the way Ms Myeni went into that funny thing with BNP, which we can maybe come to later.

But so the – we were then stuck with an extra R2 billion that we had [indistinct]  
 20 everywhere in the world, everyone was - plus we were then – had this ambition that was signed off with the new routes and the new mix of aircraft and the retirement of some aircraft that would enable us to borrow the money to buy the new fleet.

Ordinarily ordering new aircraft takes four years from when you order. So it had to be treated with some haste and speed, but at that stage we were in a very good position on one basis that it was just posted, from the time post 2008 meltdown in the

north and the western economies a lot of airlines had ordered aircraft that they were no longer able to in fact take up. So we could get fairly good deals, and in fact we did. We purchased I think four new aircraft, which was available simply because other people were in such – were even worse off than we were, airlines, so they were not able to honour their commitments. And so for the manufacturers it made good sense if they could get rid of it, it would be a great thing. So we were able to negotiate fairly competitive and fairly good prices in that.

But – so when we actually put our case to the Minister for the guarantee, that was the matter, so that we would on the one hand be able to manage our – if we ended  
 10 up with a massive loss we would be able to do that because of the fuel price, and on the other hand that we would be able to give the banks the comfort to lend money for us for purchases of the new aircraft at a more favourable rate. And I recall, just anecdotally Chairperson, we, in the meeting we had with the Minister, where we put these three options, he was more militant than we were, about no, no, no we had to get the guarantee. Because we said to him you know we have actually got three potential funders who are willing for the first time in a long time to fund SAA but obviously the interest rate. So he was quite a strong proponent and he always convinced us that he would do what it takes to do that.

Then with the question of where we were going to end with this fuel price, we  
 20 said as early as February that we anticipate that we are going to be in a very tough situation because of the fuel price increase, and which was all the more reason why the guarantee letter needed to be expedited.

So we – I must say that notwithstanding that Chairperson, we still that year, notwithstanding R2 billion extra cost that was unbudgeted for, we still managed to come out with a small nett profit. We had a R700 million operational loss but we had a small

nett profit, and we think that is quite remarkable with two billion, to be able to clear 1.3 billion of that just through smart management of your finances, of your fleet and your business planning, and the adaptation there was quite an achievement. So Chairperson, that was basically- I do not know if I have answered fully the question round the guarantee.

**ADV KATE HOFMEYR SC:** Indeed, thank you Ms Carolus. The one aspect I just wanted to get your comment on is at the bottom of paragraph 65 at page 23 you draw the link between the necessity of the guarantee and the nature of the audit that SAA would have received. Could you please explain to the Chair why the guarantee was  
10 necessary in order to have an unqualified audit position for SAA?

**MS CHERYL ANN CAROLUS:** Thank you Chairperson. The question of the guarantee was about the Board being able to express a view and demonstrate that it was a going concern, that it was not bankrupt, and so that is in very crude terms the concept of the going concern. And in terms of the Companies Act you have to demonstrate that you are a going concern and that you are not trading recklessly.

We – I must emphasised Chairperson, because this is also a matter that gets conflated and that I think Minister Gigaba bandied around you know, a piece of – I think the wrong information, was that a going concern status is a very different matter from your audited financial statements. Your going concern matters is going into the future  
20 you are able to trade responsibly and so on.

At that stage for 2012, as indeed the years before, South African Airways' books were audited without any evidence of wrongdoing. I really want to emphasise that point.

**CHAIRPERSON:** That is during your term?

**MS CHERYL ANN CAROLUS:** During my term. Yes, during my term.

**CHAIRPERSON**: Okay, so throughout?

**MS CHERYL ANN CAROLUS**: Absolutely.

**CHAIRPERSON**: That term.

**MS CHERYL ANN CAROLUS**: Yes sir, and absolutely, even in 2012 our books were audited and submitted on time at the end of our financial year, which is 30 March. It was submitted within the lawful required period we had submitted that, and the auditors found that we had met all the governance requirements and there was no evidence of wrongdoing. So – because later on it might become more relevant Chairperson, when upon our resignation the Minister was publically going around, and in fact wrote to  
10 Parliament to say that our financials were not finalised, which was not true. There is a big difference between the financials not being finalised and you not being a going concern.

As I said Chairperson, we started to raise this matter since February. Our financial year ends in March. We, the Minister assures us he wants us to go for the guarantee option. It will be the cheapest for the airline and it makes absolute sense. We get more and more worried as time goes by, that we are not having the AGM because the audited financial statements is presented to the DPE, submitted there in terms of the PFMA, but in terms of the Companies Act we also have to report at our Annual General Meeting.

20 So we say to the Minister let us go to the AGM even if we have a qualified audit, because if you cannot prove your going concern's status, which we could not without the guarantee letter, the auditors would then say we are satisfied with the state of the books and the governance as a whole, and how an account for how the money was spent, but going forward it cannot be guaranteed that there is not a risk of bankruptcy. So that there – you are not a going concern.

So that would be the qualification that would happen if we did not have a guarantee letter, but it would not impact on our ability on the lawfulness, on the legal standing of how we conduct our affairs.

And so we said to the Minister obviously the most desirable thing is to have the going concern and have an unqualified audit, but failing that we think it is actually more desirable to remain within the prescripts of the law to be able to present our financial statements in time with both the PFMA and the Companies Act, which [indistinct] I think Adv Hofmeyr will bring our attention to some matter in relation to these dates.

10           So we submitted our statements by the 31<sup>st</sup> of August to both the DPE and to Finance Department. So we were in full compliance. We start really raising concern as we go, in fact the 31<sup>st</sup> of August we just decided to submit it at the risk of not being a going concern, but that matter is only pronounced upon when you go to the AGM because it is at the AGM that you have to, as a Board, be able to give that assurance of a going concern.

**ADV KATE HOFMEYR SC:** Ms Carolus if I may.

**MS CHERYL ANN CAROLUS:** Sorry.

**ADV KATE HOFMEYR SC:** Just on that point, no just so that we can orientate ourselves in the legislative structure, you are talking now, as I have your testimony, to  
20   the presentation of your audited financial statements to the DPE, which is a requirement under the PFMA, as you have referenced, and Chair just to take you there in the bundle, the relevant section of the PFMA is Section 55, and you will find it at page 160. What you will see there is Section 55 begins with the accounting authority for a public entity, and then if you go down to D says:

"It must submit within five years of the end of a financial year, to the

relevant Treasury, to the Executive Authority responsible for that public entity, and if the Auditor General did not perform the audit of the financial statements to the Auditor General ..."

And then there is a list of three, the annual report, the financial statements for that year after the statements have been audited, and the report from the auditors on those statements. So the PFMA's requirement under 55(1)(D) is a requirement that that be done in five months from the end of the financial year, and Ms Carolus as I have your testimony that is the end of August, which is five months after the end of SAA's financial year is that correct?

10 **MS CHERYL ANN CAROLUS**: That is correct Chairperson.

**ADV KATE HOFMEYR SC**: So if we could then go to paragraph 68 on page 24 of your statement, because I understand from you that that is the second place where you would like to make a correction to your statement.

**MS CHERYL ANN CAROLUS**: Yes madam.

**ADV KATE HOFMEYR SC**: In the first sentence there you say:

"In terms of the PFMA, SAA was required to submit its financial statements to National Treasury within six months of the financial year ending March, i.e. by the end of September."

What is the correction you would like to make there?

20 **MS CHERYL ANN CAROLUS**: Chairperson the correction I wish to make is that it is in terms of the Companies Act, because these are the two pieces of legislation that govern us, is the PFMA and the Companies Act, and that is a mistake. I am sorry; it should have read Companies Act.

**ADV KATE HOFMEYR SC**: So just to get the position clear in terms of the PFMA, if you keep that sentence referring to the PFMA then my suggestion on the basis of what

you have said is all that you would change there is the reference to six months in the second sentence, should be five months.

**MS CHERYL ANN CAROLUS**: That is correct Chair.

**ADV KATE HOFMEYR SC**: And we will come later in the evidence to the Companies Act requirement.

**MS CHERYL ANN CAROLUS**: That is correct Chairperson.

**ADV KATE HOFMEYR SC**: Right.

**CHAIRPERSON**: Oh so 68 we can keep PFMA?

**ADV KATE HOFMEYR SC**: Indeed.

10 **CHAIRPERSON**: And then just change only the months is that correct?

**MS CHERYL ANN CAROLUS**: That is correct Chairperson.

**ADV KATE HOFMEYR SC**: Indeed, so the only change would be to remove the word six in the second sentence and replace it with five, is that correct Ms Carolus?

**MS CHERYL ANN CAROLUS**: That is correct Chairperson.

**CHAIRPERSON**: Okay thank you.

**ADV KATE HOFMEYR SC**: And then I would like to take you to another document, thank you Chair, because your evidence was that you had managed to submit to the DPE and the relevant other bodies, your financial statements by the end of August, and the confirmation of that you will find at page 156 of your bundle, that is Exhibit R. We  
20 can actually start a page earlier which is 155. Just to orientate ourselves in the bundle, these are documents that were added to your original statement and annexures because they were documents that were obtained from National Treasury by the Commission's legal team after receipt of your statement. And what they show Chair, is the interaction between the Minister Gigaba from Public Enterprises and Minister Gordhan as Minister of Finance, in the course of the period where there is engagement

between them about the need for the guarantee. So what you see beginning at page 155 is a letter from Minister Gigaba at the time, to Minister Gordhan as Minister of Finance, updating the Minister of Finance on the position of SAA, and if you go over the page to page 156 you will see that Minister Gigaba himself, in this letter, refers to that section of the PFMA and he says, on the face of it:

"In accordance with SAA's obligations under Section 55(1)(D) of the PFMA, and the company's commitment to compliance, I have agreed with its Board of directors that SAA should proceed to submit its annual report and annual financial statements to the Auditor General, National Treasury and the Director General of my department today."

