

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

25 FEBRUARY 2019

DAY 55

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PROCEEDINGS HELD ON 25 FEBRUARY 2019

CHAIRPERSON: Good morning Mr Maleka, good morning everybody, good morning Mr Mabuza.

MR JABULANE ALBERT MABUZA: Good morning Chair.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Good morning Chair.

CHAIRPERSON: Morning.

ADV VINCENT MALEKA SC: There are some few glitches.

CHAIRPERSON: Yes.

- 10 **ADV VINCENT MALEKA SC**: One of which is that the witness bundle is not here but it ought not to detain us. I believe that I can continue without it.

CHAIRPERSON: Yes okay.

ADV VINCENT MALEKA SC: For as long as Mr Mabuza has one in front of him.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: A copy of Exhibit U5 which we were working on in the last round of the hearings.

CHAIRPERSON: Yes. Well I see that you might not be the only one affected by that. Yes, no, that is fine. If he will be able to continue.

ADV VINCENT MALEKA SC: Yes.

- 20 **CHAIRPERSON**: If he has that then we can continue.

ADV VINCENT MALEKA SC: Chair on the question of documentation you will recall that on Friday we gave you a copy of the emails which were referred to as annexures to the set of disciplinary proceedings that Mr Mabuza was dealing with on Friday from Annexure SM1 going up to Annexure SM18.

CHAIRPERSON: And was that in Exhibit U5?

ADV VINCENT MALEKA SC: U1.

CHAIRPERSON: U1?

ADV VINCENT MALEKA SC: Yes. I gave them to you without any pagination. I understand from the secretary's office.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: That they have now been paginated.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And included in your U1 file beginning from page 397.

CHAIRPERSON: What page does it begin on?

10 **ADV VINCENT MALEKA SC:** 397. And it goes up to page 564.

CHAIRPERSON: Well Exhibit U1 for me goes up to 396 the page so it must be U2?

ADV VINCENT MALEKA SC: No Chair I believe that it has been included in your file.

CHAIRPERSON: Well I have got that one which is marked Exhibit U1.

ADV VINCENT MALEKA SC: Yes originally it ended at...

CHAIRPERSON: Then I have another file written Volume U, File 1 of and I think that one which we marked U1 was originally written like this as well.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So it may be that it is this one.

ADV VINCENT MALEKA SC: Yes.

20 **CHAIRPERSON:** That has been updated and not the one that I was using on Friday.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So let me see. Ja I am told that this is the one but whatever has been added on this one – whatever has been added on this one should actually be put there.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So that – because that is the one that I am using.

ADV VINCENT MALEKA SC: Alright.

CHAIRPERSON: But for now I will use this one.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: But we will call it U1 because that is where it should be.

ADV VINCENT MALEKA SC: It should be yes, yes.

CHAIRPERSON: Ja. Ja.

ADV VINCENT MALEKA SC: It is...

CHAIRPERSON: Okay.

10 **ADV VINCENT MALEKA SC**: It is a set of documents under titled description
Annexure J. If you look at the new index.

CHAIRPERSON: Well...

ADV VINCENT MALEKA SC: I think for now it will be ...

CHAIRPERSON: I – when you say J I thought you were talking about what we have
been referring to as dividers and I was looking for a divider marked J and there is not
one marked that so it must be something else you meant.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Just to re-orientate you. You remember the statement of
20 Mr Mabuza.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Has annexures to it.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And the last annexure was Annexure H.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: And we have now included as part of the annexure.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: J comprising the very documents we are talking about.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Beginning from page 397.

CHAIRPERSON: Okay so in this new file that is updated the annexures will be J up to what or is it just J?

ADV VINCENT MALEKA SC: It is just J.

CHAIRPERSON: Oh okay, no that is fine.

10 **ADV VINCENT MALEKA SC:** Yes. So Chair I think it will convenient if one can place a ...

CHAIRPERSON: A divider or something.

ADV VINCENT MALEKA SC: A divider or some sort of a tag.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: So that you are able to follow the documentation.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: As we take you through it.

CHAIRPERSON: Yes I do not have anything here.

ADV VINCENT MALEKA SC: I know that the resources of the commission are limited
20 but there we are.

CHAIRPERSON: Where should that go? You wanted us to put that at 397?

ADV VINCENT MALEKA SC: 397.

CHAIRPERSON: Okay, alright.

ADV VINCENT MALEKA SC: What we propose to do this morning is to complete Mr Mabuza's evidence relating to the disciplinary processes.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: That were instituted against several of Eskom's executives when he took office. And after that Chair we will go to the other transactions of concern to him and of course of relevance to the commission that he canvasses in his statement. We will add one or two...

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: More transactions which do not appear from the statement but which from the body of open source information.

CHAIRPERSON: Yes.

10 **ADV VINCENT MALEKA SC**: Are the subject matter of investigation.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Certainly by the SIU. So subject to your permission Chair I would proceed in that order.

CHAIRPERSON: That is fine thank you. So do we start with Exhibit U5 or we started with?

ADV VINCENT MALEKA SC: Yes Exhibit U5.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Mr Mabuza good morning.

MR JABULANE ALBERT MABUZA: Good morning Advocate.

20 **ADV VINCENT MALEKA SC**: You confirm that you are still under oath?

MR JABULANE ALBERT MABUZA: I confirm that I am still under oath yes.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Yes. When we adjourned on Friday Mr Mabuza we were talking about the topic that have described in your statement which is U1 from page 18. You do not have to go to U1 for now. I am merely orientating you to tell you how far we

have gone with your statement. And you have done so with reference to the contents of Exhibit U5. U5 is that blue file prepared by the attorneys of Eskom and we have gone up to page 27.

MR JABULANE ALBERT MABUZA: Page 27 of my statement.

ADV VINCENT MALEKA SC: No of Exhibit U5 the blue file ja. The one that you are looking at. If you go to page 27.

MR JABULANE ALBERT MABUZA: Page 27 being of my – being my statement?

CHAIRPERSON: No of U5.

ADV VINCENT MALEKA SC: No of U5.

10 **CHAIRPERSON:** U5

ADV VINCENT MALEKA SC: That blue...

CHAIRPERSON: Ja that blue file go to page 27 on the right hand corner – right hand corner. Okay, alright.

MR JABULANE ALBERT MABUZA: On it.

ADV VINCENT MALEKA SC: Are you there?

MR JABULANE ALBERT MABUZA: Yes I am.

ADV VINCENT MALEKA SC: Yes remember we – you – we have dealt with the various emails that had passed between Mr Koko and several individuals especially the emails that were sent to infoportal1@zoho.com. Remember that?

20 **MR JABULANE ALBERT MABUZA:** Yup.

ADV VINCENT MALEKA SC: And those were the emails that were the subjects matter of the first charge brought against Mr Koko?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Most of the emails that you have talked about were sent on 20 July 2015 and we have talked about them at length. They begin at 15.1 on page

27.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Up to 15.4 on the same page. Remember that?

MR JABULANE ALBERT MABUZA: Yup.

ADV VINCENT MALEKA SC: The date of 20 July has some significance in relation to the employment history of Mr Koko. What significance does that date have to your knowledge?

MR JABULANE ALBERT MABUZA: Mr Chairman sometime in the course of today we really would like to return to this whole issue of the suspended...

10 **CHAIRPERSON**: Yes.

MR JABULANE ALBERT MABUZA: Executives hopeful also paint the context for capture.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Between the period of March 2015.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: To December 2015.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Including Mr Koko's Dubai trips.

CHAIRPERSON: Yes.

20 **MR JABULANE ALBERT MABUZA**: We also want to give an example to show how extensive this capture was.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: And then go into a little bit more on additional inputs.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: On the disciplinary matters of Mr Singh and Ms Daniels.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: And hopefully at the end we could close with any lingering issues around this Optimum and Tegeta Coal Mine.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Now it would be remembered...

CHAIRPERSON: Well before you say – you proceed I am sure Mr Maleka will pick that at some stage and you will deal with them but in the unlikely event that he forgets and I
10 forget please feel free to say there is still this matter that you would like to really deal with thoroughly and then we can make sure. But it is highly unlikely that Mr Maleka will not remember that.

MR JABULANE ALBERT MABUZA: Thank you, thank you Chairman.

ADV VINCENT MALEKA SC: I can assure that so far as the question of the trip to Dubai is concerned that will be one of the charges that I will ask you to deal with. On the same file it is raised at page 34 paragraph VI but we will get there unless you want to talk to it generally as part and parcel of the historical context you want to give - to give.

MR JABULANE ALBERT MABUZA: Ja we may do that but and I am happy to...

20 **CHAIRPERSON:** Or maybe I should say the way I understand what you said a few minutes ago. What you want to deal with might go beyond just the trip to Dubai?

MR JABULANE ALBERT MABUZA: That is correct.

CHAIRPERSON: Ja. So Mr Maleka will see at what stage he would like you to deal with that. But all that which you believe will give us a full picture you will get a chance to deal with and Mr Maleka can guide you at what stage. He might say this is the time

or he might say later on. I just wanted to emphasise that. I think from what you have said what you want to say goes beyond – seems to go beyond the trip.

MR JABULANE ALBERT MABUZA: Correct.

CHAIRPERSON: Ja okay. It is okay.

MR JABULANE ALBERT MABUZA: So in answering the question from Mr Maleka about the 20 July I think it has got to be remembered that in March 2015 Eskom was go – we were in the midst of big load shedding at the time. It has to be remembered that it was in March when four senior executives were suspended from Eskom. The four senior executives that were suspended at the time was the acting chief executive Mr
10 Matona, the CFO Ms Molefe as in Tsholo Molefe, the head of commercial Mr Dan Marokane and the head of generation Mr Matshela Koko. Those were the people that were suspended around the 15 March. As we go through the details we will demonstrate other developments around that period but we will remember that really in the midst of the problems that were facing the utility to suspend these four executives was quite profound. Once they were suspended that also created the possibility for other executives to be brought into Eskom i.e. the chief executive, acting chief executive as in Mr Brian Molefe, the acting CFO as Mr Anoj Singh. But to the question on the 20 July. The 20 July is significant in the sense that of the four executives that were suspended the one executive that was returned on the day – the day he was
20 returned to the 20 July is Mr Matshels Koko. It was on this day when he was returned. So let me just track back. Between March and July it is around the same period that whilst these executives were suspended the Denton was appointed to do investigations before they could even bring their report certain actions were already being taken by the board. But the emails that we are going to be referring to will show the amount of activity between Ms Daniels office moving from one office to Mr Matshela's office, from

Mr Matshela's office to the chairman's office and how the co-ordination of the work between the chairman's office as per Ms Daniels, the Mr Essa outside in the Gupta's and how this got orchestrated. So Mr Matshela Koko was brought on the 20 July back. It is significant Chair that on that day in the emails that I referred the commission to earlier that very day he was referred. His activities on his email which is what we referred to on point 15.1 all the way up until 15.4 it was on that day. We at Eskom hold the view that having been suspended with the four, being head of generation should have been suspended. These were about generation. Mr Matshela Koko was brought in and he had to demonstrate his capability and his allegiance to the capturers what he can do. So as we go down I will demonstrate that. So the significance of the date of the 20 July was when Mr Matshela Koko got back.

CHAIRPERSON: Of course for what it is worth you confirm that that at that time you were not involved at Eskom but this is based on the documentation that after your – the board of which you are part began to be involved at Eskom you looked and you found?

MR JABULANE ALBERT MABUZA: That is correct Chair. These – all these that I am talking to happens before I arrive but these are in one – some of the public statements.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Mr Matshela Koko's and Mr Anoj Singh's presentation to Parliament.

20 **CHAIRPERSON:** Yes.

MR JABULANE ALBERT MABUZA: The Public Protector material.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Some of the disciplinary hearings.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: That was started and completed in as far as Ms

Daniel is concerned.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: The disciplinary charges that were placed in front of Mr Anoj Singh who resigned before he could be brought to a disciplinary hearing.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: The disciplinary charges that were placed to – in front of Mr Matshela Koko after he was re-instated by the labour court.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: So this is material.

10 **CHAIRPERSON**: Ja.

MR JABULANE ALBERT MABUZA: That is in Eskom.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Admittedly Chair as we will at the end of this be proposing and strongly recommending to the commission.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: That these individuals.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Be brought to the commission.

CHAIRPERSON: Yes.

20 **MR JABULANE ALBERT MABUZA**: To answer for this.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: But also confirm that these are part of the charges.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: In the criminal processes that we have laid.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: With the – working with the SIU and the Hawks.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: And also to confirm that – to the extent there are several claims that arise out of these. This body of evidence ...

CHAIRPERSON: Yes, ja.

MR JABULANE ALBERT MABUZA: Will be presented there.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: To also confirm that these emails.

10 **CHAIRPERSON:** Yes.

MR JABULANE ALBERT MABUZA: Come out of a server of Mr Matshela Koko's email.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Which we had to go to court to obtain his laptop.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: To access this information.

CHAIRPERSON: Yes, yes, yes.

MR JABULANE ALBERT MABUZA: So these are based on information and lastly some of the carte blanche we will refer to the carte blanche interview.

20 **CHAIRPERSON:** Yes.

MR JABULANE ALBERT MABUZA: Where certain of these accusations were place in front of Mr Matshela Koko.

CHAIRPERSON: Ys.

MR JABULANE ALBERT MABUZA: He denied them.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Once they placed some of these – the contracts that he has personally signed relating to the guarantees on Tegeta and Optimum.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: So this is where this information comes from and we as – at Eskom have no doubt in our minds that it would lead.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: The commission somewhere on its path to find – to get to the bottom of these if these individuals were to be called and have to answer to these questions.

10 **CHAIRPERSON:** No thank you, thank you. Mr Maleka.

ADV VINCENT MALEKA SC: Thank you Mr Mabuzza. What I want to do now is to look at the body of the emails which are referenced as Annexures to the charge sheet. If you are at page 27 you will see that the first email is sent on the 20 July 2015 at about 7:56 am. Do you see that?

MR JABULANE ALBERT MABUZA: Yup.

ADV VINCENT MALEKA SC: We have dealt with that email as part and parcel of the annexure but on Friday we did not look at the body of the email and I would like you to go to the body of the email itself. It is in that bundle that we have handed up this morning to the Chair. As far as I can pick up that email is ...

20 **CHAIRPERSON:** I am sorry Mr Maleka there is a green file here I do not know if that is the one you are talking about or you talking about U5 or you talking about the U1 that has been supplemented?

ADV VINCENT MALEKA SC: Yes U1 as supplemented.

CHAIRPERSON: Okay. What page on U1?

ADV VINCENT MALEKA SC: Page 453.

CHAIRPERSON: Have you got Mr – U1 Mr Mabuza? If you want to see whether it is U1 look at the outside on the spine. You have got it?

MR JABULANE ALBERT MABUZA: Yes this one.

CHAIRPERSON: Okay, alright.

ADV VINCENT MALEKA SC: You will see that...

CHAIRPERSON: Again just remind me the page again Mr Maleka?

ADV VINCENT MALEKA SC: 453.

CHAIRPERSON: 453, okay.

ADV VINCENT MALEKA SC: So Chair what I suggest you do is to go to page 453 and
10 at the same time open U5 page 27.

CHAIRPERSON: Ja I have got both.

ADV VINCENT MALEKA SC: And Mr Mabuza I suggest that you do the same.

MR JABULANE ALBERT MABUZA: Yup got the same.

ADV VINCENT MALEKA SC: Because you will see that 453 is marked SM1, do you see that?

MR JABULANE ALBERT MABUZA: Correct Chair.

ADV VINCENT MALEKA SC: So that is a document which is referred in U1 15.1. Now can I ask you to take us through that document beginning from 453? It is an email on the face of it where does it come from?

20 **MR JABULANE ALBERT MABUZA**: This email is the email from Matshela Koko, kokomm@eskom.co.za sent on the 20 July 2015 at 7:56 to infoportal@zoho.com subject: Internal Consulting Directives to Pdf attachments internal consulting directives to Pdf. Print this. Is what the email says. So in the face of it Mr Matshela Koko is telling the businessman who uses the infoportal1@zoho.com. We have advanced an argument that infoportal1@zoho.com businessman is Mr Salim Essa.

MR JABULANE ALBERT MABUZA: The attachment that email begins at page 454 and you will see that it begins with a title, what is the title of that attachment?

MR JABULANE ALBERT MABUZA: The – this attachment is an Eskom document. The title is: Directives for the Implementation of the National Treasury Cost Containment Instruction and Government Gazette. There is a number that identifies this document and there is an alternative – there is no alternative reference but the areas of applicability for this document is the group of Eskom in the finance area. It has 13 pages. It is a controlled disclosure document how it has been classified. It was compiled by Mr Van Zyl who is the Manager Solution Development Finance. It was
10 countersigned by senior General Manager Mr Velefe and it was authorised by the Finance Director Ms Tsholo on the 7 July 2014.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Ms Tsulu Molefe?

MR JABULANE ALBERT MABUZA: Molefe, Ms Tsholofelo Molefe Judge, yes Chairman.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: That is one of the executives who you say was suspended around March 2015?

MR JABULANE ALBERT MABUZA: That is correct.

20 **ADV VINCENT MALEKA SC:** Now why – why does the document refer to controlled disclosure? What does that supposed to mean for non-Eskom employees such as ourselves?

CHAIRPERSON: Maybe for the sake of completeness you can confirm Mr Mabuza that on the face of the document Mr Van Zyl seems to have signed it on the 4 July 2014 and Ms T Molefe on the 7 July 2014.

MR JABULANE ALBERT MABUZA: I confirm those dates Chair.

CHAIRPERSON: Yes thank you.

MR JABULANE ALBERT MABUZA: This ...

CHAIRPERSON: So it was the document seems to have been about a year old by the time it was sent to by Mr Koko to whoever?

MR JABULANE ALBERT MABUZA: That is correct Chair.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: What is – what is on that page 26 it starts to explain that this document is a response from National Treasury directing various public
10 entities on how to contain their costs. So this is what is then attached as a document to the businessman to indicate this is what will be going out. What is – the pattern that we are picking up here is on this day the 20 July on returning to office Mr Matshela Koko sends this material this being one example of it to Mr Essa to demonstrate to Mr Essa what business opportunity – opportunities exist in Eskom. As we will demonstrate at the end of this this is where certain work was then given to McKinsey. This is how Trillian that did not exist by this time was inserted to offer the business opportunity. So this is how it starts that I am here now. This is what I can, I can give you. You have demonstrated your power to me as we will show earlier that in that meeting of early in March where Ms Daniels was in a meeting with Mr Essa where it was, she was told at
20 that meeting to her surprise as we heard in Parliament that these four Executives are going to be suspended. She was told before it happened and she was kind of taken aback and she said in Parliament that how does an outsider get to know this detail and true that happened. These Executives were suspended. The one that was returned was Matshela Koko. On his return this was the start, this, this cost containment directives demonstrate that this is what we are assigned to do. In doing this there is

clearly some opportunities. Can you act, activate from here?