And that you will see is a letter signed on the 31<sup>st</sup> of August 2012. Ms Carolus, can you confirm that that is in fact what happened?

**MS CHERYL ANN CAROLUS:** That is correct Chairperson.

**ADV KATE HOFMEYR SC:** And I note that you were copied on that letter at the bottom.

**MS CHERYL ANN CAROLUS:** That is correct, I did not have a copy of my own because obviously I did not retain any documents after I stepped down.

**ADV KATE HOFMEYR SC:** It is many years later but it is common cause, at least insofar as Minister Gigaba is engaging with Minister Gordhan, that there was compliance with the PFMA requirements. You have already indicated in your evidence, and we will come to it again, that despite that there were utterances on public platforms that Minister Gigaba made about your noncompliance, is that correct?

**MS CHERYL ANN CAROLUS:** That is correct Chairperson, and in fact constant referral to the fact that SAA had not completed their audit of their financial statements.

**ADV KATE HOFMEYR SC:** Notwithstanding what appears at page ...[intervenes].

**MS CHERYL ANN CAROLUS**: Notwithstanding what is clearly acknowledged by him.

**ADV KATE HOFMEYR SC**: Thank you. I would then like to move to the efforts you took, because in your evidence you had concluded with – before I interrupted you and I do apologise for that, you were – at the end of August you were telling us that you had submitted the audited financial statements and now you were moving into the September phase. Can you please tell us about that phase, that month, in the experiences of the Board, in its engagements with Minister Gigaba, and if you refer to page 25, paragraph 70 you reference the efforts you took to prepare a handover report, can you tell us about that? Why was a handover report important?

- 10 **MS CHERYL ANN CAROLUS**: Chairperson we were coming to the end of our term and I think that it is good practice to do a handover report, but we had also – members of the Board were becoming very concerned about some of the Minister's utterances. The Minister had spoken, and I think there may be a, I cannot recall, I think there may be a copy of a press coverage where the Minister spoke at the Cape Town Press Club, so all the prestigious newspapers, everybody was there, and the Minister made quite sweeping statements about the fact that SAA, the Board had no strategy, it had no vision and basically they were unpatriotic, and threw out all kinds of things about how some levels of remuneration or financial rewards in the system of SAA, it was not clear whether it was Board and management, was in fact quite inappropriate. But specifically
- 20 the fact that SAA has got no strategy, and that was a refrain he started to repeat more and more, which also is factually incorrect Chairperson, because in your submission every year to – along with your financials, you have to submit every year your business plan, your strategy and business plan and then your corporate plan, and your corporate plan is a shareholder compact, where you then say in terms of this strategy this is what you as shareholder, together with the entity agree will be your key deliverables. And

that gets evaluated on a quarterly basis where there is a chance for the entity to either say, let us say in our case where one of our elements of the corporate plan stipulated certain financial expectations that the shareholder had and that we could commit to. And it enables us on a quarterly basis to raise concerns from both sides if things were not going well.

So, but you had to have, legally you had to have a strategy, and I think it is outlined in the protocol, I think by Minister Hogan may have shared that, where they outline exactly how you are told what to expect and you negotiate that and so on.

So you sign off as the Minister, as your accounting authority and the company  
10 upfront, on what the strategy is every year. You have quarterly meetings where you monitor to see if that is going to plan and both parties can raise whatever they wish. And so we did think it was inappropriate and quite nasty of the Minister to go around saying that, but he knew it was not true. You could not be operating as an entity without a strategy.

I must say Chairperson that I had a much more tolerant view on the – not tolerant, I rolled my eyes, the other – some of the other Board members felt that – were much more angry about it and in fact also concerned because they felt, these were all people of senior stature who serve in businesses, who own successful businesses, who sit on international bodies including somebody like Russell Laubscher who is the CEO  
20 of the Stock Exchange, who tells other companies how to run their business and sits in judgment thereof. So people felt that the Minister was becoming quite malicious, and I just said to them you know what, the Minister is just being a politician. You just blame everybody except yourself for anything, and especially if you were under attack for one piece of work you deflect to somebody else.

So I honestly just at that stage still said that I thought, but we did raise it with

the Minister you know, why do you say this, on the odd occasions that we had routine interactions. And then he would say no, I have been quoted out of context, and that is when I of course confirmed for me the fact that no, this is just – he is just being a politician because that is what you also do. You say no, I was quoted out of context or I never said that, and when they prove it then you say I was quoted out of context.

So we actually, as I said the Board was quite agitated but then more and more the Minister became more and more strident about this, about our incompetence as a Board, about our deviousness and our lack of patriotism, just fairly random comments that he made. And the thing that worried us particularly was this notion there was no  
10 strategy and there was no competence, because effectively he was consistently saying we did not know what we were doing.

And so we decided to pay particular attention to a fairly detailed handover report, where we documented the journey from where we arrived, with relevant attachments and so on, and the steps we took to bring the airline to a different place that was in compliance with the law and in compliance with the aspirations of the shareholder. And so that is why we decided to do that handover report Chairperson.

**ADV KATE HOFMEYR SC:** And Ms Carolus, you have attached that report to your statement. I do not propose to go into it in any detail but just to reference that it commences at page 92, it runs to page 139, so it is, I think could fairly be described as  
20 a substantial document, would you agree with that description?

**MS CHERYL ANN CAROLUS:** I would indeed Chairperson.

**ADV KATE HOFMEYR SC:** And then if you go to page 25 of your statement, you talk about what you did with the handover report and you talk about the events of Tuesday the 25<sup>th</sup> of September. For the next bit of your evidence it is going to be very important to know which day of the week we are on because the events were developing quite

quickly. Can you just indicate to the Chair what happened on that Tuesday the 25<sup>th</sup> of September?

**MS CHERYL ANN CAROLUS**: Chairperson at this stage we – I cannot recall all the interactions but we are getting quite concerned because a big red flag for us was the 30<sup>th</sup> of September, which would now be six months after the conclusion of our financial year. And so we had met the PFMA requirement by submitting our financials to our accounting authority, but the Companies Act requires you to in fact at your AGM present your financial statements.

So – and by now the Minister had not disclosed our financial statements in that  
10 manner. We have met the PFMA requirements but the Companies Act requirement still remained here. And as you could see there was an earlier reference, I cannot remember where, in the Minister's letter in fact, to say that he had postponed the AGM to the 25<sup>th</sup> of September in order to secure the guarantee letter in the correspondence with Minister Gordhan. Well the 25<sup>th</sup> came and then we were informed that it was no longer taking place on the 25<sup>th</sup>, we were now five days away from the deadline in terms of the Companies Act. And the importance about the violation, being in violation of the Companies Act Chairperson, is that I am the Chairperson of a company that I founded, most of the directors on the Board in big and small, from the dairy farming of Mr Jantjies to various little things to big things, I am a director of both the London listed and  
20 Johannesburg listed part of Investec Bank. I serve on other listed companies, I am a shareholder in these, if you are a company that is noncompliant with the Companies Act, and you are a director on that company, it has quite serious legal implications for you because you are not technically allowed to do that. We would have to declare, and Mr Laubscher, particular as the JSE who is the custodian of the Companies Act and in South Africa would have to declare as the CEO of the Johannesburg Stock Exchange,

that he is the director of a company that was delinquent effectively, and in noncompliance of the Companies Act.

So the legal and the reputational risks for us to not have our financials presented at an AGM, with qualification, without qualification was quite high, it was about our entire professions and our livelihoods and so on. So we were now, I cannot recall the exact detail of it but we were on the Minister's case about please can we get this thing now that we are not having it on the 25<sup>th</sup>. The Minister reassured us. So I eventually had met with the Minister on the 25<sup>th</sup>, it was a Tuesday, I remember very clearly, and I said to him there was two things that I wanted to discuss, I did not know if  
 10 he had anything else, and I recall it very clearly in my mind, it was in some restaurant in Pretoria, some very fancy restaurant, and we – as he approached me, I was waiting, and I anecdotally said to him where is my "*pampier*", and just before we say anything, before we sit down, my "*pampier asseblief*", and he looked at me completely surprised and he said to me [indistinct] Cheryl, did my people not give you the letter, and I said what do you mean. He says you know your people can really let you down sometimes. He said it is there, it has been agreed, and he says, he goes further, he says to me I come from PG now. I come from Pravin now, if I knew they did not give you the letter I could have just asked them for a copy and he could have signed it. I am really sorry about this. And I said to him will you make sure it gets to me by tomorrow. By now  
 20 ...[intervenes].

**CHAIRPERSON**: And that would be a letter of guarantee?

**MS CHERYL ANN CAROLUS**: Yes sir.

**CHAIRPERSON**: Ja okay.

**MS CHERYL ANN CAROLUS**: And then therefore we could have the AGM. I mean everything was prepared for the AGM and so it is not even like it was – we could have

called it at the drop of a hat. We were just waiting for that so that when we present our financials there would be no qualification.

So I said to him I have now reached a point where three of my directors had said to me I am – I want to record to you that I want to resign. One of them had handed me a letter of resignation. I said to them look it is a matter of days before our term comes to an end; please let us not harm this airline. We have managed to bring the company to a level where we were now a bankable proposition, where in fact the whole profile of the company had been rehabilitated, the company is in good health. Most of us were in fact planning to not make ourselves available and just retire.

10           And I pleaded with people, I said let us do this elegantly because there will be an impact when people like us resign, people will ask why, and let us not harm, let us just go. If we are fed up, because people were quite fed up by then, that weekend before I actually had three sets of conversations with directors who all wanted to resign and I said I cannot understand why. We are just sitting here for a few days, you are not at risk.

Well by Tuesday people, when the AGM was now according to the Minister it was no longer on, people started saying we have got days left in this business week and I am – so as I say one member had handed me his letter of resignation, I did not, I said I am not tabling it, there is not a Board meeting where I can table your letter of  
20           resignation anyway so let us just stay here.

So I had communicated this to the Minister on the Tuesday and I said to him look people are actually quite concerned and quite agitated so please can you get this letter to me by tomorrow. He said yes. By the Thursday morning we opened the Business Day, and on the front page of the Business Day, with no knowledge of ours, the Minister has issued – there is a press statement that says the Minister has written to

the speaker of Parliament, Mr Max Sisulu, to indicate that the AGM of SAA had been postponed because its financial statements were not in order or something to that effect Adv Hofmeyr, which was a complete untruth but also lawfully quite irresponsible to say something like that, when he was sitting in receipt of our financials. He said in order to allow SAA to complete their financial audit or something to that effect.

**ADV KATE HOFMEYR SC:** Indeed, you will find the reference to that article at page 140, the challenge unfortunately is that it is a very bad copy as I have it but the essence of it is as you describe as I recall it Chair. I do not know if your copy of 140 is quite as bad as mine but you will ...[intervenes].

10 **MS CHERYL ANN CAROLUS:** I may have a copy of it. I may have a copy which the Chair ...[intervenes].

**ADV KATE HOFMEYR SC:** We might be assisted with a better copy but I can certainly see in the penultimate paragraph ...[intervenes].

**CHAIRPERSON:** Well I imagine that except for the heading my one is likely to be as bad as yours.

**ADV KATE HOFMEYR SC:** Yes.

**MS CHERYL ANN CAROLUS:** But Chairperson as I said it is – the essence of it, and I hope you would have a chance, I do not know if we can still get one but basically that is what the Minister said, he said he was – he had postponed the AGM in order to enable  
20 SAA to complete their financial statements, when he was in fact in receipt of it for almost a month by then, and in full compliance. And by then people were hopping mad, and quite understandably so, because now if left unchallenged the official record is that our financial statements had not been completed, and as I said the lawful consequences of us as people, as directors of the Board and in addition to that as businesspeople, but even as directors of SAA we were delinquent and noncompliant

with the law by going towards that date. Anyway so I then called the Board members and convened a ...[intervenes].

**CHAIRPERSON**: And the Minister did not discuss his intentions with you before writing to the speaker?

**MS CHERYL ANN CAROLUS**: No, not at all. No, not at all Chairperson.

**CHAIRPERSON**: So this ...[intervenes].

**MS CHERYL ANN CAROLUS**: Because it is not true, the Minister ...[intervenes].

**CHAIRPERSON**: This whole thing was or came as a complete surprise to you?

**MS CHERYL ANN CAROLUS**: It was, and as I said somebody called me up and said  
10 have you seen the front page of the Business Day, and as I said at this stage I am keeping everybody calm and controlled and believing that the shareholder will do the right thing and then this is what they read, as I said, I mean I was completely thrown and that for me was quite shocking.

So I called an emergency Board meeting for 17:00 or 17:30 that evening, that those who could make it came in and those who could not were on the phone, and I explained to people what had transpired since the Tuesday, because the weekend I gave them an undertaking I will meet with the Minister, and at that stage I genuinely believed that the Minister had the letter in hand. And so I had given them an undertaking that I would do my best and I was quite convinced there was a  
20 misunderstanding somewhere and we would have it, because it just was too – I mean I could not contemplate that somebody in a senior position like a Minister could not understand the consequences of letting something happen by default, that lawfully there was no – everything was covered.

**CHAIRPERSON**: And the way, the basis on which – was the basis on which the Minister spoke to you about the letter of guarantee when you met, when he was

supposed to bring it, when you expected him to bring it, was the basis on which he spoke to you that he had already signed it and was expecting you to have it already? Was that the basis on which he spoke?

**MS CHERYL ANN CAROLUS**: Sorry Chairperson maybe just a slight correction, the letter of guarantee is signed by the Minister of Finance.

**CHAIRPERSON**: Oh but it is given to him?

**MS CHERYL ANN CAROLUS**: Yes and then sent to him. We, as the entity, do not engage with Treasury so we do not know if he has done, when it was brought to him, if it was brought to him, whether he had satisfied Treasury with everything that they  
10 require for him.

**CHAIRPERSON**: Oh he would be ...[intervenes].

**MS CHERYL ANN CAROLUS**: The interface.

**CHAIRPERSON**: The person to speak to the Minister of Finance or correspond with the Minister of Finance and then come back to you, go back to the Minister of Finance and so on?

**MS CHERYL ANN CAROLUS**: That is correct Minister, so ...[intervenes].

**CHAIRPERSON**: So if the – so the letter of guarantee which would have to be – would have had been signed by the Minister of Finance, if it was there already, would have had to come to you via the Minister, via Minister Gigaba?

20 **MS CHERYL ANN CAROLUS**: That is correct Chairperson.

**CHAIRPERSON**: And on the day that you met were you expecting that he would have it or not really?

**MS CHERYL ANN CAROLUS**: Chairperson, I had in fact expected he – on the basis of the conversations we have had since February, March with him, that he would by now have done what was necessary and if Treasury or anybody required further information

from us he would come back to us and say they are not satisfied. There was a long lead time to actually get this.

**CHAIRPERSON**: Oh basically it was long overdue?

**MS CHERYL ANN CAROLUS**: It was long overdue and I had expected it would come through the system.

**CHAIRPERSON**: Yes.

**MS CHERYL ANN CAROLUS**: I did not have – I should not have had to pick up a phone even to ask him. He had agreed with us when we sat down at the beginning of the year, that he would secure this letter, he would do what it takes.

10 **CHAIRPERSON**: He was keen about this letter of guarantee?

**MS CHERYL ANN CAROLUS**: He was in fact the one who was militant about it with us.

**CHAIRPERSON**: But to go back to my question, the way – what he said to you when you said where is my letter of guarantee, what he said to you suggested to you that he had given it to somebody to give it to SAA or to you?

**MS CHERYL ANN CAROLUS**: Yes, we had let him down.

**CHAIRPERSON**: In other words he had seen it?

**MS CHERYL ANN CAROLUS**: Yes sir.

20 **CHAIRPERSON**: He knew – he expected that somebody from his office had already given it to SAA or to you; that was your understanding?

**MS CHERYL ANN CAROLUS**: That was my understanding Chair.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR SC**: Sorry Chair if I may just follow that up because after receipt of Ms Carolus' statement this issue of these number of days over which there was interactions about the guarantee, was clearly of importance. And so the

Commission followed up on that aspect and obtained documents from National Treasury.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR SC**: Those are the documents in Exhibit N2 that I said we would deal with today. I understand Chair, that you have a copy of Exhibit N2 with you, and I know that Ms Carolus has been provided with one. N2 is the supplementary bundle to Minister Gordhan's evidence.

**CHAIRPERSON**: Yes I have got N2.

**ADV KATE HOFMEYR SC**: If you go to page 93 of that Exhibit N2.

10 **CHAIRPERSON**: 93?

**ADV KATE HOFMEYR SC**: 93.

**CHAIRPERSON**: Okay.

**ADV KATE HOFMEYR SC**: You will see the document that was produced within National Treasury for Minister Gordhan's attention, and it relates, you will see in the heading, to the request by South African Airways for a letter of support and a R5 billion guarantee for going concern purposes.

Before I go further in relation to these documents I would just like to remind us all, and for the benefit of Ms Carolus who might have missed Minister Gordhan's evidence, what Minister Gordhan said about this process, because he was asked about  
20 it in his evidence, and just for your record Chair, the relevant transcript is the transcript of 21 November 2018 and the discussion begins at page 41 of that transcript. Chair, I have made copies.

**CHAIRPERSON**: Ja.

**ADV KATE HOFMEYR SC**: Just to be of assistance so we did not have to have the whole transcript here, if I may beg leave to hand that up.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR SC:** I will just summarise what is happening in this part of the transcript. Mr Pretorius is asking Minister Gordhan about the circumstances around the SAA guarantee, and if you go over the page to page 42 what Minister Gordhan explains there in broad outline, because as I have his evidence he did not have a perfect recollection of these days and what happened on them, but he says as a general proposition, if you go sort of a third way down in the page, he starts talking about the FLC. The FLC is the Fiscal Liability Committee. He describes a process where when there is a request for a guarantee that is received through the relevant State  
10 department, this Fiscal Liability Committee convenes, it looks at it, it investigates, it prepares a report. That report first goes to the DG, as he says around the middle of the page, and then the DG considers it and after the DG it goes to him, the Minister, who is the final signatory with the lawful authority to approve the guarantee. And he concludes in the middle of that page to say that they are ordinarily not in the business of saying in advance that you will get a guarantee because you have to wait for this entire process to be completed.