ADV VINCENT MALEKA SC: Thank you Mr Mabuza. Just to make sure that I understand your answer to the earlier question I put to you about the meaning of controlled disclosure as appears on page 454. What does controlled disclosure of documentation mean in Eskom?

MR JABULANE ALBERT MABUZA: Control of disclosure means this is a document that cannot be widely or publically to third parties be distributed to.

ADV VINCENT MALEKA SC: So it is a document [intervenes].

MR JABULANE ALBERT MABUZA: It is a classified document. It is a, it is an internal
10 document for specific use by certain prescribed officers in an, in the organisation.

ADV VINCENT MALEKA SC: Yes. I have looked at the document and I am not too sure if there is any specific aspect of it that you would like us to consider in detail, but my understanding of the document is that it looks at different cost elements of Eskom's operation and suggests how those costs should be contained. Do you confirm that that is the substance of the document [intervenes]?

MR JABULANE ALBERT MABUZA: I do confirm Chairman.

ADV VINCENT MALEKA SC: Yes. The next email as I pick it up.

CHAIRPERSON: Well maybe before we, we, we leave this document you, you have said that in sending this document to the person to, to whom Mr Koko sent it he did or
20 may have intended to show them what opportunities were there and I take it that you mean business opportunities. Now maybe you, you should say, say something to substantiate that statement if you also agree to the question that Mr Maleka has put to you namely that it is a document that deals with cost containment. So on the face of it, it may, it might not sound like you say, if it is a document that deals with cost containment it might not sound like it is a document that deals with business

opportunities for people but having gone through the document you might be able to say no we say it does, because A, B, C, D.

MR JABULANE ALBERT MABUZA: Yes Chairman as I said once I am allowed to go into the context and then put the emails into context.

CHAIRPERSON: Oh.

MR JABULANE ALBERT MABUZA: But suffice to say.

CHAIRPERSON: Yes, I am happy if you, if you say you can deal with that later when you give the whole context. I am quite happy. I just do not want us to leave your statement as it is, the two statements as they are. If later on you are going to deal with

10 that I have no problem.

MR JABULANE ALBERT MABUZA: Chairman yes I will deal with it later on, but I may for now so that I do not leave this in anyway hanging, to say as it would become clear as to how McKinsey was appointed, how a company that did not exist, Trillian, was put in place to be the so called BEE partner of McKinsey and what his role was in that area following this cost containment directives.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: As.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Spoken earlier about.

20 **CHAIRPERSON:** Yes.

MR JABULANE ALBERT MABUZA: Some of the consultants.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: And the engineers.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: These were all and these were not the ones. We

will also link and demonstrate this as to the business opportunities of even not only acquisition of Tegeta, companies and also how they then went on to procure and, and, and, and supply coal to, to, to, to Eskom.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: Yes. Mr Mabuza as I understand so your evidence as you indicated earlier on, it is not that a mere disclosure of one document on the face of it leads to the type of conclusion you draw. You look at the documents in the context as a whole and draw some conclusions. So what I propose to do is to take you to the documents first.

10 **MR JABULANE ALBERT MABUZA:** Yes.

ADV VINCENT MALEKA SC: And having completed the documentation invite you to draw whatever conclusions that you would want to make in the light of the investigations and allegations.

MR JABULANE ALBERT MABUZA: I am, I am, I am happy with that Chairperson.

ADV VINCENT MALEKA SC: Yes. Chair if I may proceed.

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

ADV VINCENT MALEKA SC: On that premise?

CHAIRPERSON: You may, *ja*.

20 **ADV VINCENT MALEKA SC:** We have dealt with the first email. We have now established the substance of the annexure to that email.

MR JABULANE ALBERT MABUZA: *Ja*.

ADV VINCENT MALEKA SC: Can I invite you to go to the second email which is SN2 as referenced on your one page 27 paragraph 15.2. That email as I pick it up in EXHIBIT U1 is from page 467.

MR JABULANE ALBERT MABUZA: I, I, I have got, I have got that Chairman.

ADV VINCENT MALEKA SC: You will see that it is there identified as SN2. Who is it from?

MR JABULANE ALBERT MABUZA: This document is from Matshela Koko from email kokomm@eskom.co.za. Sent on 20 July 2015 at 07:57 to infoportal1@zoho.com and the subject of this email is "Top Ingenious 2 pdf and Attachment of Top Ingenious 2 pdf".

ADV VINCENT MALEKA SC: We will get to the attachment, but it is quite interesting that that email comes almost a minute after the first one was dispatched.

MR JABULANE ALBERT MABUZA: That is correct Chair.

10 **ADV VINCENT MALEKA SC:** Now look at the attachment to that email. It is from page 468.

MR JABULANE ALBERT MABUZA: I have got to that Chair.

ADV VINCENT MALEKA SC: What, what is the heading of that attachment?

MR JABULANE ALBERT MABUZA: The heading of this attachment is "Approval Conditions Agreed between the Acting CFO and the Acting Group Executive GCT and on Friday 26 June 2015 Top Ingenious Development Program".

ADV VINCENT MALEKA SC: Yes. Can we get some names to the titles? Who was the Acting CFO?

MR JABULANE ALBERT MABUZA: The Acting CFO at this point is Mr Anoj Singh.

ADV VINCENT MALEKA SC: And who was the Acting GE at the time?

20 **MR JABULANE ALBERT MABUZA:** The Acting GE at the time is Mr Matshela, Mabelane.

ADV VINCENT MALEKA SC: And the document.

MR JABULANE ALBERT MABUZA: Edwin Mabelane.

ADV VINCENT MALEKA SC: Edwin Mabelane. He is one of those Executives who was also suspended?

MR JABULANE ALBERT MABUZA: He later got subjected to a disciplinary hearing.

When we, we arrived he was on suspicion on a, on a, on a disciplinary hearing.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: But he was not one of the four who were suspended in, in, in March.

ADV VINCENT MALEKA SC: In March alright and then you say:

“The document reflects a retention strategy to be developed as soon as possible by Eskom to ensure that it invests in protocol Top Engineers.”

- 10 Why was Eskom interested in this project called Top Engineers as far as you are aware?

MR JABULANE ALBERT MABUZA: Well once more Chair to, the context continues to be about the state on the operation side on, of the, the generation which as I indicated this time there was load shedding and back to the point that was arrived at then that one of the thing that is missing are skilled Engineers in the, in the, in the, in the, in the, in the business, but this document seeks to say we need to develop a strategy of attracting but retaining Top Engineers so that once you have, you are done you still have those skills local, localised and contained in the organisation.

CHAIRPERSON:

- 20 **ADV VINCENT MALEKA SC:** Paragraph 2 refers to your budget and it says:

“Budget has been set for the next three years and it is critical that BPP savings are achieved. Activities and budget projects should be done within allocated budget.”

Can I ask you to try and explain for us what budget does this paragraph contemplate?

MR JABULANE ALBERT MABUZA: This budget contemplate to the, the acquisition

and the, the, the, the appointment of retention of these Engineers and the project work they will have to be doing in, in that, in, in, in, in the engineering work.

ADV VINCENT MALEKA SC: From your investigation have you seen such a budget yourself?

MR JABULANE ALBERT MABUZA: No, I, I, I, I have not seen it myself.

ADV VINCENT MALEKA SC: And who is BP, BPP? What is BPP savings?

MR JABULANE ALBERT MABUZA: It is Business Productivity Program. BPP stands for Business Productivity Program.

ADV VINCENT MALEKA SC: And what does it supposed to indicate? I know you
10 maybe au fait with this, but we are not.

MR JABULANE ALBERT MABUZA: This is meant a program that would facilitate operational planning session's development and a structure of this. It is to ensure that the business is productive. It is, it is a productivity program of the business.

ADV VINCENT MALEKA SC: Right. Thank you. Paragraph 3 refers to National Treasury instruction. It says:

“National Treasury instruction must be complied with.
Consultant rates and if alternative methodology such as
incentive based is use, need to verify that it is allowable within
the rules of the National Treasury”.

20 Can I stop there and ask you some few questions? We now know from the application which you as Telkom have launched, sorry Eskom have launched in the High Court challenging the validity of the McKinsey/Trillian contract. One of the grounds of review relates to non-compliance with procurement processes. Do you remember that?

MR JABULANE ALBERT MABUZA: That is correct.

ADV VINCENT MALEKA SC: This paragraph as I read it suggests that there had to be

compliance with National Treasury instructions relating to the situation of the Top Engineers Program. Do you see that?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: What conclusion do you draw from the fact that as early as July 2015 the conditions that had been agreed to between the CFO and the Group Executive of Eskom of course acting at the time made it quite clear that the Top Engineers Program had to be executed in accordance with the National Treasury instructions?

MR JABULANE ALBERT MABUZA: Chair what should not be lost in this is firstly the
10 point we have made earlier that these were classified documents. These are not documents in the hands of an external party. These are the documents now, now the documents should not have left Eskom. This has now left Eskom. It is in the hands of the external party. It now tells the external party having told the external party this is the opportunity, but please when you quote for this job please adhere to the following instruction, the following guidelines, because we cannot do it outside of this but just bear that in mind. So that when you respond because following from this there will be a, either a call for tenders through a request for, for, for, for proposals or the company as in this particular instance which led to the appointment of McKinsey a company then takes a decision that we can have a sole sourcing decision which in this particular
20 instance that is where it finally ended. So there is a problem here. There is a, the problem is now known as load shedding. We have got issues on Engineers. We need to get Engineers, but when we get them they must be within a strategy that it is not the usual consultants work, come in, stay forever. They must come in, leave, leave us with the capability. When they do finally quote this is how they should quote. This is the budget they will be working towards. These are the prices they will have to quoting

within. We then will make a decision that we are going to open or we are going to close sourcing. We made the decision making to close sourcing and that that is out, this external party goes outside and say hey, I have got opportunities at Eskom. You want to take this opportunity? This opportunity is so much. Are you okay with that? Says okay, but hey you need me as a partner. Me as a partner will be Trillian, but I do not exist. I will create myself. Then we will together go in there. Are you okay to go? This is, is, is what this whole scheming finally led, led us to the McKinsey and the Trillian.

ADV VINCENT MALEKA SC: I understand, but what I find difficult to appreciate is this and please forgive my ignorance. That at the point of disclosure of this document the
 10 internal Eskom Executives are aware that there is a need to comply with National Treasury instructions relating to procurement. Those who receive it albeit without authorisation also are brought to understand and appreciate that there is a need to comply with National instruction, Treasury instructions on procurement and yet the whole contract is infected by these allegations of non-compliance. Are you able to explain to us why within Eskom there will be a clear need and appreciation of compliance and outside to those who received this confidential information they too are told that if you want those opportunities in Eskom you must comply, but in the end there is wholesale and non-compliance?

MR JABULANE ALBERT MABUZA: *Ja, ja* I guess I have got to also just try and get
 20 my own answers to be in line with how in my own head I was aligning these, there presentations. I, I, I referred to last, on Friday that people have authority and the Chairman worked with me they have authority to take decisions. They have no authority to illegal and wrong things. So here we will comply. We will comply in that at a point in time we will decide to call for tenders if we have decided it is going to be a public tender, but if we also decided that it would be sole sourcing we would have

complied. So in this particular instance we have now created the, somewhere our, our, our, our theory is that the problem was created also. Created the problem now here is the solution for the problem that we created. To get the solution here is the service provider that we want to get to. Once we get to go to Treasury guidelines, Treasury guidelines say you must do this, you must do this within this budget. You must follow this process. Yes, we will followed the process, but at the end of the day we decide whether it is going to be open or not open. Indeed even if it was open we can still decide who then gets to be allocated the, the, the task. So they have complied in as far as they have, they will do it within the budget of a, of a, of a, set by, by, by National
10 Treasury, but they will also because they have got the authority to decide whether to go on single sourcing or open tender. In this regard as we know they have opted to go for single sourcing.

ADV VINCENT MALEKA SC: Mr Mabuza I, I still do not have an appreciation why the contract would be executed the way it was in the light of this document, but leave it. Let us go to the next document. That is the document which begins at 470.

MR JABULANE ALBERT MABUZA: But maybe Chairman it is, it should not be difficult to understand why people do not comply knowing that they should comply when their intention was.

ADV VINCENT MALEKA SC: Yes indeed.

20 **MR JABULANE ALBERT MABUZA:** Not to comply.

ADV VINCENT MALEKA SC: That is what I am trying to understand.

MR JABULANE ALBERT MABUZA: No, their intention was never to comply. Their intention was to create business opportunities for specific people for a specific reason.

CHAIRPERSON: Well it is a very legitimate [laughing] question Mr Maleka, but it is, it is, it is, it is a question that probably simply depends on ones analysis of what

happened and why certain things may have happened or why certain things may not have happened and maybe different people might have different analysis.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And conclusions, but one can understand a person who might have not so noble objectives saying to those with whom they might be working on those not so noble objectives. We have got to try and appear to be as noble as possible in whatever we do. If there are rules to be complied with we must try and comply with them, because if there is, if we do not comply maybe that we will attract attention that we do not want to be attracted to what we are doing, but one can also imagine that sometimes rules stand in the way of what people want to do and then at a certain stage
10 sometime people say forget about the rules and they proceed. What it was here I do not know.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: But it probably depends on, on an analysis and what view one takes. So.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Ja, okay. Thank you.

ADV VINCENT MALEKA SC: Chair thank you very much. Mr Mabuza the next email is at page 470 and in the interest of time you will see that it is from Mr Matshela Koko.
20 The same email as the previous ones. The date is 20 July 2015 at 08:01. That is almost five minutes or so or four minutes from the previous email that you have talked about. Now who is it sent to?

MR JABULANE ALBERT MABUZA: As, as I indicated on Friday Chair that this particular email seemed to have been a resent of the same email from Mr Matshela Koko to infoportal1@zoho.com.

ADV VINCENT MALEKA SC: Yes, it is, it is, it is the same as the previous one and it attaches the same.

MR JABULANE ALBERT MABUZA: The same.

ADV VINCENT MALEKA SC: Documentation.

MR JABULANE ALBERT MABUZA: That is correct, yes.

ADV VINCENT MALEKA SC: And you come to the conclusion that it is a resent.

MR JABULANE ALBERT MABUZA: It is a, it is a, it is a resent.

ADV VINCENT MALEKA SC: Why do you come to that conclusion?

MR JABULANE ALBERT MABUZA: As I say we, we, we, we, we come to the; that it
10 seems to be a duplicated email, because the email is sent from the same person, the same address to the same person, is the same document with the same attachment within, within four minutes of the previous one.

ADV VINCENT MALEKA SC: Yes. The next email is on page 472.

MR JABULANE ALBERT MABUZA: Yes Chair, this email is also from Mr Matshela Koko on 20 July at 08:01. It is to infoportal1@zoho.com. The subject here is, there is an Executive Committee Resolution pdf and attaching to that is the actual round robin resolution of the members of the Executive.

ADV VINCENT MALEKA SC: Yes. What is curious about the time is that it is more or less simultaneous with email at SN3 which you describe as the resent. Do you see
20 that?

MR JABULANE ALBERT MABUZA: That is correct.

ADV VINCENT MALEKA SC: Almost to the same time two separate emails with different attachments are sent.

MR JABULANE ALBERT MABUZA: Ja and really either than reading it the time and seeing that it is the same arrive at the conclusion that it is a resent. The; and now I am

in the, the, the, the area of just surmising what happens with the technology, but the intention was to send this resolution and inadvertently resent what you have sent earlier. I have seen it happen on my messages on my cellphone that I thought I sent a message and I come back it has not gone. I made a call, could not go through. When I try and make another call it redialled the number that I could not go through. So, but within we cannot see the seconds here, but within from 08:01 there were two emails that were sent.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: From the same email.

- 10 **ADV VINCENT MALEKA SC:** Yes. I would like to take you through the contents of the attachments. Obviously on the face of the email they are described as Exco Resolution pdf. Now let us look at the first attachment. It beings at page 43, sorry 473. I take it that you have read that attachment and I take it that you know what it deals with?

MR JABULANE ALBERT MABUZA: That that is correct. This, this document Chair is, it is a submission which is:

- 20 “To the Executive Committee which is the business case for the creation of a permanent Top Engineers Program that will a, help to deliver and accelerate critical business projects for Eskom whilst reducing dependency on external consultants. B, continue the development of Top Engineers beyond the foundational year currently on offer.”

And it goes on to explain what type of resolution is required from the Executives, but:

“The overall strategy of developing Top Engineer is valid and should be pursued. That the selected Top Engineers be immediately transferred to group commercial and technology.

That the group technology partnership with supporting consulting firm be approved in principle to continue beyond the Top Engineer Training Program with the sole purpose of Top Engineer Mentorship and Development. That the principal be appointed, a principal be appointed who will lead this program to provide overall strategy direction, source and approve projects for the Top Engineer, engage with Senior Eskom leadership to ensure effectiveness. That Divisional Executive of Group Technology be authorised with the power to delegate further to take all necessary and all immediate steps to give effect to the above including signing of any agreements.”

So this is what this program is about. Earlier on this is how we spoke about the BPP, but the summary of the facts is also worth mentioning that at that point that it goes and calls a company by name, that McKinsey designed the program based around the training, they provide to their own consultants. McKinsey provided the training material for trainers, in addition they are staffed and engineers within the current McKinsey teams that supported Eskom projects, so it goes on, I'm not reading the whole resolution, but this is what this – the program of the engineers had to do, but once more we must never lose sight of this is an internal document.

20 **ADV VINCENT MALEKA SC:** Yes.

MR JABULANE ALBERT MABUZA: For the Executive that is now in the hands of an external party.

ADV VINCENT MALEKA SC: Yes now on page 475, paragraph 1.3 the document indicates how Eskom should go about procuring external support for implementation of the top engineers program. I would like you to deal with it, if you don't mind.

MR JABULANE ALBERT MABUZA: Ja, paragraph 1.3 in this document talks As Advocate Maleka says Chair on external support that is required to design this program, so as a key element that resulted in the process of this program was the openers and collaboration of our partners, being McKinsey and Company, who shared their own internal intellectual property and extensive project experience with Eskom to ensure that our colleagues were able to expedite their development and benefit from the continued support, project management and mentorship of McKinsey Consultants. In order to make this program impactful, to ensure that we develop it using world-class standards it will be fundamental that we partner again with a strategy consultant to
10 ensure the seamless continuation of our colleagues' development and the impact that they achieved.