So that is a background to the pages that begin at 93 of Exhibit N2, because what 93 is, is that memo prepared for consideration by the various officials. It is dated 21 September, so we are at the end of the preceding week in which you were having  
20 your engagements with Minister Gigaba.

And what you will see if you go through these documents to page 102, is that the recommendation of the Fiscal Liaison Committee is contained there, it is in two parts. The recommendation to the Minister is that he concurs to SAA's request for the five billion guarantee for the period, and that he sign the attached letter addressed to the Minister of Public Enterprises, should he concur with the contents and support the

guarantee request.

If you go over the page to page 103 you will see that his DG, Mr Fuzile signed his confirmation that he approved the recommendation on the 26<sup>th</sup> of September, and similarly Minister Gordhan signed his approval on the 26<sup>th</sup> of September.

I would like to go back to your evidence Ms Carolus because I said I was going to place some significance on these days between Tuesday and Wednesday and Thursday ultimately, but it is on Tuesday, as I have your evidence, that you met with Minister Gigaba and Minister Gigaba said he had the letter and he could not understand why you did not have it yet is that correct?

10 **MS CHERYL ANN CAROLUS**: That is correct Chair.

**ADV KATE HOFMEYR SC**: That was the 25<sup>th</sup> of September, the Tuesday. But what we have seen from the documents obtained from National Treasury is that Minister Gordhan's assent was only recorded the next day, the 26<sup>th</sup>, and if you go over to page 104 you will see that that is the letter that Minister Gordhan signed, informing Minister Gigaba about the approval of the guarantee. And if you go over the page to 105 you will see that that also bears the date of the 26<sup>th</sup> of September 2012. Is that consistent with what Minister Gigaba told you on Tuesday the 25<sup>th</sup>?

**MS CHERYL ANN CAROLUS**: No it is not.

20 **ADV KATE HOFMEYR SC**: If you go over one further page to 106 you will see that this is a fax confirmation report. It is sent in the wee hours of 06:30 in the morning on the date of the 27<sup>th</sup> of September. We are now on Thursday, and what you will see is that is a fax confirmation of the letter signed on the 26<sup>th</sup> by Minister Gordhan, going to a number 0214652381. I do not want to take too long on this but I can assure you Chair that is the number of the Ministry of Public Enterprises and is the number for communicating with Minister Gigaba, which is clear from the August 31<sup>st</sup> letter that we

went to previously. So this goes to Minister Gigaba only on the morning of Thursday the 27<sup>th</sup> of September, and despite this, as I have your evidence, you were told on the Tuesday he had it already and that you would get it on the Wednesday, is that correct?

**MS CHERYL ANN CAROLUS**: That is correct Chairperson.

**ADV KATE HOFMEYR SC**: And as I understand your evidence from your statement at page 25 you got nothing on the Wednesday and then you were confronted on the Thursday morning with the Business Day article which recorded the statement that Minister Gigaba had made to Parliament about your audit report not having been finalised and not ready, is that correct?

10 **MS CHERYL ANN CAROLUS**: That is correct Chairperson.

**CHAIRPERSON**: Is there some – the issuing of the letter of guarantee, does that – is it consistent with what Minister Gigaba told the speaker about SAA or is it neutral? In other words ...[intervenes].

**MS CHERYL ANN CAROLUS**: No Chairperson, in fact they are two very distinct matters which only become related when we want the going concern thing. But the financial statements were finalised and in fact signed and certified by the auditing firm of SAA to say that looking backwards all things were in good order, there was nothing that was picked up that in fact was a matter of emphasis that was worrying. So the good health was signed off. So the financial statements were complete.

20 **CHAIRPERSON**: How long before this date when he wrote to the Minister, to the speaker, how long before that were the financial statements ready, had been completed?

**MS CHERYL ANN CAROLUS**: We submitted it formally on the 31<sup>st</sup> of August to both the DPE and the Ministry of – and the Department of Finance, the Treasury, because that is the lawful cut-off point. We had them, they were prepared even before that but

we were hanging onto them because they would then be presented together with an AGM to in fact submit to the AGM the annual report and the financial statements of the company.

So it was absolutely clear that our statements had been finalised. It was incorrect to say the statements were not finalised. At an AGM, in addition to your submitting your financial statements and your annual report, the Board has to express a view to say that it is, this company is a going concern, and that is that the company will be able to fulfil its legal obligations and to be able to conduct trade without any risk to [indistinct].

- 10 **CHAIRPERSON**: Had there ever been any discussion between – involving you and Mr Gigaba, that related to the financial statements prior to him sending this letter to the speaker, in which he would have been told that the statements are ready and this is what they say or not really?

- MS CHERYL ANN CAROLUS**: No at the time, Chairperson at the time the Minister made that statement on the 27<sup>th</sup> of September he had been in receipt, and SAA has received, and in fact he indicates this in his letter to Minister Gordhan, that he had received our financial statements, our completed and audited clean set of results on the 31<sup>st</sup> of August as is lawfully required in terms of the PFMA. So there was absolutely no concerns raised by the auditors. He was aware of it, he received it as such and we  
20 were just now waiting to present those statements to the formal AGM process which would comply with the ...[intervenes].

**CHAIRPERSON**: And he would not have, even if for one reason or another, although the statements may have been received in his departments, even if for one reason or another he might not have looked at them he could not write to the speaker and say what he said without checking what the statements say or whether they are there or not

is it not?

**MS CHERYL ANN CAROLUS**: Chairperson I would have ...[intervenes].

**CHAIRPERSON**: I am just trying to understand why ...[intervenes].

**MS CHERYL ANN CAROLUS**: It is quite a serious allegation Chairperson, to accuse a State owned company of breaking the law, because at that stage we would have been in violation of the PFMA and it is one of the pieces of oversight that Parliament takes very seriously, is any State entity, be they a company or a department who is in violation of the PFMA, it is firstly unlawful and certainly taken – viewed in a very serious light by Parliament in particular. And so to make that allegation without the facts, even  
10 if you are ignorant, I would just say for somebody in a position of responsibility to do that is just grossly irresponsible.

But secondly Chairperson, Minister Gigaba knew that everything was ready, the financial statements included, even the very fact that we only submitted it to his department on the 31<sup>st</sup> of August was because we were holding it back so that it could go with the letter of guarantee and the AGM would follow. And so he knew everything was ready for that AGM.

**CHAIRPERSON**: Just go back to telling me the basis for you saying he knew because if indeed factually he knew but went on to write to the speaker of Parliament and said something that was not true, you can understand how serious that can be, but I am just  
20 wondering that even if you have not seen them, I would have thought that as Minister, before you write to the speaker about something like that you would call at least the Chairperson of the Board and say what is happening about the statements, and if you are not sure, but obviously if you are sure – so I am trying to understand whether you are able to say there is a meeting in which I was there and he was there and we talked about the statements and I told him they are ready or there is a letter he wrote maybe to

the Minister of Finance or to us in which he said that the statements are ready. Because if that is there then it shows that he had personal knowledge.

**MS CHERYL ANN CAROLUS**: Well Chairperson, in fact I think Adv Hofmeyr can just take me back to the document.

**ADV KATE HOFMEYR SC**: Yes.

**MS CHERYL ANN CAROLUS**: He did indeed write on the 21<sup>st</sup> of September.

**ADV KATE HOFMEYR SC**: He did.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR SC**: Well he wrote earlier than that, he wrote on the 31<sup>st</sup> of  
10 August to the Minister of Finance to say that he was receiving your audited financial statements that day. The reference is at page 155 or your bundle, Exhibit R. This is not anyone other than Minister Gigaba writing, it is Minister Gigaba writing. He writes on the 31<sup>st</sup> of August.

**CHAIRPERSON**: Let me just get there.

**ADV KATE HOFMEYR SC**: Of course Chair.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR SC**: So this is a letter written, if you see over the page at 156 it bears the signature of Minister Gigaba. It is written on the 31<sup>st</sup> of August, it is written to Minister Gordhan, and it says at the top of page 156:

20 "In accordance with SAA's obligations under Section 55(1)(D) of the  
PFMA ..."

I am skipping a few words:

"... I have agreed."

This is Minister Gigaba speaking:

"I have agreed with its Board of directors that SAA should

proceed to submit its annual report and annual financial statements to the Auditor General National Treasury and the Director General of my department today."

That is speaking about the 31<sup>st</sup> of August 2012. If I may then Chair, just to complete this ...[intervenes].

**CHAIRPERSON**: Just to, hang on so today there implies that they are ready.

**ADV KATE HOFMEYR SC**: Indeed, because ...[intervenes].

**CHAIRPERSON**: That is why they could be submitted on that day.

**ADV KATE HOFMEYR SC**: Precisely Chair.

10 **MS CHERYL ANN CAROLUS**: Because he submits it.

**CHAIRPERSON**: So the sentence clearly implies that he is aware that they are ready, they can be submitted on that day.

**ADV KATE HOFMEYR SC**: Indeed Chair. We submit there is no other appropriate interpretation of what is being said in that letter. Chair, if I may the, just for the benefit of Ms Carolus, give you, because I have kindly been handed by my learned leader an electronic copy of that Business Day report, which enables me to read it more clearly.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR SC**: I am going to – I was supposed to keep the screen alive. I was not able to achieve that.

20 **CHAIRPERSON**: And you do not know what to do now?

**ADV KATE HOFMEYR SC**: I do not, my learned leader will equip me, thank you so much. What then is reported on the Thursday.

**CHAIRPERSON**: You have to make sure you finish reading before it goes off.

**ADV KATE HOFMEYR SC**: Yes I know, I am going to do my best to keep it alive so to speak. So Business Day then reports on Thursday morning, the 27<sup>th</sup> of September, two

days after you have met with Minister Gigaba, that he said the following in a letter to the speaker of Parliament:

"Mr Gigaba said the airline had been unable to finalise its annual report due to the need to address its "immediate financial challenges" for its auditors to complete the financial statements."

Ms Carolus that is as I have your evidence, what you say is false.

**MS CHERYL ANN CAROLUS:** That is patently so Chairperson.

**CHAIRPERSON:** Yes, that is as you recall the article that you read on that day?

**MS CHERYL ANN CAROLUS:** That is correct Chairperson.

10 **CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR SC:** And that article appears at page 140 of Exhibit R. Ms Carolus if you can just assist us because what becomes apparent from the documents we have obtained from National Treasury is that Minister Gordhan only approved the guarantee on Wednesday the 26<sup>th</sup>, and it was submitted to the DPE only on the morning of the 27<sup>th</sup>. But as I understand your evidence you were told in a meeting on Tuesday the 25<sup>th</sup> that Minister Gigaba already had that letter of guarantee, can you explain that?

**MS CHERYL ANN CAROLUS:** I am afraid I cannot speak for Minister Gigaba. I took him at his word Chairperson. I have no knowledge.

20 **ADV KATE HOFMEYR SC:** Thank you. You then, at page 25, tell us what happened in the remainder of Thursday the 27<sup>th</sup> of September. It begins with the statement that eight of the 12 directors resigned from the Board on the 27<sup>th</sup> of September. Can you tell us about those events?

**MS CHERYL ANN CAROLUS:** Chairperson as I said with this article on the front page of the Business Day I was quite taken aback and deflated because I had asked the – I

had consistently assured the Board members notwithstanding a growing view amongst them, that the Minister was at best negligent and at worst in fact hostile to the Board of his company, as our shareholder. And I had, as I said, consistently given them this reassurance but also asked that at the minimum that we seek to not harm the company and the reputation of our country in fact, with rash actions on our side.

But when this appeared on the front page I really felt the Minister had just checkmated me, the fact that he is writing to Parliament, giving an untruth as we can see is now corroborated in his own correspondence, that he was lying to the Minister, to the speaker of the house, and being quite reckless about the implications. Because if  
 10 that is a public record that stands I would have had to declare to every company I serve on that I am now the director of a delinquent company that has in fact violated the law, and that timing of that was going to become true by the 30<sup>th</sup> of – so it would have been Sunday the 30<sup>th</sup> of September, and we are now Thursday late afternoon.

So I convened a meeting of the Board and I said to them now I have reached the end of the road, that I thought this was just an utter betrayal to make that utterance to a lawful body like our Parliament, for the record, that the company that we were the custodians of had in fact violated the law. Because whilst we were still in compliance of the Companies Act until the Sunday, if what he was saying to the speaker and to Parliament was true then we were in violation of the PFMA, because the cut-off date for  
 20 us to submit in terms of the PFMA was the 31<sup>st</sup> of August. And that is quite a serious thing for anybody to do, and the insensitivity and recklessness and as by then I also – many members of the Board concluded the hostility, they did not know what his motives were but it was quite clear to them that his man was hostile to this Board and was determined to in fact ruin our reputations and I just thought it was the height of irresponsibility because I had explained to him what the consequences were just in

case he did not understand it. But I did expect that he would have. As I said Minister Hogan certainly did, she convened a whole workshop with us to say you are going to abide by this and I promise you I will abide by this. And then for the Minister to go on public record on the front page of a newspaper, is reported of having gone to Parliament to report us as people who have violated the PFMA, was just – I do not know, breath-taking.

So I said I informed the rest of the – I informed the Board that I had now reached the end of the road and I was going to resign. That I could not see my way clear to take a risk with a man who could distort or lie like that. That I could trust this  
 10 man between that Thursday and the Sunday close of business, that he would have effected all the remedies, whether to call the AGM without a letter and a qualification on the audits, not unusual in the companies in the business world that you have a qualification of that nature, or indeed that he would get the letter of guarantee for us. Because at that stage we still were not in possession of the letter of guarantee or even an indication about the letter of guarantee and yet he makes an utterance like that. I just thought that I – even I had now reached the end and it was quite a tough thing for me to do because I had really given the Minister a fair chance at being compromised by a series of things.

Anyway so I said I was going to resign and then seven other directors felt with  
 20 me, very strongly in fact, that as a matter of protest but also to protect ourselves lawfully, and our reputations, but felt we wanted to send a very strong message that we were not going to tolerate people playing loose and fast with our reputations and our legal standing Chairperson.

**ADV KATE HOFMEYR SC:** Ms Carolus you resigned en mass, all eight of you on Thursday the 27<sup>th</sup> of September, but as I have it, and you have indicated already in your

evidence, you went to great lengths to endeavour not to harm SAA as a consequence of that resignation. Can you please explain to us what motivated you in doing so, and I would, after you have done that, like to take you to one of the reports about the comments you made in relation to Minister Gigaba at the time of your resignation. But first of all why was it important not to harm SAA as a consequence of the resignation?

**MS CHERYL ANN CAROLUS:** Chairperson there were a few reasons but the most important one was here was an entity in quite severe state of disrepair at multiple levels when we were appointed to serve and that we had built up not so much as a Board even but just as a management team. They – we had really built up under the

10 leadership of Ms Mzimela, a really credible, hardworking honest team where the values were readjusted, SAA was a place where people wanted to work again and we understood that the consequences of a resignation could be quite dire, and especially if we go with a lot of controversy. We were on the verge of being able to secure, in the regular markets, funding for the airline. And if SAA was back in a negative – if there were negative perceptions, the ability – the knock-on effect was just too horrendous. The question of the fact that we needed that money, regardless of what the cost is but just people who would lend us money period, we find ourselves back in a situation now, after this procedures of State capture that has been carrying on, where many of our State entities are broken and where no one wants to lend the money because they are

20 considered such a high risk that it is very unlikely in their current state and with their current business plans and leadership, that you would ever be able to recover your money. So it was not even a question, no matter how greedy you might be you are just not going to lend the money because they are so bad, and that is where SAA started off from.

And so here we were, and so we knew it was a bit of a nuclear option, we had

really gone along, we were right up to the Thursday and the Sunday was D Day for us. Not only did the Minister – I do not know why it took so long for him to get that decision through Treasury, so between him and Treasury they must account for that but we started in February to flag this need and we left it in his hands. We were never told you have not given us enough information, you know any serious matters that caused concern that delayed, that caused this delay.

So we had given the Minister a lot of slack until the Thursday. If we did not act on that Thursday we would have been in violation of the Companies Act, that is it, in 24 hours we would have – you know by the Sunday not 24 hours. But the 24 hours is the  
 10 Friday would be the close of business. It would not have been possible to conduct many things after that day.

But I – so firstly in response to the question Chairperson, we were worried about just the financial and economic consequences for SAA, and by implication for our country because at the risk of sounding immodest again, I think that the calibre of people that we had on that Board, if people like that get up in public and make a meal of a behaviour of a senior member of the Cabinet, it would just send a very bad message that we thought would have unintended consequences. And therefore I pleaded with people that how we would manage the communications going out of there, but we thought we wanted to communicate and we made it our business, but we did not call a  
 20 press conference, we issued a statement. I was available to respond to the one newspaper that we issued the statement, because we just wanted it on the public record. And especially given the track record before, like that Thursday's press statement, that morning's press statement he made, but subsequently also if we look at the utterances he made, it was a very good move that we firstly compiled that handover report as a clear documentation that is backed up by processes that is recorded in his

own department and secondly that in fact just the financials that were signed off by his department, by independent auditors and all the regulatory authorities disproved that. But we nevertheless felt that whilst we wanted to be on the record in our own words rather than having to correct him, we still pleaded that let us just be careful. So nobody spoke in fact on the matter. So there was a general carefulness.

I must say in hindsight Chairperson, maybe I was even more mindful of the fact that here was a senior member of my organisation as well you know, but I must say that I was not going to protect him when the country, when he was in fact placing the country and its institutions like SAA at risk. I was not going to tolerate that and I could  
10 not expect other members of the Board to do that, but we wanted to strike that balance.

**ADV KATE HOFMEYR SC:** Thank you. As I have it you describe those events at paragraph 79 on page 29 of your statement in the following terms, and if I may just be permitted to read what you say in the second part of that paragraph and then ask for your comment. You say from the middle of that paragraph:

"Both Minister Gigaba and Mr Mahlangu exerted pressure on the Board and management in this regard."

There you are referring to the Jet Airways events and the New Age business. You say:

"I have no doubt that the Board at that time was seen as an obstacle to these attempts to influence its decisions. Indeed the mass  
20 resignation on 27 September 2012 feels more like a constructive dismissal in order to pave the way for a more compliant Board."

Is that an accurate recordal of the view you hold Ms Carolus?

**MS CHERYL ANN CAROLUS:** In fact I feel even more strongly about it having been party or being privy to some of the matters which have come here indeed Chairperson.