Then it goes on to describe what the strategy would do but in order to ensure success Eskom would need to deliver a number of key elements, steering operational support, operational management, allocation of members, and project tracking.

ADV VINCENT MALEKA SC: Yes and if you go to page 477 you will see that several resolutions are called for and I am going to ask you to deal with three of them if you don't mind, it's up to you, you can deal with the rest but in the interest of time can you deal with the one in paragraph 2?

MR JABULANE ALBERT MABUZA:
20 "That it be resolved that the selected top engineers should be immediately transferred into Group Commercial and Technology until the relevant program structure and reporting department has been confirmed."

ADV VINCENT MALEKA SC: Three?

MR JABULANE ALBERT MABUZA:

"The group technology partnership with a consultancy firm is approved."

MR JABULANE ALBERT MABUZA: In principle the consultancy firm is McKinsey and here the consultants would be Trillian.

ADV VINCENT MALEKA SC: Alright and then the next one that I would like you to deal with on the record is paragraph 7.

“That the Divisional Executive Group Technology is authorised with the power to delegate further to take all necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.

ADV VINCENT MALEKA SC: Who was the Group, who was the Divisional Executive for Group Technology in Eskom at the time?

ADV VINCENT MALEKA SC: It was in July 2015.

ADV VINCENT MALEKA SC: Well when the resolution was signed ...(intervention)

ADV VINCENT MALEKA SC: 20 March 2014, if the signature of Mr Dames is anything to go by.

MR JABULANE ALBERT MABUZA: Chair just as we say this document is a 2014 document, this was a document that in 2015 the relevance of it, it was going to be taken in 2015 to implement in 2015, but this material is material that was sitting in 2014 that was owing to a particular process that was followed by the Executives in 2014. These are – as it happens in 2015 they went to file, pulled what was agreed in 2014 to

say this is good enough to take to external parties in 2015 and say can we do this now. So these are – the executives that are now sitting doing this are not the executives that were in office in 2014, and at this meeting on 2014 in March 2014 clearly this would have been something that predates the 5th of March 2014 and I haven't gone back to see what happened between 2012, 2013 and March 2014, but it is a document that was used in 2015 on the 20th of July to send to this external party to say we will be looking for this as per the prescript that was prescribed. I don't know whether the people sitting in these offices in 2014 would have, could have, or have followed this process in sourcing at the time, but I do know that these ones sitting here now in 2015 using this

10 material were intentionally not going to follow the process so when Advocate Maleka says why is compliance so prescribed yet it's not so followed, this compliance is prescribed to people that were in office then, these ones that were in office now, all what we know they have not followed process by leaking this information to external parties, as would be clear going forward that when they went onto finally employ these consultants that is why when I was asked the question I said McKinsey Trillion, this did not happen in 2014, this happened in the now era, using sourcing material and strategy that had been arrived much earlier than this day, being the 20th of July 2015.

ADV VINCENT MALEKA SC: I understand that and I would like you to apply to one key question, that I am going to ask you to deal with at the end of these documents,

20 because the sequencing of all of these formal decisions is around March 2014, when the Top Engineers program was approved, when the relevant business case for its implementation were made and nothing happened and we pick-up the resuscitation of this very project somewhere in March, April, June, July 2015. Please park that question because I would like you to deal with it once I have completed the sequence of the documentation relating to 2014. We have completed the first resolution that was

required to be adopted by Exco, on my papers it is only signed by Mr B Dames on page 477, and if you go to page 478 you will see that it refers to other executives but mine is not signed, how about yours?

MR JABULANE ALBERT MABUZA: Well as I said Chair this is a document in 2014, this document is signed by the then Group Chief Executive, Mr Dames, and it may well be that the copy that we've got as you can see it's a Round Robin, the other – well when you go further to page 484 you will see the continuation of the other executives that have signed this document, so all the group executives as they were then have signed. It would appear to me that these were not signed in the same place at the
10 same time, one document, the first one referred to was signed by the Group Chief Executive and this other document was signed by all the other executives and – let me go and just check this point I want to make here.

ADV VINCENT MALEKA SC: So Mr Mabuzza as I understand page 479 up to page 484 it's the same document that we previously dealt with. The only difference is that when you compare page 477 and 484 you will see that the rest of the executives signed that resolution on page 484.

MR JABULANE ALBERT MABUZA: That is correct Chair but worth mentioning that it's not unusual for the boss man to be the last to sign, so you would see that Mr Dames signed this document on the 20th of March when his – all his executives signed the
20 document between the 4th and the 13th of March, so when the Chief Executive finally put his signature is when all his executives had signed.

ADV VINCENT MALEKA SC: Yes there is a script at the bottom, and I must confess that I can't make head or tail, maybe it's because of my four eyes, if you are able to read it can you read it for us so that we understand what it says, and I will ask you some few questions about it.

MR JABULANE ALBERT MABUZA: Ja, (indistinct) at reading these hieroglyphics.

CHAIRPERSON: Well the first one where it's one which is settled appears to be a commercial process needs to be followed to select the firm, I don't know whether in, whether that's (indistinct) or in McKinsey something, we're all trying and then what appears to follow there if you have struggle reading it Mr Mabuza and the notes seems to say I don't believe we should be paying McKinsey to meet their FD plus L commitment, then that's the one, the second bullet point, this appointment is subject to new Treasury requirements relating to consultants.

MR JABULANE ALBERT MABUZA: Agreed.

- 10 **CHAIRPERSON:** And bullet point 3 I support the continuation of the Top Engineers Program, ja that's – well there's somewhere immediately after M Chokolo's signature there, next to the one that is encircled, there is somebody has written "we need to ..." I'm not sure what that word is "...for a further ten six something". Ja, I've done, I've been able to read substantially but not 100%.

MR JABULANE ALBERT MABUZA: Ja Chair I think that first point just and I'm no authority on handwritings, I am just going to try this "a commercial [asterisk] we need to find previous needs – a commercial" I'm trying to see where it goes that way or this way.

- 20 **ADV VINCENT MALEKA SC:** I thought that you would be able to tell us who made these annotations, if you don't know we should not waste time about it.

MR JABULANE ALBERT MABUZA: Ja, but what I've tried to also check here this document, these comments, these notes, the Chairman was reading would appear to be comments by Mr S Lennon, just looking at the signatures, that signature would seem to be the one that is in that column.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Well there seems to be at least to my eyes three signatures, one for the top left comment with one which is then settled, which I read to be a commercial process needs to be followed to select the firm and then there seems to be a signature below that.

MR JABULANE ALBERT MABUZA: That one would seem to me Chair to be T Govender's signature.

CHAIRPERSON: And then there is the other one that I couldn't read to very well, there seems to be a signature that is on the right hand side of that one, and then there is the one at the bottom where it says note, the signature at the bottom of that notation
10 appears to be different from the two that are above.

MR JABULANE ALBERT MABUZA: Correct. Correct, I can't work out the second one.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: The first one on the top column Chair.

CHAIRPERSON: Yes the one at the – the one that you said seems to be Mr Lennon's one, is it the one right at the bottom?

MR JABULANE ALBERT MABUZA: Ja, it's one right at the bottom.

CHAIRPERSON: Oh ja I see if I look at column S it ...(intervention)

MR JABULANE ALBERT MABUZA: It can say "me note" "my note".

20 **CHAIRPERSON:** Yes ja, okay.

MR JABULANE ALBERT MABUZA: And then there is one now we're getting there, the one from Lacmia Haron it's got a note one, it's got one second next to it.

CHAIRPERSON: Oh okay.

MR JABULANE ALBERT MABUZA: Which – so these are three notes now, I think I finally got into this, the one is one settled relates to like Lacmia Haron next to his

signature, and then there's an asterisk, that asterisk if you go to the second signature on the corner is the one that there is a signature an asterisk to Mr T Govender.

CHAIRPERSON: Oh okay.

MR JABULANE ALBERT MABUZA: So the way this should be reading one goes down and then the asterisk starts on the other side and goes down so once there's a commercial I don't process, a commercial process needs to be fulfilled to select the firm.

CHAIRPERSON: Yes, I think what you say fulfilled seems to be followed, "needs to be followed".

10 **MR JABULANE ALBERT MABUZA:** "to be followed to select the firm" correct ja. And the one with the asterisk says "we need to push for a 5th reduction in McKinsey's ...(intervention)

CHAIRPERSON: Or maybe a further.

MR JABULANE ALBERT MABUZA: A further reduction.

CHAIRPERSON: Ja, I don't know the rest.

MR JABULANE ALBERT MABUZA: I don't understand the formula here as well.

CHAIRPERSON: Yes, it's okay.

ADV VINCENT MALEKA SC: Yes but we can fairly proceed on the basis that the executive signed ...(intervention)

20 **MR JABULANE ALBERT MABUZA:** All of them, some with notes, some without notes.

ADV VINCENT MALEKA SC: Yes, what follows thereafter is a submission document, you will find it as part of the attachment from page 485. It says submission to Exco, do you see that?

MR JABULANE ALBERT MABUZA: Yes I can see that.

ADV VINCENT MALEKA SC: And then I've looked at it quite quickly and I see that at the end at page 490 that submission is dated 24 February 2019 and it is signed by Mr Haron, do you see that?

MR JABULANE ALBERT MABUZA: I can see that.

ADV VINCENT MALEKA SC: In his capacity as Group Executive Technology and Commercial.

MR JABULANE ALBERT MABUZA: Acting.

ADV VINCENT MALEKA SC: In terms of time I mean this submission seems to predate the resolution that we have looked at.

10 **MR JABULANE ALBERT MABUZA:** Correct.

ADV VINCENT MALEKA SC: So if one were to reasonably speculate about the sequence of documents it would mean that this submission went to the Executive Committee members before they signed the Round Robin Resolution?

MR JABULANE ALBERT MABUZA: Correct Chair.

ADV VINCENT MALEKA SC: Alright, it deals in substance more or less the same issue about ...(intervention)

CHAIRPERSON: I'm sorry Mr Maleka I thought I am on the same page as both of you, I thought you were talking when you talk about a submission document we are talking about the document at page 485 of U1?

20 **ADV VINCENT MALEKA SC:** Correct.

CHAIRPERSON: But did you just say that and Mr Mabuza agreed that it seems to predate the document signed by the Executives that we have looked at?

ADV VINCENT MALEKA SC: Yes Chair.

CHAIRPERSON: But that date on page 485 that document says review date July 2015.

ADV VINCENT MALEKA SC: No, no Chair remember the evidence of Mr Mabuza is don't look at the review dates because the documents are ...(intervention)

MR JABULANE ALBERT MABUZA: The format of how they're going to – just the process they say this document was since reviewed on the 25th of July, this particular document but as it was clear in my own declaration my declaration was in January but the review document, I don't know whether that means this documentation, this process, this format must come up for review in July 2015.

CHAIRPERSON: Well I just want to make sure I am on the same page as the two of you.. Mr Maleka put a question to you which I understood to be this document at page
10 485 predated, or predates, predated the document we looked at that was signed by the Executives and my question is if it's dated 2015 how can it be a predated document signed in 2014.

MR JABULANE ALBERT MABUZA: The answer, and we're back to that document, my own declaration, this column at the top of this document on page 485 this is what is the unique identifying number, what document type is this, it's an internal document control within Eskom, so Eskom have got set documents.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: So I think this so-called review date says this format, this document, this type of document will come up for review in 2015 July, this
20 document, but because it's a template it comes out like that as a master, then what we should be focusing on is the actual body of the document and the date at which that particular paper was signed this one what Advocate Maleka is saying Chair.

ADV VINCENT MALEKA SC: If you go to page 490 Chair.

CHAIRPERSON: Yes I see that, 24 Feb 2014.

ADV VINCENT MALEKA SC: Indeed.

MR JABULANE ALBERT MABUZA: Right, this was signed in February 2014, which was a submission to the Executive.

CHAIRPERSON: Now I understand, thank you very much.

MR JABULANE ALBERT MABUZA: The time we had spent just before this was the resolution following from this submission.

CHAIRPERSON: Now I understand, I think what was confusing me is the date at 485, and I hadn't seen the one on 490, it appeared to be a different document when I looked at it.

MR JABULANE ALBERT MABUZA: Yes but so that we don't lose the point we are
10 making here, this is a 2014 document that was to be reviewed just the way they do this in July, this is a 2014 document that has been used and has been sent to external party, and the year this document is now submitted as can be seen on page 490 with the fine print at the end, that this submission now it's now a resubmission.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: It's resubmitted for the purposes of this so that we don't confuse submissions.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: This submission was to an Exco in 2014, this is now resubmitted again by Matshela Koko. You would have noted that he was no
20 executive at Eskom in 2014. He was not a signatory in the Executive team that was led by Brian Dames at the time.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: So he is now resubmitting this to – this one is now prepared by him.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: But it is a resubmission of a document that was – that had served to a previous Exco.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: Which was no longer in office at this time.

CHAIRPERSON: Okay thank you Mr Mabuza.

ADV VINCENT MALEKA SC: Thank you Chair. Finally Mr Mabuza the submission by Mr Lacmia Haron was accompanied by a checklist which you will find from page 491 and 492 and that checklist is certified by him on the same date he signed this submission, which is the 24th of February 2014, do you see that?

10 **MR JABULANE ALBERT MABUZA:** Yes I can see that.

ADV VINCENT MALEKA SC: Now back to my question and to sum up in order to contextualise that question, it becomes clear that somewhere February and May 2014 Eskom's internal processes were triggered to get a final approval from the executive committee on the desirability of the Top Engineers Program.

MR JABULANE ALBERT MABUZA: Right.

ADV VINCENT MALEKA SC: And Eskom's internal processes were fully executed by the Executives involved who supported that program. That was in, at worst case scenario, May 2014, do you agree with that?

MR JABULANE ALBERT MABUZA: That's correct yes.

20 **ADV VINCENT MALEKA SC:** My question is this, we now know that nothing was done relating to the appointment of the consultants, until that program is revived in 2015.

MR JABULANE ALBERT MABUZA: I agree Chair, ja.

ADV VINCENT MALEKA SC: The question is this, if you agree, why all of a sudden the archives of Eskom are raided in order to trigger this program and cause Eskom to execute it when it was left in the archives in 2014?

MR JABULANE ALBERT MABUZA: It would appear Chair that as early as February to May 2014 the executive that was in office at the time had determined that this is the course of action to be followed, we need to develop engineers, 2014, we need to develop engineers, and this is the program, we need to go and source these engineers following a particular revised guidelines from Treasury on how to appoint consultants, so the Executive in office at the time considers a submission from the responsible executive of – in technology, Group Commercial and Technology, to say I submit that we go this line. All the executives look at the submission, this was followed by a resolution to execute on the proposal from the sponsor, being Mr – I now recall his
 10 name incorrectly – Mr Lacmia Haron, and this has been done to the T, followed the process of Eskom of checking, does it meet all these requirements as a submission, send this to the Exco, the Exco supports it. Three of the members of the Exco with some qualifications on price and maybe on format and sticking to Treasury.

So we don't see these Executives actually acting to appoint these consultants. I would argue they were no longer in office at a certain point because when we – it's May 2014 as Advocate Maleka is saying but we now know that by 15 March there was a different set of executives in office, who went on to their archives and pulled this and resubmitted it and then went on a particular process in securing.

So what flows from here is what we surmise and we conclude that having
 20 seen this a decision would have followed, that it looks like we will end up working with McKinsey it would appear when you look at this document that they might have dealt with this McKinsey before, so we're coming back to them, we know they have had this thing internally, for their own, if we go to them, but this time we must make sure that when they give us engineers they will be permanently with us we won't be going back to them again.

So all that squares ticks process, ticks logic, commercial logic and it is sensible. But we now have other issues here at Eskom. We have got issues of our suppliers must be empowered. It would then appear to me that the executives that were in office then between March and July 2015 this our summation take this document and go to McKinsey and say McKinsey through Mr Essa, McKinsey you can get this job but you will have to do something else. You can get this job this is what we will pay you but at a point you will have to do something else. As I will demonstrate in my submission as I contextualise this that this something else was you will appoint Trillian which at this point does not exist. As at in March a company Trillian does not exist.

10

ADV VINCENT MALEKA SC: Chair can I move to the next email?

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: It is on page 493. It is Annexure SM8, do you see that?

MR JABULANE ALBERT MABUZA: That is correct.

ADV VINCENT MALEKA SC: We have dealt with it by simply describing it on Friday but I would like you to deal with the contents of that email. Again it is from the same email address but the date is different, what is the date?

MR JABULANE ALBERT MABUZA: The date here now is the 8 August and it is an email that was sent on the 8 August from Matshela Koko from kokomm@eskom.co.za.

20

ADV VINCENT MALEKA SC: What time was this at?

MR JABULANE ALBERT MABUZA: On the 8 August at 22:20 to infoportal1@zoho.com. The subject is: Online Vending and the attachment if on Online Vending.

ADV VINCENT MALEKA SC: And the body of the email?

MR JABULANE ALBERT MABUZA: The body of the email is – this is a submission to

the executive committee procurement.

ADV VINCENT MALEKA SC: No, no. Turn back to page 493.

MR JABULANE ALBERT MABUZA: The body of the email on 493 is – we did not finish our discussion about this transaction. So this is Matshela saying to infoportal which we have concluded is Mr Salim Essa and we will demonstrate how we arrive at that conclusion. He said they did not conclude their discussion about this transaction. And this is what is going to the board on the 18 August. So on the 8 August Mr Matshela Koko sends our argument to Mr Salim Essa a document on Online Vending that was discussed with Mr Salim Essa as it would appear on this email but that
10 discussion about this transaction was not finished to use his words. But this material is going to Mr Salim Essa ten days before it is going to go to the board which would be on the 18 August.

ADV VINCENT MALEKA SC: Yes. Alright. Can we now look at the body of the attachment? It begins at page 494.

MR JABULANE ALBERT MABUZA: So on page 494 what happens this is a document – it is an executive summary of a document that is a submission to the executive committee procurement sub-committee what they call the EXCOPS. Yesterday I have tried to explain what we have suddenly – we have since done about the various levels and schedules of the authorities of the various structures.

20 **ADV VINCENT MALEKA SC:** Yes.

MR JABULANE ALBERT MABUZA: This was the sub-committee of executives which was to be submitted on the 11 August bearing in mind this document is going out on the 8th to Mr Essa, was to be submitted on the 11 August and then on the 18 August the same document was on the assumption it would be approved by the EXCOPS the same document would now go to the board tender committee on the 18 August.

ADV VINCENT MALEKA SC: Now insofar as the dates are concerned can I ask you to rush ahead to page 501.

MR JABULANE ALBERT MABUZA: 501. I am at 501.

ADV VINCENT MALEKA SC: And you will see that the document is signed on the 8 August by two persons, who are they?

MR JABULANE ALBERT MABUZA: The one is Mr C Kalima who was the general manager commodity sourcing in acting capacity and Mr Matshela Koko who was the group executive technology and commercial. Both signed this document on the 8 of August certifying that all the various boxes were ticked and when they were not ticked
10 they did say why it was not required. So this was the control document again which attaches to the document of the submission that on the same date as on 499 was signed by Mr Matshela Koko.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: Which is the document that he sends to Mr Essa which would then serve three days later to the EXCOPS clearly assuming that it would pass the EXCOPS. This document will go to the board tender committee a week later on the 18 August.

ADV VINCENT MALEKA SC: Yes. Chair that document I have referred to is the check list which accompanies the submission.

20 **CHAIRPERSON:** Yes.

ADV VINCENT MALEKA SC: I merely wanted to draw Mr Mabuza's attention to the date but the body of the submission itself Mr Mabuza as we said starts at 494. The signature certifying that submission is at 499, do you see that?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Who signs it?

MR JABULANE ALBERT MABUZA: This is signed on 499 by Mr Matshela Koko in his capacity as group executive technology and commercial Chair.

ADV VINCENT MALEKA SC: When did he sign it?

MR JABULANE ALBERT MABUZA: He signs it on the 8th and as soon as he signs it he sends it to Mr Salim Essa.

ADV VINCENT MALEKA SC: So he is responsible...

CHAIRPERSON: 8 August 2015?

ADV VINCENT MALEKA SC: Yes it is on page 499 Chair. So he is the person you would call the sponsoring executive?

10 **MR JABULANE ALBERT MABUZA:** That is correct Chair.

ADV VINCENT MALEKA SC: Yes. Now Mr Mabuza we have now established in relation to that document that it represents a submission sponsored by Mr Koko to the EXCOPS with a view to a further submission to the BTC, the Board Tender Committee.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: On the 8 August 2015.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: And these are the documents that are attached to an email which goes out.

MR JABULANE ALBERT MABUZA: At 20:20 – at 22:20.

20 **ADV VINCENT MALEKA SC:** In the evening?

MR JABULANE ALBERT MABUZA: In the evening of the 8th to Mr Salim Essa.

ADV VINCENT MALEKA SC: Given that sequence of events and the timeline why do you think Mr Koko would send these documents to a third party such as infoportal1@zoho.com? What reason is there you can think of?

MR JABULANE ALBERT MABUZA: Well Chair I do not know either than it is in

keeping with the activities of Mr Matshela Koko on his emails that we have seen on that trend from the 20 July. So from the day he arrived back from suspension he really was quite busy on his email. So this is in keeping with that just we have not I am sure we did not find that gap between the 20 July and the 8 August but that is in no way suggest it was not happening. So as you can this document Chair refers to a discussion that was not finished. I mean if we have the time and the interest to look at what that discussion it would just be in line with that. So I do not know why.

CHAIRPERSON: Before we proceed. It may be that a member of the legal team for Mr Mabuza is quite happy with the way the evidence goes but I would like her not to be
10 nodding towards – in his direction while Mr Mabuza is giving evidence otherwise that may be misconstrued as indicating whether Mr Mabuza is giving evidence in the right direction. So she might be completely unconscious of what – what impression it might give I am sure she did not intend that but I think she might just have to listen to the evidence without showing any indications of anything. Okay thank you.

ADV VINCENT MALEKA SC: Chair I believe that my colleague Mr Ngcukaitobi would like to address you?

CHAIRPERSON: Just say something?

ADV VINCENT MALEKA SC: Address you on this issue.

CHAIRPERSON: Yes, okay alright. Mr Ngcukaitobi.

20 **MR NGCUKAITOBI:** Thank you Mr Chair I simply indicated to Mr Maleka asked him whether or not he would like me to respond but there is very little to respond to other than to record our apologies and to note that if something of the sort happened it will not happen again.

CHAIRPERSON: Yes, yes. Yes no thank you Mr Ngcukaitobi.

MR NGCUKAITOBI: Thank you Mr Chair.

CHAIRPERSON: Thank you. Thank you. YeS.

ADV VINCENT MALEKA SC: Chair can I proceed?

CHAIRPERSON: Ja you may proceed ja.

ADV VINCENT MALEKA SC: Mr Mabuza the next email is on 515. As I have it it is SM15, are you there?

MR JABULANE ALBERT MABUZA: I am just next door. Ja I am on 515.

ADV VINCENT MALEKA SC: In fact I must Mr – sorry I think I mislead you. I skipped SM10. If you do not mind can you back page to 512. Are you at 512?

MR JABULANE ALBERT MABUZA: Correct Chair.

- 10 **ADV VINCENT MALEKA SC:** It is dated 21 September 2015 again it is from the same person to infoportal1@zoho.com, what is the subjects that side of that email?

MR JABULANE ALBERT MABUZA: The subject is ME, ME. The attachment is Disciplinary Intention to Suspend.

ADV VINCENT MALEKA SC: And do you know who this intention to suspend in pursuit of disciplinary processes relate to?

MR JABULANE ALBERT MABUZA: This disciplinary process is to suspend a Mr Phetla.

ADV VINCENT MALEKA SC: Alright. Chair you will see that on page 513.

CHAIRPERSON: Yes.

- 20 **ADV VINCENT MALEKA SC:** Who is Mr Phetla P-h-e-t-l-a as far as you know?

MR JABULANE ALBERT MABUZA: Mr Phetla is an executive at Eskom at this point who ...

CHAIRPERSON: At this point as in 2015?

MR JABULANE ALBERT MABUZA: As at the 31 August 2015.

CHAIRPERSON: Okay, alright.

MR JABULANE ALBERT MABUZA: Which is the date on which he was being suspended.

ADV VINCENT MALEKA SC: And do you know why was he suspended?

MR JABULANE ALBERT MABUZA: Well Chair according to this letter of suspension that in this email Mr Koko is sending to Mr Essa is intention to effect – the letter reads: “intention to effect suspension with pay pending an investigation into misconducts and or disciplinary action in that he amongst other things is being found to have committed serious misconduct by amongst other things inconsistency in the management of the coal quality assurance process. Eskom has therefore taken a decision to investigate
10 the alleged misconduct.” And then they tell him how he should behave and when he has got to come for his hearing and what he should or should not do during this period. Ja. The rest that relates to this is when we started finally got to hear in the various public debates about the quality or thereof otherwise of testing of coal about the – in the sourcing and the contracting of the supplier or that coal.

ADV VINCENT MALEKA SC: Yes. Chair I believe that Ms Hofmeyr will give you some details regarding this suspension as was implemented against Mr Phetla and others including the late Doctor Van Riet who has made a statement to the commission before his untimely departure. I am not going to explore that issue further other than to ask...

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** Mr Mabuza why would Mr Koko inform infoportal1@zoho.com of this suspension as far as you are able to help the commission on that score?

MR JABULANE ALBERT MABUZA: Chair really other than being Chair of Eskom I am also a member of the public.

CHAIRPERSON: Well ...

MR JABULANE ALBERT MABUZA: And in the public domain I have followed...

CHAIRPERSON: Well if you are able to say, say but if you are not able you do not need to say.

MR JABULANE ALBERT MABUZA: No I am not able to say.

CHAIRPERSON: Ja, okay.

ADV VINCENT MALEKA SC: The next email Mr Mabuza is at 515.

MR JABULANE ALBERT MABUZA: Yes I am at 515 Chair.

ADV VINCENT MALEKA SC: Again it is from and to the same parties but what is the date of that email?

10 **MR JABULANE ALBERT MABUZA:** The date of this email is the 30 September 2015 at 14:47. It is sent to infoportal1@zoho from Mr Koko, mm@eskom.co.za

ADV VINCENT MALEKA SC: And what is the subject of that email?

MR JABULANE ALBERT MABUZA: The subject is RE.

ADV VINCENT MALEKA SC: Well.

MR JABULANE ALBERT MABUZA: R-E.

ADV VINCENT MALEKA SC: Chair you will see that there is an attachment to that email on page 516. The one that was given to us on Friday was not clear and I asked the lawyers of Eskom to give us a clearer copy.

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** And best available copy has now been given to me. For the sake of the record and before I hand you a copy can I ask Mr Mabuza to take us through that email so that we have it on the record?

CHAIRPERSON: Ja.

MR JABULANE ALBERT MABUZA: Chair this which would be a legible copy of 516 is on Eskom's letterhead Chair. Is a letter from the Chairman – Interim Chairman as it is

signed here of Eskom Doctor B S Ngobane. It is a letter formally addressed to the Honourable Minister Lynne Brown. It reads: “Dear Minister Brown suspension of contact in any form whatsoever and or commercial relationship with the Mail and Guardian City Press and Sunday Times. The above matter has reference and ministers correspondence of 28 September 2015. The board has deliberated on the issues and found that Eskom is experiencing a similar trend as the Transnet example. Accordingly the board has resolved that Eskom shall suspend any dealings be it the placement of advertising or any other commercial relationship with the Mail and Guardian, Sunday Times and City Press pending the resolution of the complaints that state owned entities

10 have against the three newspapers. Mr Anoj Singh has abstained due to a conflict of interest as he was the subject of one of their articles published. This decision has been communicated to the group chief executive to implement with immediate effect. I trust that Minister will find this is order. Yours sincerely signed B – Doctor B S Ngobane on the 30 September 2015.”

ADV VINCENT MALEKA SC: Alright. Chair two things I am not going to ask Mr Mabuza to speculate about why this letter was sent. I would merely want him to confirm that this was an exchange between the Chair of the Board and the relevant executive authority to whom the board reported and that this letter was sent by Mr Koko to a third party?

20 **MR JABULANE ALBERT MABUZA:** I confirm Chair in line with these emails that this is one of the letters that – that email that we dealing with of the 30 September attaches this letter send by Mr Koko to Mr Salim Essa.

ADV VINCENT MALEKA SC: We will present to you evidence of the cyber specialist.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Or expert who will give you an appreciation of the

background to this letter of who drafted it and how ultimately it got to be sent to the relevant executive authority at the time.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: So subject to all of those qualifications I will during the tea break ask your Registrar to replace the ineligible copy of page 516 with the one that we now have.

CHAIRPERSON: Okay that is fine.

ADV VINCENT MALEKA SC: But for now we have Mr Mabuza's evidence on record about this letter. I see that he wants to say something in addition.

10 **CHAIRPERSON**: Yes.

MR JABULANE ALBERT MABUZA: Ja Chair I was – if we are soon to be breaking for tea.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: I do not know whether it might perhaps not be appropriate for us to just to close this point about why we saying infoportal1@zoho is Mr Salem Essa.

CHAIRPERSON: Okay we – Mr Maleka.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: You quite happy? Let us do that Mr Mabuza.

20 **MR JABULANE ALBERT MABUZA**: I get to my notes. I will get to the actual details.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Where I will – might ask the team to help me with the actual reference to the bundle.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: But the details are this. We have email here.

CHAIRPERSON: Okay let us see how we are going to deal with it. There are two ways of dealing with it. One is you say what you are able to say without the benefit of the notes you are looking for and then after the tea break add whatever you want to add after having been helped in regard to your notes by your legal team. Another way of doing it is to postpone it to after the tea break and you say everything after the tea break.

MR JABULANE ALBERT MABUZA: Chair I think I have got...

CHAIRPERSON: Which one do you...

MR JABULANE ALBERT MABUZA: I have gotten to it.

10 **CHAIRPERSON**: Oh okay alright.

MR JABULANE ALBERT MABUZA: I have gotten to it and to the extent my numbering does not accord to the record here. On page 447.

CHAIRPERSON: Of Exhibit U1?

MR JABULANE ALBERT MABUZA: I think so.

CHAIRPERSON: Wait, the bundle that has got your statement?

MR JABULANE ALBERT MABUZA: The bundle that is in front me. The one we have been using.

CHAIRPERSON: Oh the blue bundle?

MR JABULANE ALBERT MABUZA: The blue bundle.

20 **CHAIRPERSON**: Okay alright what is the page?

MR JABULANE ALBERT MABUZA: It is page 447.

CHAIRPERSON: Thank you.

MR JABULANE ALBERT MABUZA: The Chair is...

CHAIRPERSON: Oh I am sorry. The blue bundle does not appear to have page 447.

MR JABULANE ALBERT MABUZA: No I have got the...

CHAIRPERSON: But you are holding the blue bundle – have you got the page right?

MR JABULANE ALBERT MABUZA: I have got many blues here?

CHAIRPERSON: Oh.

ADV VINCENT MALEKA SC: Well Chair I think Mr Mabuza is working from...

MR JABULANE ALBERT MABUZA: On the bundle of ...

ADV VINCENT MALEKA SC: The file that is rather fancy from Bowman. But I suggest we work with the numbers at the top. The pagination.

MR JABULANE ALBERT MABUZA: Would that be 325 or JAM447?

ADV VINCENT MALEKA SC: You referring to 447.

10 **MR JABULANE ALBERT MABUZA**: Just 447.

ADV VINCENT MALEKA SC: Let us work with 447.

MR JABULANE ALBERT MABUZA: Ja 447.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: On JM 447.

CHAIRPERSON: Okay one sec – one second. That must be U1.

ADV VINCENT MALEKA SC: It is U1 Chair.

CHAIRPERSON: Ja. 447 okay alright. Ja you may proceed.

MR JABULANE ALBERT MABUZA: This is an email Chair that comes from Sameera dated Tuesday 22 December 2015 at 12:25 pm.

20 **CHAIRPERSON**: Yes.

MR JABULANE ALBERT MABUZA: Sameera is sending this email to Mr Salim Essa on email address salemessa@gmail.com.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: And he has copied Halima Allana at Travel Excellence and Sagheer Sajida at Travel Excellence.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Sameera is sending this from his email of – at
travelexcellence .co.za.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: And he says – she says or Sameera says one
visa is out.

ADV VINCENT MALEKA SC: Your one visa is out.

MR JABULANE ALBERT MABUZA: Your one visa is out.

CHAIRPERSON: Ja.

10 **MR JABULANE ALBERT MABUZA:** This is to Salim Essa from Travel Excellence.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: On page 446.

CHAIRPERSON: The previous page?

MR JABULANE ALBERT MABUZA: Yes.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: We see an email from Matshela Koko from his
email address.

CHAIRPERSON: Yes. @eskom – the Eskom ...

MR JABULANE ALBERT MABUZA: On the 3 January 14:30. His...

20 **CHAIRPERSON:** 2016?

MR JABULANE ALBERT MABUZA: Yup. He is sending this email to the reception at
grandastenbali.com.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: This is would appear it is a hotel in Bali. And the
subject is: Visa for Travel. And he sends attachments Travel Matshela Moses Koko one

Mosema Elizabeth Koko and Pia Koko these are attachments to this email.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: This is sent from his Samsung device. That same day Chair on the 3 January at 7:58

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: An email sent from Businessman infoportal1@zoho.com is addressed to Matshela Koko 20:10 at yahoo .com, his private email.

CHAIRPERSON: Yes.

10 **MR JABULANE ALBERT MABUZA:** With the topic one visa for travel.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: And it has for what it is there 3 x Koko family visa.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: So Chair Sameera sends an email to Salim to his gmail address.

CHAIRPERSON: Yes.

20 **MR JABULANE ALBERT MABUZA:** This visa finally lands in Koko from Businessman infoportal. So the conclusion we have drawn is Salim Essa who received the email from Sameera is the same Salim Essa who used Businessman infoportal1@zoho.com to send it to Matshela Koko.

CHAIRPERSON: Yes. Thank you.

MR JABULANE ALBERT MABUZA: This is how we conclude.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: That Salim Essa is Businessman referred to as

Businessman using address infoportal1@zoho.com.

CHAIRPERSON: Now you, conclude that in part because the email address used in the document at page 446 that you have, from which you have just read uses the same email address that to which Mr Koko had sent a number of emails that is infoportal1@zoho.com.

MR JABULANE ALBERT MABUZA: Hm.

CHAIRPERSON: That is that is that is, you say is the same email address?

MR JABULANE ALBERT MABUZA: *Ja*, correct Chair.

CHAIRPERSON: *Ja*.

10 **MR JABULANE ALBERT MABUZA:** The, the, the, the, the visa comes from Sameera.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Goes to Mr Essa.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Mr Essa sends from his private email to Mr Matshela's private email.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Mr Matshela uses his Eskom email.

CHAIRPERSON: Yes.

20 **MR JABULANE ALBERT MABUZA:** To send to the receptionist in the hotel in Bali to print.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Those visas.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Which enables him to travel with his family from Bali to Dubai and that is that is that is that is how we arrived.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: At this linkage.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Alright. Mr Mabuza you see the actual visas appear from page 450.

MR JABULANE ALBERT MABUZA: Zero.

ADV VINCENT MALEKA SC: 450.

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: 451.

10 **MR JABULANE ALBERT MABUZA:** Yes.

ADV VINCENT MALEKA SC: And 452.

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: 451 being Mr, 450 being Matshela Koko's visa and 451 being Ms Elizabeth Koko and 452 being a visa of Mr P Koko, son of Matshela Moses Koko.

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: Mr Mabuza there have been speculations about precisely who is the person who utilised this controversial email address of infoportal1@zoho.com. You have come to the conclusion that it is the email utilised by

20 Mr Salim Essa. Can I put the version of others who were confronted with the very conclusion that you have now expressed before the Commission and ask you whether you know about this? Of course Mr Koko has a version about who this email belongs to. Do you know about that version of Mr Koko?

MR JABULANE ALBERT MABUZA: Well I do not know about the, the, the email version. I know about his version of why he was transiting via Dubai.

ADV VINCENT MALEKA SC: No. I.

CHAIRPERSON: I think Mr Maleka is asking you whether you know what Mr Koko's version as to who, to whom that email address belongs.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Or who uses that email address. So in other words you have put your conclusion to say your conclusion is that it is an email address belonging to Mr Essa and, but Mr Maleka is saying Mr Koko has a certain version. Are you aware of that version? That is the question.

MR JABULANE ALBERT MABUZA: Yes I am, I am aware of the version and if I am
10 not mistaken Mr Koko's version is that this email address belongs to Ms Suzanne Daniels. It is Ms Suzanne Daniels who told him to communicate with her using this email address.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: But we, we reject that as we do not know why a Chief Executive would agree with a, a subordinate to communicate on official business on a different email address code named "Businessman" being a female Chief Executive and also why would the Chairman of Eskom who is also been in communicating on the same email address. We, we, we reject that.

ADV VINCENT MALEKA SC: Are you aware that Ms Daniels herself was confronted
20 about that version of who is the precise user of inforportal1@zoho.com during the disciplinary proceedings instituted against her?