**ADV KATE HOFMEYR SC:** Thank you, I would then finally like to conclude with the

comments you make at page 28 of your statement.

**CHAIRPERSON**: I am sorry, before you go there, are you – your last answer to Ms Hofmeyr, is it because of – is that view you hold about why thing happened the way they did leading to what happened when you were at SAA Board, does that kind of explain to you why maybe Mr Gigaba behaved in the manner in which he behaved, which you might not have understood at that time?

**MS CHERYL ANN CAROLUS**: Chairperson ...[intervenes].

**CHAIRPERSON**: In other words you told me, us earlier on you could not understand why he would – he wrote to the speaker and said something that was not true and there  
10 may have been other instances when you or members of your Board thought he seemed to reveal a hostile attitude towards the Board, but sometimes he would say he was quoted out of context and so on. And from what – my understanding of your evidence is that at that stage sometimes you were not sure why so I am just asking whether your view is that it may or may not have had anything to do with what you say in paragraph 79, namely an attempt to remove a Board that might not have been so cooperative maybe in his view.

**MS CHERYL ANN CAROLUS**: Chairperson you are correct in saying that, it seems so irrational and inexplicable. Many of my fellow Board members quite early on in that year, they read it as hostility, we have a hostile shareholder. In fact I think that is what  
20 the one person who did the letter of resignation said that, they really felt the Minister's actions were hostile in the extreme. I did not believe it but it was so irrational.

I mean here is a grown person who is – one of the things that I always admired of Minister Gigaba when he was a young man emerging through the ranks of the ANC youth league that really endeared him to me was that he was intellectually very astute, and so this just did not add up, this is just madness. And initially I thought it was just

benign because of my healthy sinicism I have about what politicians do and how they behave and how I expect them to behave, and later it just became weird. I just could not explain because my fellow Board members kept on asking me well how do you explain this, we are telling me this man is hostile, he is a hostile shareholder. And Chairperson, I must say that as I watched the events unfold long before the Commission started to sit, before things were officially placed on the record to this Commission, it became quite clear what Minister Gigaba had sadly fallen into, from his lifestyle. I mean I do not want to be petty you know, just all manner of things about – I got to know him as a young man of exceptional intellect, of absolute moral integrity,

10 modest, humble, and in fact I thought he – I projected him in the ANC as the poster kid of what an ANC youth league President should look like into the future, where we were not at war but where we were building a country, that he was that kind of person. So he is not stupid. So that is what was irrational for me. But I must say I have been quite sad at what he has degenerated into because it is quite clear that he has been quite central to a lot of wrongdoing in many of the State owned enterprises.

If I look at SAA just you know, the fact that within a very short period of time of him arriving there he seeks to virtually get us to hand over a part of our business that was showing promise, to some outside entity. You know he was our shareholder, and just listening to some of the evidence here, but also some of the Parliamentary hearings

20 that happened around Eskom over the last few years it just raised a huge amount of disquiet and disappointment in a man who had so much going for him but he does not have the excuse of stupidity. He certainly did not. It was quite calculated what he did.

**CHAIRPERSON:** As I understand your evidence at the time when – around end of September the terms of the Board members, or at least some of them were about to come to an end am I right?

**MS CHERYL ANN CAROLUS**: That is correct Chairperson.

**CHAIRPERSON**: Would that have been – they were not – it would have been only for all the members of the Board or not, or most?

**MS CHERYL ANN CAROLUS**: I think it would have been for some of the initial people who did, because you are appointed for a term of three years.

**CHAIRPERSON**: Oh.

**MS CHERYL ANN CAROLUS**: I cannot remember that detail Chairperson.

**CHAIRPERSON**: Oh, and I guess some would remain behind for continuity terms of ...[intervenes].

- 10 **MS CHERYL ANN CAROLUS**: We had urged, in our handover report very strongly because we found ourselves with just one person, and so in the handover report we make two points, we say (1) we do think that there should be – at least one-third should be retained always for continuity is best practice, and secondly we thought the term should maybe be a bit longer because you make decisions over a very long cycle, your corporate plan is four years.

- But – so as I said the reason why it was not too material was that most people will desperately want him to leave, and eventually agreed, you know a natural process for you to be relieved of this high risk space that you believe you are in here, is to just wait for the AGM, and it was supposed to take place anytime from May. And so, and
- 20 where traditionally the Minister appoints, the shareholder appoints, reappoints, renews, refreshes and those whose terms have expired he applies his mind to. And we spoke about it a little bit. I just said to him you know most people would want to move on, did not go into detail about why but certainly at least the eight and some of the other people also who subsequently resigned also wanted to leave.

Ms Mzimela and them were also at the point where – in fact Ms Mzimela in

particular was wanting to resign when we resigned because she has been at the front of the full frontal attack of these people and their efforts, much more so than even the Board. She was subjected to far worse undignified treatment. And we in fact implored on her to stay because we thought that if she leaves with us it would just destabilise the entire team. And she – subsequently she could not stay for another two weeks, they were clearly wanting to get rid of her too.

**CHAIRPERSON**: Well the problem with the suggestion, at least as at September, that maybe he did all of these things because he wanted the Board to leave so that he could put in a more compliant Board is since the terms of these Board members were going to  
10 be coming to an end, would he not have better just wait for the terms to end and then, so that he would not have to resort to any of these things?

**MS CHERYL ANN CAROLUS**: Chairperson, I think he also sought to ...[intervenes]

**CHAIRPERSON**: In other words what I am saying, I am looking at all angles ...[intervenes]

**MS CHERYL ANN CAROLUS**: Yes, no I, I understand ...[intervenes]

**CHAIRPERSON**: And I am saying he could, he could say why would I want to push you out when you are going to go anyway shortly?

**MS CHERYL ANN CAROLUS**: Chairperson, if you, if there was a healthy relationship between a shareholder and directors of a board, particularly as I say again at the risk of  
20 something immodest, the calibre of people he had on his board. And I do not want to diminish from subsequent boards and their own standing, but you would have imagined that it ought to have ended on a healthy basis. But we had, unwittingly, it was not a conscience act, but we had thought at a number of things. So this had carried on over a period of a year. Him diminishing our, seeking, I believe he seek to, not only get rid of us, but he seek to diminish our stature and our standing so that if we challenge him on

anything he would have successfully created a bit of a cloud over the names of the people on that board which was quite a difficult thing to do.

I think he would have wanted us to sign off on things like the Jet Airways and the New Age things and we just [indistinct] him every step of the way. And that why for me it was irrational why he would not, was, he, as I said that discrepancy between the signatures of him and Minister Gordhan is something that I still find puzzling. I mean I only learnt it in the course of the proceedings here.

But what was quite clear was that he was, had no intention of getting any of the people who were in - I, I must say, Chairperson that subsequently to other members  
 10 of that board who were reappointed also resigned, and virtually the only person who remained standing was in fact Ms Myeni. And from what I could recall from public utterances, even those two members were citing lack of governance that was completely out of hand at South African Airways that through the executive authority whether it was Cabinet, whether it was the Minister, whether it was the President himself who was directly implicated along the line about who gave Ms Myeni the comfort to be able to do that.

I think it is common cause that Minister Gigaba for a long time had enjoyed quite a lot of confidence of the President, and at the time, I do not know how will that added up. It is beyond my, but that is why it was so puzzling, Chairperson that we  
 20 could, because he knew that, you know, that he could, we could just, or we could do was just go to the AGM and that in fact most people had indicated that that is what their desire was. But it seems as if he wanted to really tarnish people's images as well in the process.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** Thank you, Chair. Ms Carolus, I may just ask one or two

questions as a follow-up from the Chair's latest engagement with you. There would be no bar to reappointment of board members should they wish to stand, would there?

**MS CHERYL ANN CAROLUS**: No, there would not be.

**ADV KATE HOFMEYR**: So notwithstanding the fact that your term was coming to an end at September, if there had been a good relationship and continuity was important those members could have stood again to be members of the Board. Is that correct?

**MS CHERYL ANN CAROLUS**: That is correct.

**ADV KATE HOFMEYR**: And of the eight who resigned with you, did anyone make themselves available again to serve on SAA's board?

10 **MS CHERYL ANN CAROLUS**: No, no, ma'am.

**ADV KATE HOFMEYR**: Thank you, Mr Chair. If I may then proceed to page 28 which is really your concluding remarks of your statement. As I read paragraph 77 and 78 on that page, what you do is you, you make some comments about what happened to SAA after that mass resignation on the 27<sup>th</sup> of September. If I could ask you to take the Chair through the concerns that you express there about what had happened to SAA after your departure.

**MS CHERYL ANN CAROLUS**: Chairperson, I start off by saying I am sad to note certain developments in SAA. I must say that I am, I, I still fly SAA as my airline of choice, I am a lifetime platinum member because of how much I fly.

20 **CHAIRPERSON**: [Laughs].

**MS CHERYL ANN CAROLUS**: On the airline. I chair a board and many of the boards I sit on I could fly first class, I choose not to, I choose to fly SAA. And so, and every time I get on the airline, I spoke with one of the former board members who came today, who landed from New York and just said how three out of four of the audio-visual sets on the aircraft – and I am sure it is a story all of us are familiar with – just was not

working. I know how I get onto an aeroplane, it has happened to me thrice that I can recollect where a passenger in the business class section is apoplectic because the bed does not work, their screen does not work. And we know that SAA, the prices of SAA is, it is not able to be as competitive because it is flying with this ancient aircraft that weighs way more than the modern aircraft that Air Kenya, Air Ethiopia, that they are flying.