MR JABULANE ALBERT MABUZA: Yes, I am aware that she was, she was confronted. I just need to refresh my memory of what her exact response was to that.

ADV VINCENT MALEKA SC: Yes. Chair, I suppose we can leave that to the tea adjournment and resume thereafter.

CHAIRPERSON: Yes. Okay. We still had about seven minutes on my watch. I do not know whether you deliberately would prefer that we take the adjournment now?

ADV VINCENT MALEKA SC: No, no we can proceed.

CHAIRPERSON: *Ja.*

ADV VINCENT MALEKA SC: Until we are finished.

CHAIRPERSON: Yes, until what [intervenes].

ADV VINCENT MALEKA SC: Mr Mabuza would you just come back to us on that issue after you have refreshed your mind?

MR JABULANE ALBERT MABUZA: Will do.

10 **ADV VINCENT MALEKA SC:** The.

MR JABULANE ALBERT MABUZA: I will Chair.

ADV VINCENT MALEKA SC: If you go back to 498.

CHAIRPERSON: On EXHIBIT U1?

ADV VINCENT MALEKA SC: U1.

CHAIRPERSON: 498?

ADV VINCENT MALEKA SC: Yes. You remember this is the attachment to infoportal1@zoho.com the one that went in the evening of 20 past 10 on 8 August, but I refer you to 498 because that page contains commercially sensitive information relating to different suppliers from whom Eskom procured or sought to procure services relating

20 to the vending transaction. If you look at that page you will see that the names of the suppliers are mentioned. I am not going to repeat them and ask you to mention them by name here given questions of confidentiality, but you will see that the names are given with the level or the degree of charge [indistinct] and the estimation of the contractual amount over a spread of a period that Eskom would be required to pay. Do you see that?

MR JABULANE ALBERT MABUZA: Yes. I do Chair.

ADV VINCENT MALEKA SC: I struggle to understand why such commercially sensitive information relating to Eskom's actual or potential suppliers would be distributed by an Executive of Eskom to third parties. Can you think of any reason why would that be the case?

MR JABULANE ALBERT MABUZA: Chair I can think of any other reason other than the conclusion we have reached that Mr Matshela Koko as he is the author of this submission was put in the hands of Mr Salim Essa all the pertinent information including the price in sense per kilowatt hour to enable Mr Salem Essa to see the
10 opportunity and seize the opportunity.

ADV VINCENT MALEKA SC: Mr Mabuza we have dealt with the emails up to 30 November, 30 September 2015 at page 515. I would like to complete the rest of the emails relating to the first charge against Mr Koko before we take the tea adjournment. The next email is the one of 14 November 2015. You will find it at page 517.

MR JABULANE ALBERT MABUZA: Yes, I am on page 517 Chair.

ADV VINCENT MALEKA SC: Alright. You confirm that it is the exchange between the same email addresses?

MR JABULANE ALBERT MABUZA: *Ja*, I confirm this is an email from kokomm@eskom.co.za being Matshela Koko.

20 **ADV VINCENT MALEKA SC:** And the separate letter.

MR JABULANE ALBERT MABUZA: The, this is on 14 November at 10:36 and the second email is, are you referring to the one on 25 November?

ADV VINCENT MALEKA SC: We will get to the one of 25 November.

MR JABULANE ALBERT MABUZA: Sorry.

ADV VINCENT MALEKA SC: I am merely asking you to identify the attachment to the

email.

MR JABULANE ALBERT MABUZA: Oh, correct. I, I missed that. This email attaches a document entitled “Electricity Load Shedding Review and way forward”. This is the, the email that was sent with this attachment as appears on 518 to 520.

ADV VINCENT MALEKA SC: Now it, it gives the history of load shedding in Eskom and we have conversed that history with the Chairperson beginning from the enquiry by NERSA in 2008 and have also reflected on the investigation and preliminary findings of Dentons in 2015. I would like you to take, I would like to take you to the body of the email insofar as it begins to talk about the way forward which is described I quote:

10 “Light at the end of the tunnel.”

On page 519. Do you see that?

MR JABULANE ALBERT MABUZA: Yes Chair. I am on 519. If I may it says:

20 “To manage the demand and execute maintenance Eskom is developing a generation turnaround plan focussing on new build program. This plan aims to stabilise and improve the availability of Eskom generating plant by focusing on three main components namely the execution of generation maintenance plan, a continued focus on people, plant and process effective outage management and execution. The maintenance plan prioritises safety, statutory and risk manage maintenance in order to minimise unplanned capacity losses in the short term. Key to the success of the plan is the Tetris. Tetris is a visualisation tool which assists in scheduling maintenance optimally. This allows Eskom to proactively review the plan from an outage scheduled perspective as well

as sourcing required supply and demand side levers to
minimise load shedding.”

And attached to this is Annexure A which appears on 520 and the next page.

Conclusion:

“No doubt the biggest game changer for the dramatic reduction
in load shedding incidents has been [intervenes].”

CHAIRPERSON: Load shedding, load shedding, load shedding incidents.

MR JABULANE ALBERT MABUZA: “...load shedding incidents.”

ADV VINCENT MALEKA SC: You can start from the beginning.

10 **CHAIRPERSON:** I, I, I.

ADV VINCENT MALEKA SC: Please.

CHAIRPERSON: I am sorry I interrupted you, but I have noticed that like me despite
the assistance that we get from specs sometimes we do not see every word. So I was
helping you there to say, it says load shedding. Maybe you can start that sentence
from the beginning.

MR JABULANE ALBERT MABUZA: Thanks Chair.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Conclusion:

20 “No doubt the biggest game changer for dramatic reduction in
load shedding incidents has been the change in leadership that
introduces much higher motivation and resolve to eliminate
load shedding. Going into the future it is imperative that these
traits be embedded in the organisation and be emulated across
levels of decision of making.”

ADV VINCENT MALEKA SC: You have done investigations relating to the import and

significance of this attachment as was conveyed by Mr Koko to third parties. Can you sum up the results of that investigation insofar as there is a description of the way forward and the conclusion expresses in this document on questions of load shedding and the game changing nature of how Eskom would deal with it going forward?

MR JABULANE ALBERT MABUZA: Well Chair all that I know we have in the very recent past started to experience load shedding and there is various documentation that is available. There is the Treasury Report. There is the NERSA Report. These are amongst others that seek to address the issue of load shedding. That we continue to have load shedding can only conclude that these which are not new today of what
 10 should be done was never done before. Hence load shedding continued to persist. We in the current state we have also reached that same conclusion that load shedding has a lot to do with the absence of maintenance and the absence of skilled people in the operation. At least the required skilled people in the operation.

CHAIRPERSON: Well just for what it is worth it is, it is of concern that one does remember, because it is public knowledge that when there was load shedding I think in 2008 I think the government at the time admitted that the, it had warned about I think eight years earlier by Eskom management that, if I remember correctly it has been a long time. That certain steps needed to be taken to avoid what ultimately happened into [indistinct] namely the load shedding and the Government at the time as far as I
 20 can recall admitted that the mistakes were on their part. They did not follow the advice or warning that had been given by Eskom management and if I am correct to say even then the cause related to maintenance. It is of concern that so many years later the, part of the cause at least may still well be maintenance. So I just mention because we, we all ought to learn from you know the past. So I just mention that, because you just mentioned that part of, of, of, of load shedding comes from issues of maintenance and

then you mentioned the skills as well.

MR JABULANE ALBERT MABUZA: Chair yes.

CHAIRPERSON: Thank you.

MR JABULANE ALBERT MABUZA: And I would avoid the temptation to.

CHAIRPERSON: *Ja*.

MR JABULANE ALBERT MABUZA: To go beyond here.

CHAIRPERSON: *Ja*, okay. Thank you.

ADV VINCENT MALEKA SC: Yes. Chair this pointed question on this is I mean you, you disclosed this email and the attachment to us. I am struggling to understand why
10 would you have done so in the light of the phases you have of the exchanging, exchanges between Mr Koko and Mr Businessman.

MR JABULANE ALBERT MABUZA: Well [intervenes].

ADV VINCENT MALEKA SC: What, what should we make of it now that you have disclosed it?

MR JABULANE ALBERT MABUZA: Well what, what, what we make of it is there are, there are various elements of this relationship. There is an element that deals with the commercial opportunities, but there is also an element that deals with the media as when we go down the line we will demonstrate some media statements that we believe have been crafted outside of Eskom, but also given that there was public outrage,
20 outcry of course you have to be seen to be also addressing issues that are of public concern.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Like load shedding.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: So we are not only talking about what we can be

getting ourselves on the side. We will also demonstrate that these issues that were between Mr Koko and Mr Salim Essa and those for whom he was working with were also over and above the things that Mr Koko was doing himself that were not, it was help us with this. You do this with us. Do what you are doing with whoever you are doing elsewhere. As it has become clear to us that for instance the issue of Impulse International has absolutely nothing to do with Salim Essa and associates. So the, the, the only conclusion we, we, we could arrive at is this particular aspect was one that goes to the hearts and the minds of society because load shedding was affecting anybody, but it is curious in its sequencing as to where it ranks in the order of things that had to be, to be, to be done.

10

ADV VINCENT MALEKA SC: Chair I left it that because.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: I do not know whether the document on the face of it is an Eskom document or is just the views of Mr Koko expressing his own professional.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Or personal views about load shedding.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: I cannot make any judgment call on it.

CHAIRPERSON: Ja.

20 **ADV VINCENT MALEKA SC:** Because remember the charge against him.

CHAIRPERSON: Hm.

ADV VINCENT MALEKA SC: Which includes a reference to this email is that he disclosed confidential information. So I am not too sure whether this document.

CHAIRPERSON: Hm.

ADV VINCENT MALEKA SC: Falls within that category or is something else.

CHAIRPERSON: Okay. No that is fine.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: I think we should take the tea adjournment.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Yes. Let us take the short adjournment and we will resume at twenty to twelve.

ADV VINCENT MALEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Pretorius?

ADV PAUL PRETORIUS SC: Good morning DCJ.

CHAIRPERSON: Good morning.

ADV PAUL PRETORIUS SC: Chair at your request may I intervene to place on record certain matters that need in time to be finalised.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: You will recall Chair that on the 12th of February 2019 Ms Mentor gave further evidence before you.

20 **CHAIRPERSON:** Yes.

ADV PAUL PRETORIUS SC: During the course of her evidence reference was made to two video recordings, one taken by representatives of the Commission of a tour of the Gupta residences and certain matters dealt with during that tour, and reference was also made to a video taken by representatives of the Gupta family, and it's in relation to that latter video that I address you.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: You will recall that informally at least it was suggested that that second video, for the sake of convenience may I refer to it as the Gupta video, be admitted in evidence.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: You made two informal rulings, or you gave certain clear directions in that regard to counsel representing the Gupta family. The essence of what you said was that in the first place you would have to be persuaded that counsel for the Gupta family had standing to address you on the issue. If that effort of persuading you
10 was successful then you would need to be addressed on the merits or demerits of the video being admitted.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: That has been communicated in writing to the attorneys representing the Gupta family.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: In response there was a long letter raising various issues and I won't detail the contents of that, it is not necessary at this stage, but on receipt of that letter a clear communication was sent by the Commission to attorneys representing the Gupta family, which in essence notified them of what you had said on the 12th of
20 February 2019, attaching the transcript of the relevant passages.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: Saying that the quest to have it admitted in the letter of the Guptas was not a formal application that complied with your requirements and that if they still wished to have the Gupta video admitted in evidence they would have to deal with it in a formal application.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: Separately there have been communications between counsel but it's not necessary to deal with those before you. So the position now Chair is that the attorneys for the Gupta family are on terms to make a formal application should they wish it to be admitted. I may say that from our own observation as a legal team such an application is unlikely but we cannot be sure, so the intention is to put them on terms, to bring an application by a certain date and if that is not done we will assume that no application will be forthcoming.

CHAIRPERSON: Yes okay, okay. Thank you very much Mr Pretorius, thank you.

10 Before we resume Mr Maleka I just want to say something unconnected with the current evidence, previously I expressed concern that certain sections of the media were publishing witness statements that had been filed with the Commission before the witnesses concerned could give evidence and I drew everyone's attention to the relevant provisions of the regulations which required that the Chairperson's permission be obtained if it was sought to publish such statements before and subsequently meetings, a meeting or meetings occurred between representatives of the Commission and SANEF and I indicated that the reports I had received of that meeting indicated that all parties had engaged very constructively in regard to the matter.

I – there is in today's Business Day an article relating to Mr Sean Abrahams' affidavit which was filed with the Commission some time back, and Mr Abrahams has of course not given evidence before the Commission. I raise this not to say the publication of that article is in breach of the regulations, because it is not, I raise this to indicate to everybody who may see that article and remember what I have said before and what the regulations say, to say that the publication of that article has happened after my approval was sought and I granted it in the circumstances of Mr Abraham's

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affidavit and Mr Abrahams I had been assured also wished or was consenting to publication. So I just mention this so that nobody might think that that article is in breach of the regulations and goes against what we have said, but actually to say proper processes have been followed in relation to the publication of that article and I commend the conduct of all concerned who have made sure that when they sought to public an article in the circumstances and they followed the law.

Thank you very much, that is what I wanted to place on record so that there can be no misunderstandings about that article.

Thank you, Mr Maleka you may proceed but before you proceed I think I
10 want to bring something to your attention that escaped both your and my attention on Friday, that is that we had spoken around maybe Wednesday last week that on Friday morning I think I would be giving feedback in regard to the question whether the Commission's legal team was going to do anything in regard to the application for leave to cross-examine that we dealt with last week, and I think there was the legal team of the witness concerned, I can't remember now who we were dealing with, they had intimated something which escaped our minds, so I mention it so that maybe sometime today or tomorrow I could have the report back of where we are in regard to that matter.

ADV VINCENT MALEKA SC: Thank you Chair, I will take it up with Ms Norman who is in charge of that part of the arrangements.

20 **CHAIRPERSON:** Yes okay no that's fine.

ADV VINCENT MALEKA SC: Chair I also take it that today we are aiming at closing shop around two pm.

CHAIRPERSON: Yes we are aiming to do that as previously discussed, hopefully we will have finished Mr Mabuza's evidence.

ADV VINCENT MALEKA SC: So that it may be necessary to steal liberties off the

lunch adjournment to complete Mr Mabuza's evidence.

CHAIRPERSON: Yes, yes I hope he will be fine with that as well. Mr Mabuza if we have to use the lunch break are you happy with that, in order to finish?

MR JABULANE ALBERT MABUZA: That's in order Chairman.

CHAIRPERSON: Okay thank you.

ADV VINCENT MALEKA SC: Mr Mabuza before we adjourned I had asked you to reflect on the question whether you know what the version of Ms Daniel was in regards to the operator of this Infoportal1@zoho.com, you remember that?

MR JABULANE ALBERT MABUZA: That's correct.

10 **ADV VINCENT MALEKA SC:** Are you able to help us on that score and if I may guide you, can you go to the smaller blue file, which is U5, in it you will find the findings of the Chairperson of the Disciplinary Committee.

MR JABULANE ALBERT MABUZA: Got that Chair.

ADV VINCENT MALEKA SC: That is our colleague Cassiem, and he talks about ...(intervention)

CHAIRPERSON: What page at U5?

ADV VINCENT MALEKA SC: 76.

CHAIRPERSON: Okay thank you, yes.

ADV VINCENT MALEKA SC: He canvasses the charge against Ms Daniel from page
20 76 from paragraph 60 onwards, with reference to those paragraphs can you just take us through what the Chairperson of that enquiry said?

MR JABULANE ALBERT MABUZA: Chair thank you. Charge one which is paragraph 60 says the nub of this charge is that Ms Daniel caused the distribution of confidential Eskom proprietary interest be it in the form of documentation or contents thereof to a third party. It is not disputed that Ms Daniel distributed information to an

email address businessman being infoportal1@zoho.com. It is also not in issue that the material so distributed by Ms Daniel contains confidential Eskom information which ought to have been made available to outside third party.

Ms Daniel's defence is that the email address, ie infoportal1@zoho.com belongs to Seleke. Eskom contention on the other side is that the email address is likely to be that of Essa. In order to evaluate their respective contentions I need to analyse the role of the two individuals concerned *apropos* the information made available to them and the overall probability.

ADV VINCENT MALEKA SC: Can I ask you to then go to page 64 where the
10 Chairperson begin to analyse questions of probabilities.

MR JABULANE ALBERT MABUZA: Is that paragraph 64 or page 64?

ADV VINCENT MALEKA SC: Paragraph 64 on page 77.

MR JABULANE ALBERT MABUZA: Right, Ms Daniel conceded that she met Mr Essa in March 2015 at a meeting in Melrose Arch convened by Koko, then her immediate boss. From the contents of that discussion it was apparent that Essa had intimate and intrinsic knowledge about the affairs of Eskom. Essa had alerted her to the fact that four senior Eskom, senior officials of Eskom would be suspended the following day and there would be investigation into Eskom and his observations were correct.

20 **ADV VINCENT MALEKA SC:** And then may I ask you to turn to page 78, paragraph 67 where the Chairperson expressed his conclusion on the probabilities.

MR JABULANE ALBERT MABUZA: The Chairperson on paragraph 67 says:

“On the probabilities I reject the suggestion that the emails were intended for the attention of Seleke. First Seleke in his official position would generally speaking be entitled to such information representing the shareholder. There

would be no need for secrecy; secondly Ms Daniel's explanation that Ngubane had informed her that it was Seleke's email address when they started working together in April 2015. This cannot be correct, Seleke only became Public Enterprise DG in December 2016, whereas the first email copied to "businessman" being infoportal1@zoho.com email address, was on the 11th of June 2016, dealing with the position statement issued by the Chairman of Eskom, Ngubane, dealing with the public criticism ad on the Carte Blanche program concerning Eskom's coal contract being irregularly advanced for the benefit of the Gupta family."

- 10 **ADV VINCENT MALEKA SC:** You can skip the rest and finally reflect on the sum total of the conclusion at page 79, paragraphs 68 and 69.

MR JABULANE ALBERT MABUZA: Chair if I can beg your indulgence to deal with the third point.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA:

- 20 "Thirdly the contents of the email demonstrate a clear leaning to favour Essa and the Guptas in business transactions involving Eskom. Fourthly the conduct of Essa by this time and in particular his ability to pack the Eskom Board with his lackeys demonstrate that he was indeed running Eskom. An outsider conducting the affairs of Eskom for the purpose of enriching himself and his associates."

On the probabilities, that is paragraph 68:

"I concur with the evidence of expert Sean Morro that the email account most probably belongs to Mr Essa."

So Chair I heard there were four points I needed to cover flowing from the Daniel's.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: When we adjourned I was dealing with the load shedding, Advocate Maleka asked the relevance and why. What we could confirm on that document we were dealing with earlier pertaining to the emails of November 2015 the one that is on page 28, what do we call this one, U5, on page 28, which was dealing with the electricity load shedding chair.

ADV VINCENT MALEKA SC: Yes but the text of the document I referred to was in 518 and 519.

MR JABULANE ALBERT MABUZA: Right the point we want to make on these load
10 shedding story is as that document in page 518. What the status of this document being that it is on a clear piece of paper, no letterhead, but it is a document attached to this email from Matshela Koko to Infoportal which we have just now dealt with the versions of Matshela and the one of Daniel and still conclude as Advocate Cassiem had concluded that it is Essa, so this was sent to Essa under the email from Matshela Koko on the 14th of November.

This document in essence Chair what this document says, I have sought to make the point that there were three buckets, the one was commercial interest, the other one was media, management of media, the other one was public interest. There's no doubt there was an issue of public interest that was being injured by load
20 shedding. So of course they had to show that they were not only about self-interest, they were also about public interest, but the point in his email at the start of this attached document, the one about load shedding and the way forward, without going into reading it word by word, says the past leadership, because now there's new leadership, the past leadership in addressing the issues of supply thought – focused on one solution only being loads shedding. There are other solutions, one of those

solutions is the use of - they're also OCG, the open cycle gas turbine which is you should buy more diesel but there is that solution.

But when you go to page 519 Chair in the conclusion, the conclusion is repeating the reading and the text, it says:

“There is no doubt the biggest game-changer for the dramatic reduction in load shedding incidents has been the change in leadership, that introduces a much higher motivation and resolve to eliminate load shedding. Going into the future it is imperative that these traits (I argue that the traits is changing leadership) these traits be embedded into the organisation and emulated across all levels of decision making.”

10

Now to my point about why I wanted to read on that blue file this page that talks about the putting in lackeys, so the biggest game-changer was bringing in the new leadership, ie Mr Molefe, Mr Singh. Now that you've done that you must take this across the organisation, you must change the whole organisation, and bring in other people. This is what I refer to be the traits and the embedding.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: So this starts to show when we go to the various key timelines in December, because this is now November Chair when we're dealing with these emails. It would be seen as we go down in the key timelines as we call them and Advocate Maleka can stop me if he thinks I should wait until then but the point I wanted to advance here was whilst I'm on this line of thinking, in December the emails as we were to proceed on these emails it would become up clear that there were various other meetings that were taking place with other people.

20

CHAIRPERSON: Yes, you previously wanted to go to page 28 of U5, I'm just wonder whether whatever you are looking for is where it is.

MR JABULANE ALBERT MABUZA: That is correct Chair.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: So these emails when you once we've concluded on the Makoko (indistinct) emails.

ADV VINCENT MALEKA SC: I have not and that's the point because there's one mail which is the last email at page 28 15.9 which I wanted to take you through because it says something which in common language of exchanges between executives or professionals is unheard of. You will find that email at page 521.

MR JABULANE ALBERT MABUZA: Correct.

10 **ADV VINCENT MALEKA SC:** And Chair I ask you to cross reference that 521 in U5 with – sorry in U1 with U5 28 paragraph 15.9.

CHAIRPERSON: 521 in Exhibit U1 and then on U5 must I be at page 28 which is where I am.

ADV VINCENT MALEKA SC: Yes and then you will see 15.9 refers to Annexure SM19.

CHAIRPERSON: Yes, yes.

ADV VINCENT MALEKA SC: And I merely ask you to make a note to cross-reference and say SM19 is to be found at U1 521.

20 **CHAIRPERSON:** Well you didn't suggest I do that in regard to the other emails, but I did it, so I have been doing it for all the other emails that we have dealt with in this particular document from page 27 when we're dealing with these emails so I have been cross-referencing to Exhibit U1, ja okay.

ADV VINCENT MALEKA SC: Yes, I am grateful for that. Mr Mabuza I mean to be quick, because time is not on our side, it's exchanges between the familiar characters that we know by now. The date is 25 November 2015, around 15:47 in the afternoon.

The subject is “Ray” and we don’t know what, but there are attachments there, do you see it?

MR JABULANE ALBERT MABUZA: Yes, correct.

ADV VINCENT MALEKA SC: Let’s deal with the attachments. What is the heading of the attachment on the face of the email at five to one?

MR JABULANE ALBERT MABUZA: On the face of the email which is from Matshela Koko to Infoportal to Essa it says:

“2015/11/25, total cost plus minus investments by Eskom, future fuel, give the boss please.”

10 **ADV VINCENT MALEKA SC:** Have you made any investigation as to who is the boss referred to in this email? If you have not let us know, but if you have we will welcome your input.

MR JABULANE ALBERT MABUZA: No, I don’t have that information right now.

ADV VINCENT MALEKA SC: The attachments are at 522 and 523, and I’ve tried to make sense of what they refer to, it is the name of mines which we know from the Dentons report supply coal to Eskom and across each of the referenced mine there are numbers under the heading actual rands future fuel invested by Eskom according to SAP since inception of costs plus agreement. How do I intelligibly interpret what is referred to in that document.

20 **MR JABULANE ALBERT MABUZA:** Well this document Chair seems to be a summary of the amount of money that – in Rand terms that has been spent on the cost plus agreements between – during the period breaking it on the various mines and arriving to a figure at the bottom of 12.1 billion, and it’s summarised that the main mines being Arnot, Matla, New Denmark, Vaal (indistinct), these are the mines that have got agreements to the tune of R1.38. Significant to note that these mines are all mined by

the so-called majors.

ADV VINCENT MALEKA SC: If you go to page 523 there is more by way of figures, which is given in respect of those mines. You will see that the names begin on the extreme left hand, and then the next heading or column deals with the type of fuel provided from the mines, which is called assets and the next heading says acquis value, I suppose it's acquisition value. What is that supposed to refer to?

MR JABULANE ALBERT MABUZA: Well this states that the name of the mine, what is that mine, what does it do, it was acquired at the value of R300million if we take the first one as an example and depreciation over time was about 212million leaving a book
10 value of 87million, so this schedule shows what was the value, what is the now depreciated value of those various assets at their book value.

ADV VINCENT MALEKA SC: I mean these mines are not owned by Eskom, correct?

MR JABULANE ALBERT MABUZA: Well these are the so-called cost plus minus that are mined by other companies but Eskom has got an agreement to source the fuel from those.

ADV VINCENT MALEKA SC: From those mines.

MR JABULANE ALBERT MABUZA: Right.

ADV VINCENT MALEKA SC: So third parties do operate those mines?

MR JABULANE ALBERT MABUZA: Yes.

20 **ADV VINCENT MALEKA SC:** And it will generally be for the third parties to account for the values of those mines in their books and financial statements. How does it happen that this information is relayed to someone is Eskom? Is there a transactional obligation between the mine operators concerned and Eskom to give out these values?

MR JABULANE ALBERT MABUZA: Well I would argue – my read is this is building a case for an acquisition. This is to just throw a backdrop that mines valued at these –

this is what happens and in the majority these are the people that owns these mines.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: So there may well be an opportunity to acquire a mine or that opportunity to acquire a mine as we later got to know that there was a certain mine that was under business rescue and this was all material leading to the timelines I was referring to immediately after the end of this November period.

ADV VINCENT MALEKA SC: Yes. Do you know Mr Koko disclosed this information to infoportal?

MR JABULANE ALBERT MABUZA: Well as I indicated Chair that this once more was
10 standby. There will be an opportunity, a business opportunity. This just so that you ready this is the universe in this type of commercial opportunities. This is what they look like, this is what they cost, this is what their value is, this is what their going rate is. Therefore when we get to the opportunity you have got to know whether it is a good or a bad opportunity in the context of what this thing really means.

ADV VINCENT MALEKA SC: Yes. Chair I have completed the emails insofar as they relate to charge 1.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And unless Mr Mabuza has anything further to say in relation to charge 1 I will move onto charge 2, Mr Mabuza and after I have completed
20 all of these charges I will ask you to tell us what the response of Mr Koko was to these charges.

MR JABULANE ALBERT MABUZA: Chair maybe whilst add this to just illustrate that these exchanges which we have now established was giving classified information or proprietary information within Eskom to third party i.e. Mr Essa, we have concluded that is to prepare and advance his personal and financial business interest. We have also

dealt with the public interest and we have dealt with the media. But as it was demonstrated in the Suzanne Daniels email exchanges that these were not isolated and confined to those two. It was also in the various email exchanges that was later to come about of – between Mr Singh, Anoj Singh the CFO in the period around the 8 December. We can see email exchanges in that period between Mr Singh and Mr Eric Wood of Regiments. We can also see in the exchanges in emails and the meetings between Mr Wood, Mr Bobat and Mr Anoj Singh.

ADV VINCENT MALEKA SC: Yes the emails relating to Mr Singh as far as I picked them up begin at page 399.

10 **CHAIRPERSON:** Of Exhibit U1?

ADV VINCENT MALEKA SC: U1.

CHAIRPERSON: Did you say 399 or 311?

ADV VINCENT MALEKA SC: 399 they are in different parts but the first set of emails they are in Exhibit 3 – Exhibit U1 page 399.

MR JABULANE ALBERT MABUZA: Right Chair just to conclude my point here.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: About these – the emails and the commercial interest Advocate Maleka was leading me to answer the question about these cost plus mines. That was – it was the end of November 2015.

20 **CHAIRPERSON:** Yes.

MR JABULANE ALBERT MABUZA: This email that we now referring to is dated the 8 December. This is an email that comes from Mr Anoj Singh to Mr Matshela Koko and now this is about round rib – I think the RR means Round Robin Resolution Optimum Coal Mine final. And it reads: This is what is on page 401.

CHAIRPERSON: I am sorry. I am at Exhibit U1 page 399. Is that where you are as

well where you are – it looks like you are seeing something I am not seeing on that page? I am sorry. I am at Exhibit U1 page 399. Is that where you are as well where you are – it looks like you are seeing something I am not seeing on that page?

MR JABULANE ALBERT MABUZA: My apologies.

ADV VINCENT MALEKA SC: I think Mr Mabuza is elsewhere but let us go to where Mr Mabuza is Chair.

CHAIRPERSON: Yes I want to go there.

ADV VINCENT MALEKA SC: Because we...

MR JABULANE ALBERT MABUZA: I am on page 401.

10 **ADV VINCENT MALEKA SC:** 401.

CHAIRPERSON: Oh okay, alright, thank you.

MR JABULANE ALBERT MABUZA: This is an email from Mr Anoj to Matshela Koko on the 8 December 3 – 20:15 at 3:36 pm.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: And the subject is RRR which I would think would be Round Robin Resolution Optimum Coal Mine PTY LTD final. And it reads: “Hi M please review revised submission and if happy sign and give to Mia.” This is sent from his iphone.

ADV VINCENT MALEKA SC: Yes.

20 **MR JABULANE ALBERT MABUZA:** And it is following an email that came from Fahiema Badat of Regiments 8 minutes earlier at 3:28.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: To Anoj Singh. So the sequence the email came from Fahiema Badat at Regiments. It was sent to Anoj Singh at Eskom. It was cc'd to Eric Wood at Regiments and Mohamed Bobat at Regiments and the subject of that is

the Round Robin Resolution. So it says: “Dear Anoj. Please find attached Optimum Coal Mine board memo.”

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: Now Chair here is Mr Badat, Mr Wood, Mr Bobat writing a Round Robin Resolution for the board of Eskom sending it to Mr Anoj Singh the CFO of Eskom who in turn sends it to Mr Matshale Koko undercover to review.

ADV VINCENT MALEKA SC: Can I –

MR JABULANE ALBERT MABUZA: That Round Robin Resolution referred to is on 403.

10 **ADV VINCENT MALEKA SC:** Yes.

MR JABULANE ALBERT MABUZA: This Round Robin Resolution without just going into its details is a Round Robin Resolution to the board of directors of Eskom which it would appear has been drafted outside of Eskom, sent into Eskom to process. This is a Round Robin Resolution that deals with the pre-purchase of coal from Optimum Coal and it details what resolution it is required. This is sponsored by the Group Chief Executive and the Group Generation Executive. This Round Robin Resolution its summary and conclusions on page – on paragraph 2.2 says: “Eskom faces a supplier risk of coal to Hendrina of about 5.5 million tons per annum as a result of this business rescue proceedings. There is a potential disposal proposal potential proposal. There is
20 a potential proposal. There is a potential proposal from the Business Rescue Practitioner supported by the Department of Mineral Resources. The solution relates to a pre-purchase of coal to the value of R1.68 billion which mitigates supplier risk, counterparty risk is mitigated via a session of the coal to Eskom. The funding of the pre-purchase will be made by an inventory working capital reduction of 54 days to 40 days of stock. This proposal will result in the nett present value benefit of R238.9

million to Eskom. In collusion this proposal provides much needed coal business – coal for business operation mitigates supplier risk and provides commercial benefits to Eskom” And it goes on to describe the pricing and what should be done and how to get this asset out of business rescue and this is a Round Robin Resolution drafted for the signature of the Chief Financial Officer and the Group Generation Executive Mr Matshela Koko. This resolution is also seeking to get the two of them to be given the authority to negotiate, conclude and sign this resolution.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: But ...

- 10 **ADV VINCENT MALEKA SC:** Can I stop you there if you do not mind and I am sorry to derail your train of thought but I just want to place it and facts in context.

CHAIRPERSON: Just before you do so. If there was a point you wanted to say make sure you do not forget it.

MR JABULANE ALBERT MABUZA: I will not, I will not Chair.

CHAIRPERSON: Ja, okay, alright, thank you. Mr Maleka.

ADV VINCENT MALEKA SC: Thank you Chair. Your view is that this Resolution was drafted outside Eskom and was sent by someone from Regiment Fahiema Badat.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: To Mr Anoj Singh who then forwarded it to Mr Koko.

- 20 **MR JABULANE ALBERT MABUZA:** Correct.

ADV VINCENT MALEKA SC: One matter of context I would like you to reflect on. Is that as far as we have been able to establish as at 8 December 2015 Regiment was not providing any profession management or consultancy services of any kind to Eskom?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Why would Regiment be involved at this stage via these

emails in advising Eskom's CFO about a resolution?

MR JABULANE ALBERT MABUZA: Well Chair I can only surmise that it is to prepare Regiment to be a supplier of some service to Eskom. Get them ready to be. Enable them to be suppliers. They then draft what type of Round Robin Resolution they would require to be such.

ADV VINCENT MALEKA SC: Yes. And we now know that from that Round Robin Resolution provided the estimate for the acquisition of the assets was 1.6/1.7 billion?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: The email discussion is taken up further on that topic
10 from 48 – from 408 as far as I am able to pick up.

MR JABULANE ALBERT MABUZA: 408 yes correct.

ADV VINCENT MALEKA SC: And that is two days later on the 10 December?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Can you just present to us in the way you consider appropriate the flow of the emails on that day?

MR JABULANE ALBERT MABUZA: Correct Chair but so let me just make two other points about the timelines. This is the ...

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: The 8 December.

20 **ADV VINCENT MALEKA SC:** Yes.

MR JABULANE ALBERT MABUZA: Another development takes place on the 9 December.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: A new Minister of Finance is appointed on the 9

December.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: On the 10 December.

CHAIRPERSON: Well there is one who is dismissed. There is one who is appointed is it not on the same day?

MR JABULANE ALBERT MABUZA: The vacancy occurred.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: On the 9 December there is a new Minister of Finance appointed.

10 **CHAIRPERSON**: Yes.

ADV VINCENT MALEKA SC: Minister Van Rooyen.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: On the 10 December.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: One of the recipients and a part authors of that Round Robin Resolution I have referred to of the A.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: One Bobat is now a panel of advisers to the Minister of Finance.

20 **CHAIRPERSON**: Yes.

MR JABULANE ALBERT MABUZA: If I can just pass there and come back to 408.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Mr Mabuza you can take comfort from the fact that we have specifically placed that issue before the Chairperson and we will deal with it when relevant witnesses come.

CHAIRPERSON: That is true but I think it is important to make the point that he has just made. I think that is important. Ja okay.

MR JABULANE ALBERT MABUZA: Chair yesterday – on Friday when I spoke about some curiosity I at least have of a recipient of services and goods gives guarantee for the benefit of the supplier. This email that is on 408 and I do not intend to go through it but it is – it relates to a guarantee that is arranged by Eskom for the benefit of a potential supplier to Eskom and for the tune of I think it is about a billion.

ADV VINCENT MALEKA SC: 1.7 billion.

MR JABULANE ALBERT MABUZA: 1.7 billion.

10 **ADV VINCENT MALEKA SC:** Ja if you go to page 408 Mr Mabuza and someone had given me a very useful way of considering email. You start from the middle or the bottom going up. You will on that page the first email comes from Emerentia

MR JABULANE ALBERT MABUZA: Van Eisland.

ADV VINCENT MALEKA SC: Van Eisland at

MR JABULANE ALBERT MABUZA: At Barclays.com.

ADV VINCENT MALEKA SC: Yes. And it comes in at about 9:40 in the morning.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: It is sent to Mr Anoj Singh?

MR JABULANE ALBERT MABUZA: Correct Chair.

20 **ADV VINCENT MALEKA SC:** And it is copied to Lee Zulu.

MR JABULANE ALBERT MABUZA: At ABSA Capital.

ADV VINCENT MALEKA SC: Yes and the subject is 1.7 billion guaranteed, do you see that?

MR JABULANE ALBERT MABUZA: I can see that Chair.

ADV VINCENT MALEKA SC: And you can read the body of the email or summarise it.

MR JABULANE ALBERT MABUZA: I think it is important I read it.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: It says: “Dear Anoj Thuli requested I provide you with details on a guarantee to be cash covered for 1.7 billion. My understanding is that the transaction relates to the supply of goods and services or services and or services it is slash in this regard please find attached templates for the demand guarantee under a demand guarantee underlined. The guarantors ability under this guarantee is principle in nature and is not subject to any agreement. The guarantor will pay on written demand and will not determine the validity of the demand or become party to any claim
10 or dispute of any nature which any party may allege.” Now let lawyer interpret that. “Pricing for the demand guarantee would be 0.30 percentage points per annum charged quarterly in advanced.”

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: The Chair would remember that we spoke on Friday about the cost SEKA 630 000 that was incurred by Eskom at the time when this guarantee was

ADV VINCENT MALEKA SC: Alive.

MR JABULANE ALBERT MABUZA: Alive.

ADV VINCENT MALEKA SC: Yes we have dealt with that issue.

20 **MR JABULANE ALBERT MABUZA:** Right.