So the fuel cost associated with that is enormous, and that immediately means that SAA's ticketing pricing is not always the most competitive. Their, price is not one of the strong points they can take for granted.

10 But as I said, Chairperson three times I have found myself in the business class section, and a passenger would be apoplectic because they paid for a lie flat bed and they do not have a bed. Their system is not working.

Just recently again, it is almost by exception that you do not get an announcement to say we have a problem with our entertainment system, we have to reboot the whole system, it is going to take 20 minutes. And it happens a few time in each flight. I think those of us who, who have flown in the business class over the past while will know that.

So that ancient fleet which was already too ancient when we, when our term started in 2009 are still the aircraft, the majority of the aircrafts that SAA is operating  
20 with. So that is the first thing. That fleet has been allowed to degenerate, and we are still stuck with it.

There are far more modern versions as I said that is around that means your fuel cost is greatly reduced. We ...[intervenes]

**ADV KATE HOFMEYR**: Ms Carolus, if I may, sorry, interject there.

**MS CHERYL ANN CAROLUS**: Yes.

**ADV KATE HOFMEYR:** One of the proposals as I have it that you made in the handover report was for a renewal of the fleet.

**MS CHERYL ANN CAROLUS:** Yes.

**ADV KATE HOFMEYR:** Is that correct?

**MS CHERYL ANN CAROLUS:** Yes, that is, that is correct indeed. It was, it was in fact one of the most critical things that we thought had to happen, and that related to fixing the balance sheet. So not only getting a cash injection from the shareholder, but we had demonstrate when people do a due diligence on your book to, to, when you apply for a loan to a bank and it is usually in billions, they look at your books and they see  
10 how you run your business. And if they pick up just that there was inefficiencies that was so large.

So fixing that balance sheet and getting the efficiencies going was a crucial part to get SA to a point where we were able to borrow in the capital markets with comfort.

**ADV KATE HOFMEYR:** Can you explain why that was not taken forward?

**MS CHERYL ANN CAROLUS:** Chairperson, I ...[intervenes]

**CHAIRPERSON:** Would she now?

**MS CHERYL ANN CAROLUS:** No, no, no. I think there was some, I can only refer to matters that came, and in fact I think Parliament made some references yesterday. I did not watch the whole proceedings, but I caught a snippet in the news when this  
20 chairperson of the committee, Portfolio Committee there in fact said they were now handing over Ms Myeni amongst other people for some action because they did what I think is unlawful. You cannot refuse to come to Parliament when Parliament calls you. But there were a few people, Ms Myeni was one of them.

In the newspapers, and Ms Myeni was asked to come to Parliament amongst other things to account on this matter, that we had, together with, first of a board of

which she was a part, we had developed a strategy, we had costed that strategy, and we had looked at options for funding that strategy.

Central to this was fleet renewal, both because of the age of the fleet, as well as getting a better mix of aircrafts that was not just the too extreme short-haul or very long-haul, but that would particularly enable us to get the ones that can fly to Africa or the six and a half hours into Latin American destinations which, or India for that matter. So fleet renewal was absolutely essential for us to be competitive.

The second part of that was that we, our competitors in terms of try eye, the people who were eying the African route aggressively, and that east-west corridor from  
10 Asia into Africa and onward into Latin America, the Brix axis, the east-west axis that we call it.

To be able to do that you needed to in fact get a whole, you needed to get a shareholder injection. Because as I said, Chairperson it is like any factory. If you have old machine and there is newer ones, and you are competition. So sometimes the shareholder puts money in there, not to pay for mismanagement in the past, but in fact to enable you to keep your edge.

SAA at that stage still had an edge on a number of fronts against particularly. I think with Emirates it is a different ballgame there altogether, because the level of support they enjoy from their government. But all three these airlines, Emirates, Kenya  
20 and Ethiopia. But Kenya and Ethiopia is similar to us, but countries that had, that have much smaller GDP's, they understood the importance of capitalising their airline adequately, and it became very easy for them to in fact overtake SAA.

SAA has lost an enormous amount of market share even against smaller, what started out as smaller airlines from smaller countries with much less money, but who understood the importance of capitalising. So we have now officially been overtaken

by Air Kenya and Air Ethiopia.

In other ways we have, they have [indistinct] our market share into some markets. Another example is, we look at, with this aging fleet we have - we used to have up to four frequencies a date, flights to London. Today we have one. The implication of that - again I alluded to this earlier, Chairperson – we have lost 75 percent not only of passengers. We have lost the jobs on those flights, 75 percent of them we have lost. We have lost 75 percent of the jobs of air chefs. We have lost 75 percent of the people who used to supply from toilet paper to salads. And then perhaps more, even in addition, I should not say more [indistinct]. In addition we have totally  
 10 eroded the capacity of what used to be a world-class facility called South African Airways Technical, SAA Technical.

A few weekends ago I just read in the newspapers that Lufthansa was going into partnership with Comair - that is a privately owned airline – to in fact set up an alternative to SAA Technical because the capacity [indistinct] . That same Lufthansa used to bring the aircraft from Europe and incur the cost of bringing them here to South Africa, to Airways Park for servicing.

It is like our pilots. Everywhere you walked in, in the world, you mention SAA Technical, it was a write-up there amongst the best. That capacity is gone. And so, and those came because of Ms Myeni's bizarre intervention, completely unorthodox  
 20 from what the newspaper said and what has been submitted to Parliament, that Mr Myeni took the extraordinary step to place the whole fleet acquisition on hold. She took issue with members of her board. Members of her board actually wrote of, well there were two boards. I think it was another board down the line. So not our immediate successor board, there was another board that came in, and those people took the step of reporting the Minister to the authorities, to the executive authority, a substantial

chunk of those people.

And then subsequently Minister Gigaba was removed and Ms Myeni remained. And Ms Myeni decided to also place on hold the financing, and in fact came in the name of transformation with something that she argued was a black owned financial house.

To fund a fleet you do not go to a start-up entity. I mean it was, it is just the most bizarre things, and that is why, as I said it is very hard. Ordinarily one cannot pin things on an individual, but here was a person who acted in total flagrant disregard for Parliament, and her accountability as a citizen and as a director, but also justified her  
10 board, and in fact the lawful agreements that we had with the accounting authority and Cabinet for our business plan, our growth strategy and the funding strategy.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** Chair, just to clarify for the future evidence that will be led in the course of the Commission. All of these aspects that Ms Carolus has touched on in the period after her time at the board will be traversed in detail. She simply, as I have [indistinct] setting the scene for the further evidence that will be presented.

**CHAIRPERSON:** Ja, no that will be necessary.

**ADV KATE HOFMEYR:** Indeed. Chair, those are the questions that I have. Thank you.

20 **CHAIRPERSON:** Ja, thank you. Just one or two. Can I go back to the New Age? After the meeting that you had with the Director-General of the Department of Public Enterprises and Mr Mahlangu, and the CEO of SAA - I think it was the meeting which the DG called and you went to where the discussion was on the New Age. Is there any decision that SAA changed after that meeting in regard to the New Age that it had made before?

**MS CHERYL ANN CAROLUS**: I cannot speak on that, Chairperson because again as I said it is matters that ordinarily is far out of sight of the board.

**CHAIRPERSON**: But in terms of ...[intervenes]

**ADV KATE HOFMEYR**: So I cannot. I think you will have to ask management about that, Chairperson.

**CHAIRPERSON**: But in terms of the discussions at that meeting which you did attend, the basis on which the meeting ended, did it not entail that there would be anything, any decision changed, or any new decision, or that the New Age would be, something would be given to them that they had asked for but had not been given before?

- 10 **MS CHERYL ANN CAROLUS**: Chairperson, I have seen the New Age distributed, but, so there is a presence of the New Age as with all other newspapers who ask. One of the considerations there always is weight. So how many newspapers get put on.

So my limited understanding, I think they are sort of divided up equally and fairly, you know between the different newspapers. I cannot speak about numbers, you know? I cannot speak about advertising in the New Age, the costings of you know whether more was paid to New Age *versus* other newspapers. I, I do not have any knowledge of that, Chairperson.

- CHAIRPERSON**: What would you, what would you say where the main difference is in approach between on the one hand former Minister Barbara Hogan and former Minister  
20 Gigaba as ministers of Public Enterprises in relation to dealing with SAA issues or the Board? What would you say the main differences appeared to be if there were any?

**MS CHERYL ANN CAROLUS**: No, there, it was chalk and cheese, Chairperson that, I think and the centrality of it all is about the fact that here were two ministers, one of whom understood in very simple terms the difference in the roles between shareholder, board and management.

Minister Hogan would never ask the Board to do something that is a management matter. She would never seek to discuss matters with us that had not been processed through our management teams. They were the people running the business.

So that is a fundamental difference that Minister Hogan was absolutely ...[indistinct] and quite simple. When you dealt with her and she raised her displeasure – and she did on occasions and was not shy to be firm and tough about her expectations – you could understand immediately that it was that she was concerned about you exercising your roles properly, delivering on the expectations. All of that was  
10 transparent and upfront.