ADV VINCENT MALEKA SC: Now the template Chair you will find it on page 410 and 411 just to complete the email concerned. After that email was sent and assuming it was received by Mr Anoj Singh he then refers it to someone else and you will see that the trail resumes right at the top of page 408. Do you see that?

MR JABULANE ALBERT MABUZA: Correct. He has got this email now and it is the

10 December at 9:40 just under an hour later at 10:24 on the same date Mr Singh forwards the same template under the heading: Eskom/1.7 billion to Mr Eric Wood at Regiment and says: Please review and advise?

ADV VINCENT MALEKA SC: Ja why would Mr...

CHAIRPERSON: Oh maybe after the question.

ADV VINCENT MALEKA SC: No apology Chair after you.

CHAIRPERSON: Maybe that question is – was going to go to the same question that I wanted to put. Mr Mabuza in the light of the addressee of that last email to which you have referred. In the light of the identity of the addressee do you have anything to say
10 about that addressee and the date of 9 December 2015?

MR JABULANE ALBERT MABUZA: Well as I – the only – I cannot talk about 9/15 except that it is a development that happened Chair. What I can talk about is the emails of the 8 December which has got three people in it. Mr Singh, Mr Wood and Mr Bobat.

CHAIRPERSON: Ja, yes.

MR JABULANE ALBERT MABUZA: The 9th is an announcement of an appointment.

CHAIRPERSON: Ja.

MR JABULANE ALBERT MABUZA: On the 10th we see one of those Mr Bobat in office. On the 10th we see these email exchanges with the bank that is now between
20 Mr Wood, Mr Anoj Singh and the bank and as it would become clear on what then happened going forward on from 414.

CHAIRPERSON: Okay. Okay no that is fine. Mr Maleka.

ADV VINCENT MALEKA SC: Thank you Chair. And then the trail of email continues and this time I pick up the immediate next time line at page 415. Right at the top you will see there is an email from Mr Anoj Singh at 10:59 on 10 December 2015 to Ms

Daniels, do you see that?

MR JABULANE ALBERT MABUZA: I can see that.

ADV VINCENT MALEKA SC: Okay. And it says sent from iphone which is a forwarded message and that is a message of the email from Emerentia.vaneisland@barclays.com we have dealt with this email.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: So my reading of this trail of the email on this page is that Mr Anoj Singh also forwarded that email from Barclays to Ms Daniels?

MR JABULANE ALBERT MABUZA: Correct.

10 **ADV VINCENT MALEKA SC:** And then Ms Daniels takes up the conversation between herself and Barclays on the preceding page which is 414.

MR JABULANE ALBERT MABUZA: Correct. Now Chair yes this email from Anoj on the 10th on 414 – page 414 to Suzanne Daniels on the 10 December at 1.34 pm and copied on this is Caroline Henry at Eskom and still that subject of 1.7 billion. This letter – this is to Suzanne copied to Caroline but it is says: “Hi C. Please arrange for the transfer of funds to ABSA for the issuance of an on demand bond that includes CP. I will revert by 2:00 pm with CP for the bond. Timing is close of business today please if possible. Thanks A.” Being Anoj.

20 **ADV VINCENT MALEKA SC:** And then the question of the CP’s is dealt with on page 417.

MR JABULANE ALBERT MABUZA: The question of the CP’s is dealt with on page 14 – 417 which is now forwarded from Anoj at 4:26 to Regiments – to Eric Wood at Regiments.

ADV VINCENT MALEKA SC: And as he is sending this email to Mr Wood he is forwarding a message from Ms Daniels?

MR JABULANE ALBERT MABUZA: Just to get the sequence right. At 4:13 pm Ms Daniels sends a letter of agreement because that is what the subject says and this is an execution copy. It says: Hi Anoj herewith agreement as amended. Anoj 13 minutes later forwards the same agreement to Mr Eric Wood at Regiments.

ADV VINCENT MALEKA SC: And that agreement appears from page 419 up to page 422.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: The question is why would Mr Singh send this agreement from Ms Daniels to Mr Wood of Regiment?

10 **MR JABULANE ALBERT MABUZA:** Chair I can only say here this takes us back to the start of the emails between Wood and Regiment – and Mr Singh about this agreement that would be entered into to. Now there is a draft agreement. See this, are you happy with this, then if you are happy we will go on and pay ABSA this or we will settle the agreement with the guarantee with ABSA.

ADV VINCENT MALEKA SC: Yes Mr Mabuza unless you have anything further the rest of the emails deal with the content of the guarantee and the guarantee application form which was filled on behalf of Eskom. Chair you will see that the form of the guarantee is at page 430. And it ends up at page 432. They are exchanges between Mr Zulu or Thuli Zulu with the rest of the of the Eskom people including Mr Singh. I am
20 not going to take you through them unless you want to say something about them?

MR JABULANE ALBERT MABUZA: Chair just to complete the – really the point to make was we have answered the financial injury that Eskom had suffered with this. This guarantee was not finally implemented or perfected or called on in that certain information started to get into the public domain about the workings of the associates of the parties involved here which naturally made ABSA a bit nervous. At which stage this

guarantee had already been shown to a potential seller that I am good for 1.7 billion to buy this asset which we argue the asset is buying the Tegeta and the Optimum Mines. But just before ABSA reached this decision there was then a pre-payment of another 600 odd million 6 – I think it is just around 6 just over 600 million which added to the guarantee amount would have translated to 2.2 billion which earlier on in the documentation we talk about a figure of 2.27 billion. If you add those two numbers they are what would have been the purchase price for that asset. I just wanted to conclude on that on the time lines the emails and this particular transaction.

CHAIRPERSON: Yes and, and you have covered the point that I said you must not
10 forget.

MR JABULANE ALBERT MABUZA: Chair I have not forgotten it.

CHAIRPERSON: Oh, okay.

MR JABULANE ALBERT MABUZA: I have, I have covered that point.

CHAIRPERSON: No that is fine.

MR JABULANE ALBERT MABUZA: I have covered he four points.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Daniels, load shedding.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: December timelines and Singh on 401.

20 **CHAIRPERSON:** Okay.

ADV VINCENT MALEKA SC: Alright, we have seen how the email flowed from Mr Koko to Mr Woods concerning this guarantee, but there is another email that I would like you to look at. This time it is from Mr Woods to Mr Singh. You will find that email on page 433. I am not too sure why you have given this email to us.

CHAIRPERSON: That is the email on what page again?

ADV VINCENT MALEKA SC: 433.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Subject to possible explanations around fake documentation. On the face of this email appears to be on the letterhead of Regiments from Mr Wood as the Executive Director. Do you see that?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: What is the date of that email?

MR JABULANE ALBERT MABUZA: This email is dated 10 December at 04:59.

ADV VINCENT MALEKA SC: Who?

- 10 **MR JABULANE ALBERT MABUZA:** On the one side we have dealt up to now Chair about Eskom and its bankers providing the guarantee to, to Absa.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Now this email, the subject of this email is from Mr Wood to Mr Singh attaching banking details which I image this would be banking details of Regiments of and it details their account name being Bank of Baroda. This is a Nedbank account with the account number and the branch code and it references to Tegeta exploration and resources. This is from Eric to Anoj.

CHAIRPERSON: From Eric Wood to.

MR JABULANE ALBERT MABUZA: Eric Wood to Anoj Singh.

- 20 **CHAIRPERSON:** Huh-uh.

MR JABULANE ALBERT MABUZA: From Regiments to Eskom at 04:59 and a minute later, Caroline of Eskom sends to Anoj the templates about the Tegeta guarantee with the words:

“Hi Anoj, please check and if this is C equals to what you want before I print it off, thanks.”

CHAIRPERSON: That is now on page 434?

MR JABULANE ALBERT MABUZA: On page 434 Chairman.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: The question is, I mean if at that point in time Eskom had been discussing with its banker that is Absa about the nature and template of the guarantee why would Mr Woods on the same day give to Mr Anoj Singh banking details of a different bank?

MR JABULANE ALBERT MABUZA: I do not know Chair.

ADV VINCENT MALEKA SC: Okay. We will leave that.

10 **CHAIRPERSON:** Ja.

ADV VINCENT MALEKA SC: Hopefully Mr Singh will be able to explain to us why that was the case. Mr Mabuza unless you want to say something about the exchange of the emails on the 1.7 pre-purchase or banking guarantee relating to Tegeta. I would like to move to a different set of emails relating to Mr Singh and that I pick up from page 524, Chair.

CHAIRPERSON: Thank you.

MR JABULANE ALBERT MABUZA: Chair maybe it is once more just to conclude this. Page 435 has got a memorandum on this.

CHAIRPERSON: Yes.

20 **MR JABULANE ALBERT MABUZA:** Guarantee.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC:

MR JABULANE ALBERT MABUZA: It is a memorandum from Caroline Henry who is a Senior General Manager in Treasury sending it to Mr Anoj Singh the CFO on the 10th of.

CHAIRPERSON: Treasury of, of Eskom?

MR JABULANE ALBERT MABUZA: Treasury of Eskom.

CHAIRPERSON: Ja, okay.

MR JABULANE ALBERT MABUZA: And the subject is:

10 “Guarantee in Favour of Tegeta Exploration and Resources
(Pty) Ltd. The purpose of this memorandum is one, the aim of
the submission is to summarise the circumstances resulting in
the issue of a performance guarantee in favour of Tegeta. Two,
to request the Chief Executive to approve the issuance of the
guarantee as approved by the Board of Directors. Background:
point three, on 12 December 2015 Eskom planned to enter into
coal supply agreement with Tegeta Exploration and Resources.
In terms of that CSA Eskom had agreed to pay an advance
payment of 1.68 billion. The advance payment is payable on
the conclusion of certain conditions precedent in order to
provide Tegeta payment certainty and shield Eskom from
recovery and shield Eskom from recovery of the funds. In case
the CPs are not met Eskom is contracted to issue the
performance guarantee. Given the immediacy of the required
20 guarantee the CFO has approached Absa for pricing on a
secure guarantee. The Treasury subsequently approached
FNB and Standard Bank and Absa and Absa fared best on the
planned benefit on the deposit and the guarantee fee. Eskom
has deposited the funds on [indistinct] with Absa at market rate.
However this large deposit results in a bridge of the targeted

concentration limit across banks. The CFO has approved this breach for the duration of the guarantee which is three months of 1.68 billion at cost of 0.0375 percent per quarter secured by funds that have been placed in a [indistinct]. This is a memorandum that recommends that the CFO and the Acting Chief Executive utilisation of Absa for the purposes of this guarantee as well as approving the temporary breach of concentration of limits on the investments.”

CHAIRPERSON: Thank you.

- 10 **ADV VINCENT MALEKA SC:** Yes. That completes the exchange of confidential emails that formed the subject matter of charge number two against Mr Koko?

MR JABULANE ALBERT MABUZA: Correct Chair. Now.

ADV VINCENT MALEKA SC: Hm.

MR JABULANE ALBERT MABUZA: This closes now the entities enables to have money to go and act.

ADV VINCENT MALEKA SC: Yes. We now deal quite quickly with the email exchanges relating to charge three and you remember charge three was formulated in U5 page 34. These are the email exchanges relating to the trip to Bali and Dubai?

MR JABULANE ALBERT MABUZA: Correct.

- 20 **ADV VINCENT MALEKA SC:** You have dealt with some of these emails if not all of them. You will see that if you go to page 34 of U5 paragraph 25 refers to Annexure SN29 and Chair in this fashion I ask you to cross-reference SN29 with U1, 446.

MR JABULANE ALBERT MABUZA:

CHAIRPERSON: I am sorry SN29 is on what page, on U1?

ADV VINCENT MALEKA SC: U5 page 34 paragraph 25.

CHAIRPERSON: *Ja*, I have noted that and then on N.

ADV VINCENT MALEKA SC: On U1 it will be page 446.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Onwards.

CHAIRPERSON: Yes, I have got it.

ADV VINCENT MALEKA SC: Mr Mabuza you referred earlier to these emails in order to make the point that the connection you have made is that Mr Salim Essa who was using that infoportal1@zoho.com, is there anything further you would like to say about these emails with reference to charge number three?

- 10 **MR JABULANE ALBERT MABUZA:** Chair at the risk of sounding like repeating the point that we were establishing, we were making was to demonstrate why we have concluded that “Businessman” going by the email address infoportal1@zoho.com is Salim Essa. These emails of the travel agent advising Mr Salim Essa that visas which we now have established were visas of the Koko family who was at a hotel in Bali. That email from this company Travel Excellence if I am not mistaking their name sent their visas to Mr Essa on Mr Essa’s email, private email at Gmail. Mr Essa sent that that attachment to Mr Matshela Koko to his private email. Mr Matshela Koko sent those emails to the reception at the hotel in Bali to print the visas and he took those visas, him, Ms Koko and young Mr Koko they travel to Dubai. We part of the charges having
- 20 now established that Mr Essa is infoportal1@zoho.com or infoportal1@zoho.com is Mr, the “Businessman” is Mr Essa and we have gone onto the Advocate Cassim’s disciplinary hearing of Ms Daniels. So we have dispensed of their version of Mr, the version of Mr Matshela Koko of who “Businessman” is. That the Chairman of the disciplinary hearing has rejected that and has accepted the conclusion that “Businessman” is Mr Essa. Now Mr Koko would now be able to travel to, to Dubai as

per his arrangements that have been made by Mr Essa and travel, Travel Excellence or travelexcellence.co.za.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: *Ja.*

MR JABULANE ALBERT MABUZA: There, there is nothing else I want to canvas any, any, any, any further here. So the charges that were placed on him subsequent.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: Well there is the charge of flying to Parliament about the circumstances surrounding his trip.

10 **ADV VINCENT MALEKA SC:** Yes.

MR JABULANE ALBERT MABUZA: And he was advised to detour in transit via Dubai is what we are charging him for having lied to Parliament.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: This is how we arrive at the point that he has not stated the, the, the truth to Parliament.

ADV VINCENT MALEKA SC: Yes. The last charge is number four. You will find it at U5 page 35 and page 36. I have looked at it. It does not refer to any confidential exchange of information. It merely relates to the allegation that Mr Koko deceived Parliament when he dealt with his role involvement in regards to the McKinsey contract.

20 How the despite on the invoices were ultimately settled on the mandate of the Board. Do you confirm that it does not relate to disclosure of any confidential emails?

MR JABULANE ALBERT MABUZA: Yes I, I, I confirm that Chair, but on page 36 it, it may well be worth just putting it on record that under D on page, on page 36.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: Earlier on in my statement I.

CHAIRPERSON: I, I am sorry.

MR JABULANE ALBERT MABUZA: Of names.

CHAIRPERSON: I am sorry. Let us be on the same page first. The page 36 that I am looking at is in U5. Is that the same one you are talking about?

ADV VINCENT MALEKA SC: Hm.

CHAIRPERSON: You said if we look at page 36.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So I am just checking whether that is U5.

MR JABULANE ALBERT MABUZA: Is the Chairman looking at page 36 with the D?

10 **CHAIRPERSON:** It does not have.

MR JABULANE ALBERT MABUZA: Oh.

CHAIRPERSON: That is why I am wondering whether we are on the same page.

ADV VINCENT MALEKA SC: No, no, no.

MR JABULANE ALBERT MABUZA: No this is my statement.

ADV VINCENT MALEKA SC: No. We.

CHAIRPERSON: Oh.

ADV VINCENT MALEKA SC: We are not at your statement.

CHAIRPERSON: Oh.

20 **ADV VINCENT MALEKA SC:** We are at the, U5. The, the, the file that was given to us by Bowmans on Friday.

CHAIRPERSON: The, the.

ADV VINCENT MALEKA SC: The one that sets out the charges.

CHAIRPERSON: The blue file. I know you said you have two blue files there.

ADV VINCENT MALEKA SC:

MR JABULANE ALBERT MABUZA: I have got too many.

CHAIRPERSON: The one that had the emails from Koko that, Mr Koko that you have [intervenes].

ADV VINCENT MALEKA SC: I think it is that one Mr Mabuza.

MR JABULANE ALBERT MABUZA: Correct. What page through you Chair?

ADV VINCENT MALEKA SC: 36, 35 and 36.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: 35.

CHAIRPERSON: Ja, Mr Maleka referred you to page 35 because he said that is where you find charge, I think four.

10 **ADV VINCENT MALEKA SC:** Yes.

CHAIRPERSON: Charge four against Mr Koko.

MR JABULANE ALBERT MABUZA: I might need help here of page [intervenes].

CHAIRPERSON: 35. Page 35 at the top right hand corner.

MR JABULANE ALBERT MABUZA: I do not, can I get help here.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: Chair.

CHAIRPERSON: Ja, can somebody assist him?

MR JABULANE ALBERT MABUZA: Which pagination is this solid one?

CHAIRPERSON: We are looking for U5, page 35.

20 **MR JABULANE ALBERT MABUZA:** Page 35 written by hand.

CHAIRPERSON: Ja.

MR JABULANE ALBERT MABUZA: Thank you.

CHAIRPERSON: I think, I think the problem is that you have got more than one.

MR JABULANE ALBERT MABUZA: More than one.

CHAIRPERSON: U5.

MR JABULANE ALBERT MABUZA: Page 35. There is page 35 that is GM35 and there is one paginated by hand.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: I am there Chair.

ADV VINCENT MALEKA SC: Are you there?

MR JABULANE ALBERT MABUZA: I am there Chair.

ADV VINCENT MALEKA SC: We have conversed the nature of the charge and we have drawn your attention to the fact it did not involve any allegation of exchange of confidential information. That Chair completes the four charges brought against

10 Mr Koko by Eskom.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And the substance of the evidence Eskom sought to rely to support those charges. I would like to round up on the, those charges by asking Mr Mabuza whether he knows what the response of Mr Koko was to those charges.

MR JABULANE ALBERT MABUZA: Chair just a, I think it is worth mentioning these. We have mentioned the other two charges the one on emails.

CHAIRPERSON: Huh-uh.

MR JABULANE ALBERT MABUZA: We have referred to the third transgression on the trip between Dubai and Bali.

20 **CHAIRPERSON:** Yes.

MR JABULANE ALBERT MABUZA: The third charge was being paid for by and we have advanced.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: Evidence.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: That indeed that is what happened.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: The fourth charge I think it is important just to call it what it is which was, this charge Mr Koko played a central role.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Inserting Trillian's initial mandate and these go onto to advance that argument of the, of this particular charge.

ADV VINCENT MALEKA SC: Yes.

10 **CHAIRPERSON:** Yes.