So from a governance point of view a huge difference. It was shocking where SAA ended up under Minister Gigaba. Whereas I said, we even, the culture, you know where you pass it down in the system to your members of staff, and to your, because you set the tone at the top. And when you set the tone, where the lines are so blurred and non-existent and everybody, it is a free for all, your legal advisor can jump in, in a discussion that ought to be with junior people around newspaper distribution, you actually significantly erode the question of governance right down the valley chain, because there is no longer clarity of roles at all levels in the organisation.

And also where your members feel that it is actually okay for them to, to start  
20 telling a state owned entity how they must conduct their business when in fact the state owned entity were people who were professionals in that particular field. People at Eskom were people in the energy field who knew to run a public utility on that.

So for somebody to sit in a, it might be a very good professional in a government department is just inappropriate, and that is why those roles are so clearly demarcated in the various legal pieces.

But those things are also unlawful. That in fact effectively what Minister Gigaba and his team often expecting us to do was in direct violation of those legal parameters of what sits within the remit of shareholder, the Board and of management. So that was a fundamentally big one.

And the second one, Chairperson I would say quite frankly was a [indistinct] thing that drew on the foundations of what this brave democracy of ours were seeking to build.

We were trying to build a different world order where we served, and I, I cannot remember who it was, it might have been Minister Hogan, but it is something  
10 that I, I firmly align myself with. It is a very dangerous slippery slope when you see yourself as ruling people as oppose to serving people, or even governing. Because governing implies that you mediate a set of interest that you have to weigh up and treat fairly as oppose to ruling.

And I think that Minister Gigaba imbued that Department of Public Enterprises with a sense of ruling and issuing instructions which of course is very dangerous for accountability of elected people and the people who are in their teams. Because ministers are, and Cabinet are people who are entrusted with one of the most sacred things in our democracy, and that is people's vote.

People trust you, it is the highest trust that anyone in a country can give. And  
20 for you to actually take that and do with it what they did I am not surprised that people have lost faith in those whom they elected. Both formally through the number of votes they cast, and in fact the number of votes the ruling party got. But maybe I am becoming, I am [indistinct] into too much politics.

But, so I would say the two differences is governance, and the question of embedding and building on a value system that seeks to serve, and a value system that

seeks to grow an economy that will eradicate poverty. Because you cannot eradicate poverty and inequality without them.

**CHAIRPERSON**: And of course while Minister Barbara Hogan was minister there was an approach who was not there to her, and maybe to the Board - I am not sure – to say SAA should terminate the Mumbai route. And during Minister Gigaba's term there was that approach. Do you know what Minister Barbara Hogan's attitude was to that approach, to when she was minister?

**MS CHERYL ANN CAROLUS**: Minister Hogan was quite clear that there was a process around routes, and the only basis on which you make it is where it make  
10 economic sense for us to run that route.

We have often, SAA still finds itself sometimes where people say why do you not fly between London and Durban? And then my comrades in KZN really believe that there is gross injustice if we do not fly.

We can only fly – I see you are smiling, Chairperson. I mean, nothing personal here.

**CHAIRPERSON**: Well I am from Durban.

**MS CHERYL ANN CAROLUS**: [Laughs]. I know, I know that is why I am saying nothing personal.

**CHAIRPERSON**: [Laughs].

20 **ADV KATE HOFMEYR**: But ...[intervenes]

**CHAIRPERSON**: And I have asked that question. [Laughs].

**MS CHERYL ANN CAROLUS**: [Laughs]. I hope that, when, when the management team comes ...[intervenes]

**CHAIRPERSON**: But not to you. [Laughs].

**MS CHERYL ANN CAROLUS**: [Laughs]. I hope that when the management team

comes they can enhance your understanding of the economics of, of airlines and national carriers in particular.

But, Chairperson so I think that, on that question of Mumbai ...[intervenes]

**CHAIRPERSON**: So you are saying ...[intervenes]

**MS CHERYL ANN CAROLUS**: The Mumbai route.

**CHAIRPERSON**: Minister Barbara Hogan's approach was there are processes, they must be followed ...[intervenes]

**MS CHERYL ANN CAROLUS**: And she did not single it out. But also, Chairperson she did not just focus on one route. I would, I think that Minister Gigaba's motives are  
10 questionable, because why is it that as we say there was Botswana, there was London. There was a whole lot of routes, and within weeks of his appointment he starts to, try to get us to find common cause with Jet Airways who explicitly state that their idea is we must get off the route. That is the common cause that Jet Airways identifies. He does nothing to in fact support us. And as I say he actually is clearly talking to these people all the time, and then brings them and presents them in front of us to do that.

So Minister Hogan certainly was not obsessing about any one route. She was very focussed on all the routes, but she was also focused on a strategy within which she understood and signed off on the notion of being a network carrier.

**CHAIRPERSON**: Thank you very much. Nothing arising?

20 **ADV KATE HOFMEYR**: No thank you, Chair.

**CHAIRPERSON**: Okay. Thank you very much, Ms Carolus for your evidence, thank you for having come to assist the Commission. You may or may not be asked later on to come back. We do not know whether in due course there might persons who might want to apply for leave to cross-examine you. But I have no doubt that you will make yourself available if proper arrangements are made.

**MS CHERYL ANN CAROLUS:** Chairperson, I can just say in support of your assumption that I would, I will do whatever it takes to cooperate with the Commission, and I want to circle back to your request after my opening remarks that I wish the Commission well. I do want to make a very strong appeal, and one of the reasons why I felt I wanted to come was because there is a lot of fear that people still have about whether they should come forward. And I must say I was appalled at the vitriol levelled at some of the people who did appear here such as Minister Gordhan in particular ...[intervenes]

**CHAIRPERSON:** Yes.

- 10 **MS CHERYL ANN CAROLUS:** But perhaps even more frighteningly was the level of vitriol against the Commission itself, and the fact that I do not understand why people who have such, who claim to have such serious information are not challenged more seriously and even legally, lawfully to make themselves available to put these facts here to the case.

**CHAIRPERSON:** [Affirms].

**MS CHERYL ANN CAROLUS:** I am pleased that Minister Gordhan has actually decided to take legal action, because I do think there is good reason to be quite fearful of people [indistinct] levels of violence, a fairly, thinly veiled.

**CHAIRPERSON:** Ja.

- 20 **MS CHERYL ANN CAROLUS:** And that is why I really want to say this is a great country of ours. It came at a huge price. We have the most amazing nation of people, but we are poorly led. But for us to be able to build we need to lance the boil, and I think that the work of this Commission is so crucial. I want my country back. They have, some people have made a good attempt at stealing our present, they tried to distort our future, but I am not going to allow them. They distorted our past, I am not

going to allow them to steal our future. And I think that we are beginning to see some new hope and optimism, but the impact of state capture sits there.

I think, for example, Chairperson with your indulgence – our President has successfully managed to create some new excitement about the opportunities South Africa offers. Then we hear that Eskom is now running out of power because of the Tegeta contract where Glencore was effectively shut down, and the contract given to Tegeta with no proven track record and we now were told this morning again there is going to be load shedding.

And so no matter how much support the President drums up, if we cannot give  
10 people the energy to expand their business we cannot grow this economy and SAA is a microcosm of that.

And so to that extent, Chairperson you have my full support. Whatever I can do to help to, to lance the boil, the sickness of corruption and, and abuse that has be [indistinct] democracy you have my unconditional support. Thank you.

**CHAIRPERSON**: Thank you very much. Thank you very much. Thank you very much, and you are excused. Thank you. Mr Pretorius, you want to say something?

**ADV PAUL PRETORIUS SC**: No, Chair, except that the [indistinct] of Tuesday is still a matter of cooperation between the legal team and the intended witness. We are not sitting tomorrow as you know.

20 **CHAIRPERSON**: Ja.

**ADV PAUL PRETORIUS SC**: Nor are we sitting on Monday.

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

**ADV PAUL PRETORIUS SC**: And the reason for that delay has been arrangements with the next witness, Ms Mento.

**CHAIRPERSON**: And you say with regards to Tuesday we probably will be able to

issue to media statement on Monday as to what is going to happen?

**ADV PAUL PRETORIUS SC:** Yes, Chair.

**CHAIRPERSON:** Ja.

**ADV PAUL PRETORIUS SC:** And the events of Tuesday will largely depend on a discussion we need to have.

**CHAIRPERSON:** Yes. And Wednesday? You do not know yet?

**ADV PAUL PRETORIUS SC:** Wednesday and Thursday had been reserved for witness or a witness from Eskom. We are told that there is an attempt to secure that, but we cannot be hundred percent sure at this stage. It depends on the level of cooperation which we believe is forthcoming, but it does not result in any certainty at this stage.

**CHAIRPERSON:** Okay, alright. We are going to adjourn. There will be no hearing tomorrow. There was going to be a witness. Was it going to be Ms Mento tomorrow? Was it going to be Ms Mento tomorrow?

**ADV PAUL PRETORIUS SC:** It was going to be tomorrow.

**CHAIRPERSON:** Ja.

**ADV PAUL PRETORIUS SC:** And then Monday, and now Tuesday because certain arrangements have been made for Monday.

**CHAIRPERSON:** Ja.

20 **ADV PAUL PRETORIUS SC:** Which really will be spoken about on Tuesday.

**CHAIRPERSON:** Okay, alright. We will not have a sitting tomorrow, and we will not have a sitting on Monday and as to what, whether we will have a sitting on Tuesday, we will be able to advise the public by way of a media statement on Monday. We adjourn.

**COMMISSION ADJOURNS**