MR JABULANE ALBERT MABUZA: Chair you, Advocate Maleka asked what was Mr Koko's response to these charges.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: These are the charges that were placed to Mr Koko and we never got to, to, to discipline Mr Koko on this as the Chair would remember we indicated that when we arrived at Eskom on 22 February, January Mr Koko was not at Eskom. He was on suspicion and he was challenging his suspension.

CHAIRPERSON: Huh-uh.

20 **MR JABULANE ALBERT MABUZA:** And the Labour Court had decided that he be reinstated.

CHAIRPERSON: Huh-uh.

MR JABULANE ALBERT MABUZA: On reinstatement for reasons of logistics he was to report the following Monday owing to the fact that the Wednesday before and the days leading up to that he was in Parliament.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: We then served him with these charges.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Over the weekend.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Before he was to resume office and we placed him immediately on suspension. Being.

CHAIRPERSON: A further suspension?

MR JABULANE ALBERT MABUZA: Being reinstated.

10 **CHAIRPERSON:** Ja.

MR JABULANE ALBERT MABUZA: We respected the, the court decision to reinstate him.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: As a reinstated employee we had placed these charges and we immediately suspended him.

CHAIRPERSON: Yes.

20 **MR JABULANE ALBERT MABUZA:** And we never got to; a lot of time passed in, in the nature of these or the engagement between setting up the, the disciplinary process getting an independent Chairman and our legal team being ready to come and, and lead the, the evidence against Mr Koko in with his legal representatives. A date was set and I will have to check what those dates were. Suffice to say having been reinstated and having public said he wants to clear his name Mr Koko resigned one hour before the start of the disciplinary hearing. We got a letter from his attorneys telling us to that effect that he is resigning. So the, the conclusion is as far as this current Board is concerned Mr Matshela's departure from Eskom in this particular term is not related to

what is publically said about IPPs not signing. He resigned an hour before his disciplinary hearing stating that and I am paraphrasing this letter.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Which you might get to it if need be.

CHAIRPERSON: Ja, hm.

MR JABULANE ALBERT MABUZA: But in the interest of the safety of his family and children he does not want to proceed.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Chair that completes the, the, the, the charges. I would
10 like to go quite quickly to the charges relating to Ms Daniels.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Mr Mabuza they are formulated in U5. The very dark, the very bundle that you had. They start from page 39 and you will see that on page 39 going to page 40 the first charge relates to the question of the very controversial email of "Businessman" at infoportal1@zoho.com.

MR JABULANE ALBERT MABUZA: [Intervenes].

ADV VINCENT MALEKA SC: You have talked a lot about this on Friday.

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: Do you have something more to say in relation to it?

20 **MR JABULANE ALBERT MABUZA:** Chair I do not have, I do not have to add anything more. We have spoken about this charges at various times. I do not need to add anything more save to say that there was a third charge. The first one was on Mr Essa. The second one was her role on the McKinsey Service Agreement. The other, the third charge for the record Chair was the one relating to.

ADV VINCENT MALEKA SC: Yes on.

MR JABULANE ALBERT MABUZA: [Intervenes] to it. Relating to, to her breach of duty in as far as it relates to her role in the, in that guarantee and the, the, the, the submission of the Tegeta, Optimum and her submissions to Parliament and the last charge was relating to the, these charges of signing some invoices. These were invoices Chair that, Mr Ngubane was now Chairman of Eskom, had some legal fees that related to his role and a parliamentary enquiry about her role, his role as Chairman of SABC and there were some legal fees that ought to have been paid by Mr Ngubane relating to SABC. Ms Daniels authorised that the SABD related legal fees be paid for by Eskom.

10 **ADV VINCENT MALEKA SC:** Yes.

MR JABULANE ALBERT MABUZA: We thought that was neither related to Eskom or no value gained by Eskom.

ADV VINCENT MALEKA SC: Yes and the figures concerned are mentioned on page 51 paragraph 4.2.

MR JABULANE ALBERT MABUZA: Yes. On 12 May 2017 she signed and approved two invoices. One for R154 614,04 and the other one being a figure of R651 811,67 being charged to and paid by Eskom for legal services not rendered to Eskom.

ADV VINCENT MALEKA SC: Yes. Do you know what her response in relation to that charge was?

20 **MR JABULANE ALBERT MABUZA:** Well Chair suffice to say she did. She was found guilty by the, the Chair of the disciplinary hearing and she was found guilty on all four the charges that she was accused of and on the basis of that the Judge, the Chairman of the disciplinary hearing went further to recommend that she be dismissed summarily and also further the law firm that she was working with should cease, Eskom should cease doing business with that particular law firm. Both decisions have since been

implemented. We are aware that she, she must have taken this matter out to the CCMA or the other courts, but that is where the matter is at.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So the, so the amount that related to Dr Ngubane and SABC and him being represented by a certain law firm that Ms Daniels approved be paid by Eskom was over R1 million.

MR JABULANE ALBERT MABUZA: Hm.

CHAIRPERSON: If you put or not really [intervenes].

MR JABULANE ALBERT MABUZA: *Ja*, it is round numbers Chair. This would be

10 bout

CHAIRPERSON: [Intervenes].

MR JABULANE ALBERT MABUZA: 800 000.

CHAIRPERSON: *Ja, ja, ja*. Okay, thank you.

ADV VINCENT MALEKA SC: Mr Mabuza I have read the findings of the Chairperson fairly quickly. I could not find any response of Ms Daniel to this charge.

MR JABULANE ALBERT MABUZA: Well Chair I agree. As, as I say we then got to hear that she had taken the matter to the CCMA.

ADV VINCENT MALEKA SC: Chair finally can I deal with questions of emails?

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** As they appear to have been exchanged between Ms Daniels and other third parties.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Mr Mabuza they begin at 531 of U1.

MR JABULANE ALBERT MABUZA: Got it.

ADV VINCENT MALEKA SC: Are you at U1 page 531?

MR JABULANE ALBERT MABUZA: Yes, I am Chair.

ADV VINCENT MALEKA SC: You will see that it is an email from Ms Daniels.

MR JABULANE ALBERT MABUZA: [Intervenes].

ADV VINCENT MALEKA SC: Do you, do you, do you, do you recognise that email address?

MR JABULANE ALBERT MABUZA: Yes Chair. I recognise Ms Daniels' email address here in this U1 Chair. Ms Daniels is sending herself an email from her own home email called danielshome@mweb.co.za on 8 March at 04:48. That is 2016 at 04:48 pm. She is sending herself, she is forwarding an email to herself, but now to her Eskom official
10 email address from her home email to an official Eskom email address. She is forwarding an email that she, Ms Daniels, had received from one Nazeem Howa from email address nazeemh@tnamedia.co.za on 4 March at 07:34. He, she then; it was addressed to Ms Daniels home email address and this email is a session, an assignment of coal supply agreements between Optimum Coal and Eskom to Tegeta Resources. Do not know whether Advocate Maleka wants me to go.

ADV VINCENT MALEKA SC: Well can I stop you there. I mean Mr Howa sends an email to Ms Daniels at her private email and then it relates to the session and assignment of the coal supply agreement between Optimum and Eskom and then she then sends that email from that private email to Eskom's official email. The question is
20 why would Mr Howa send this email to Ms Daniels?

MR JABULANE ALBERT MABUZA: Well on reading this email Chair firstly Ms Daniel sends herself an email that she got from Mr – or from her home address to her business address, but what Mr Howa sends is what Ms Daniel must send back to Mr Howa, so Mr Howa is drafting a letter that all what Ms Daniel needs to do is to put it on the letterheads of Eskom and send it back to Mr Howa.

ADV VINCENT MALEKA SC: Alright, I'm still unclear about why would Mr Howa do so, I mean he is not an employee of Eskom, he is not an official of Eskom.

MR JABULANE ALBERT MABUZA: But Chair ...(intervention)

CHAIRPERSON: Well maybe I should say the question is intended for you to offer what you think is the explanation if you have it, but if you don't have it you don't have it, so but you have had occasion to look at these emails and you therefore may have a result of – a conclusion you have made based on analysing the situation.

MR JABULANE ALBERT MABUZA: Well Chair at the point we have made the argument that in the context of – in reference to Mr Essa that Eskom was being run
10 outside of Eskom, so in this regard the body of the email would indicate firstly we've dealt with the drafting of the agreement, the guarantee, the Round Robin Resolution, the role of Mr Singh, how it came from Mr Wood to Eskom, now we see Mr Howa drafting a – what should be a letter back to Tegeta that must now be signed by, be sent back to them from Ms Daniels. So the body of this email speaks about that guarantee and the basis on which this session and the assignment of the sale agreement to Tegeta now, so these were – outsiders would determine what to do and then would draft executive insight, this new leadership that has now been put in place that has been the game-changer at Eskom, is now taking these instructions from outside and they draft and they send them, they put on the letterheads or the draft resolutions they
20 put in front of the Board, the Board approve and that becomes an Eskom position.

CHAIRPERSON: So you're saying decisions that relate to Eskom in regard to these matters were now being taken by people outside of Eskom and certain people within Eskom were simply required to execute those decisions?

MR JABULANE ALBERT MABUZA: Correct.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: And give a semblance that those were – they appear to be the decisions of Eskom?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: When in truth and in fact they are not?

MR JABULANE ALBERT MABUZA: Correct yes.

ADV VINCENT MALEKA SC: Page 533, there are two emails which Ms Daniels sends to different persons, let's start with the top one, it is from her official Eskom email, correct?

MR JABULANE ALBERT MABUZA: Correct.

10 **ADV VINCENT MALEKA SC:** The date is?

MR JABULANE ALBERT MABUZA: The date is now the 11th of June 2016.

ADV VINCENT MALEKA SC: The time is?

MR JABULANE ALBERT MABUZA: The time is very early in the morning at two am?

ADV VINCENT MALEKA SC: It is sent to?

MR JABULANE ALBERT MABUZA: One Baldwin.Ngubani@gmail.com, I suppose this is the private email of the Chairman of Eskom at the time.

ADV VINCENT MALEKA SC: And the subject matter is?

MR JABULANE ALBERT MABUZA: The subject matter is a draft statement by the Chairman.

20 **ADV VINCENT MALEKA SC:** Okay and more or less the same time an email is sent to a number of persons, can I ask you to go through them fairly quickly.

MR JABULANE ALBERT MABUZA: I'm sorry Chair the time was 11:56, not two am, it was 11:56, GMT+2.

CHAIRPERSON: Ja, GMT+02:00 ja.

MR JABULANE ALBERT MABUZA: Yes, I just wanted – the time 11:56 Chair.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Around the same time Ms Daniels sends this email to the following, the one is 1kwaitam@yahoo.com, Zethembekhoza@telkomsa.net, markvivanpaminsky@markpam.com, these would be ...(intervention)

CHAIRPERSON: I'm sorry Mr Mabuza, you might have a reason but not to read the full email address for Mr Khoza but maybe we should, it says khozazw@telkom is that the one you are reading.

MR JABULANE ALBERT MABUZA: That's correct Chair for Twahita it's
10 Twahitam@yahoo.com, for Zethembe Khoza it's Khozazw@telkomsa.net, markvivanpaminsky@markpam.com. These are members of the board of Eskom that are being sent a draft statement of the Chairman, a draft statement by the Chairman to the members of the Board clearly attaching that statement to say to the members as per Chairman's telephone call your consideration and review.

ADV VINCENT MALEKA SC: It is marked of high priority and also confidential.

MR JABULANE ALBERT MABUZA: Correct.

CHAIRPERSON: That's the email address, the email is marked of high importance and sensitivity, confidential.

ADV VINCENT MALEKA SC: Do you see that?

20 **MR JABULANE ALBERT MABUZA:** Correct yes.

ADV VINCENT MALEKA SC: So that's on all considerations, everyone to whom it is sent will know that it's a confidential document and it is of high priority. Now if you go to page 535 you will see an email from who – who does it come from?

MR JABULANE ALBERT MABUZA: This email Chair comes from Businessman, which we have advanced the point now that's from Salim Essa.

ADV VINCENT MALEKA SC: The date?

MR JABULANE ALBERT MABUZA: Of Infoportal1@zoho.com, the date is now the 11th of June at 13:13 in June 2016.

ADV VINCENT MALEKA SC: And the time?

MR JABULANE ALBERT MABUZA: It is to Suzanne Daniels, the time is 13:13.

ADV VINCENT MALEKA SC: That would be more or less two hours after she had already sent the confidential email to board members.

MR JABULANE ALBERT MABUZA: Correct, she had sent the email to board members at 11:56, now it's 13:13, yes correct.

10 **ADV VINCENT MALEKA SC:** Yes, give and take two and a half hours.

MR JABULANE ALBERT MABUZA: Two and a half hours, well one hour fifteen minutes seventeen minutes.

ADV VINCENT MALEKA SC: And what is the subject matter of that email from businessman to Ms Daniel?

MR JABULANE ALBERT MABUZA: The subject matter is forward draft statement by Chairman.

ADV VINCENT MALEKA SC: And what does it say in the body of it?

MR JABULANE ALBERT MABUZA: It then says please add okay line about the big four that they supply 80% of Eskom's coal and Tegeta supplies only 5%.

20 **CHAIRPERSON:** Or less than 5%.

MR JABULANE ALBERT MABUZA: Less than 5% and I am then happy that we issue as soon as possible. Maybe worth just mentioning that this has become when we're looking at that statement about the various prices of the assets, the depreciated value, and these are all those coal plus mines all owned by the so-called majors. This became – was to become the line that was common in all communication that says it's

no big deal if Optimum gets an opportunity, it is after all going to be supplying less than 5% so this is how this statement gets into the language at Eskom at the time, but he, the businessman, is now then happy that we, now we issue as soon as possible.

CHAIRPERSON: So by this time he has been forwarded the draft statement by the Chairperson of - the then Chairperson of Eskom and he is responding and saying what you have just read, is that right? Or am I misunderstanding something?

MR JABULANE ALBERT MABUZA: Yes, by this time ...(intervention)

CHAIRPERSON: Maybe Mr Maleka will help, or not yet Mr Maleka?

ADV VINCENT MALEKA SC: No, no you're correct Chair, by this time Businessman
10 had received the statement, he had reviewed it, he's making his input and he is lining a narrative which you know by now is the (indistinct) in July.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: And he is advising Ms Daniel if she is happy with her input then she can go and that's what Ms Daniel says right in the next email

CHAIRPERSON: And she must just add that line, that the so-called big four are supplying 80% of Eskom coal and Tegeta supplies less than 5%. As I understand it he is asking Ms Daniel to add that line in the statement.

ADV VINCENT MALEKA SC: Indeed, in the statement.

CHAIRPERSON: Okay, alright.

20 **ADV VINCENT MALEKA SC:** And again Mr Mabuza we have dealt with the fact that as between Ms Daniels and board members that was a confidential statement.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: But for reasons not yet explained Businessman has the right or interest to make an input in it by running a narrative and you will see in the middle of that page if you add 535 Ms Daniel responds.

MR JABULANE ALBERT MABUZA: On Saturday 11 at 14:39, to Businessman.

ADV VINCENT MALEKA SC: And what is her response?

MR JABULANE ALBERT MABUZA: She says “okay will do.”

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: Maybe context Chair, I don’t know whether we will get to it, this is a statement that is prepared as a holding statement in the knowledge that there will be a big Carte Blanche coverage on the role by Mr Matshela Koko and the guarantees and on the CSA contract, so this was a bit of damage control just to conclude my point about public’s interest, business interest and media, this was
10 a – this statement ought to – it would appear not only did businessman see it the first time now, he would have been the one, or he would have been part of drafting it and sending it and sending it to the Chairman, from the Chairman to Suzanne and now to go back and say just add this other line.

CHAIRPERSON: Yes okay.

ADV VINCENT MALEKA SC: The next email Mr Mabuza is at page 535 for the boardroom, it goes to page 536. What is the document, where does it come from?

MR JABULANE ALBERT MABUZA: This document comes from Baldwin.ngubane@gmail.com, Baldwin Ngubane I believe the Chairman of Eskom here on the 26th of June – the 11th of June 2016 at 12:19 sent to Ms Daniel to her Eskom
20 official email but interestingly copying the Businessman, so the Chairman is cc’ing the Businessman on a letter about is statement to Ms Daniel with the words:

“Suzanne I suggest we list the eight points at the end of the statement as a summary of the board resolution, and of the board’s position.”

ADV VINCENT MALEKA SC: Right, and you will see that it’s sent from a Samsung device.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: And Mr Mabuza I see a repeat of the emails that we have dealt with on the same page, 536, I'm not going to take you there.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: And then I see another email on page 538, I can't make sense of it, are you able to help us what that email is supposed to be. If you can't I'll take you to the last email exchanges on this score.

MR JABULANE ALBERT MABUZA: Suffice to say it's sent to members of the Board Chair from – and it's still about that statement.

10 **ADV VINCENT MALEKA SC:** Yes, 539 it's an email from Ms Daniel, it's 13:21.

MR JABULANE ALBERT MABUZA: Correct Chair.

ADV VINCENT MALEKA SC: It is sent to the Chairperson and the Board members that you have previously identified and again it deals with the statement of the Chairperson, it's marked high priority and it addresses the Chairperson do you see that?

MR JABULANE ALBERT MABUZA: Ja correct Chair, I have ...(intervention)

ADV VINCENT MALEKA SCU: And what does it tell him?

MR JABULANE ALBERT MABUZA: It says:

“Chairman herewith updated draft incorporating comments.”

20 **ADV VINCENT MALEKA SC:** Yes, that's as far as the email exchanges on the statement is concerned and the body of the statement as I pick up is from page 541 to 542 and you will see that the eight points listed on page 542 there's nothing for the present purposes which turns around that I think those are the matters that have been confirmed in the email.

Mr Mabuza let's skip something, you can take it for granted that I have

explored your evidence relating to the exchange of emails and the charges that you refer to in your statement. If you are happy that you have said what you wanted to say on those matters I will then quickly take you back to your statement.

CHAIRPERSON: Well in the meantime I see that in the – on page 541, the paragraphs are not numbered but in paragraph number four the last sentence captures what the Businessman said to Ms Daniel she must add with regard to this big four providing approximately 80% of Eskom's coal while Tegeta supplies less than 5%, so it seems that that was captured.

ADV VINCENT MALEKA SC: Yes.

10 **CHAIRPERSON:** You see that Mr Mabuza?

MR JABULANE ALBERT MABUZA: Yes I see that Chair and I confirm and agree that it makes that point of the Businessman.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Chair it remains for me to conclude the evidence of Mr Mabuza with reference to his statement. I have explored with sufficient details the matters that you deal with from page 18 paragraph 51 up to page 24 paragraph 66 of your statement.

MR JABULANE ALBERT MABUZA: Chair sorry before I go there, just for me to close this, I think we have not, we have spoken about the statement but I think it's worth
20 placing on record by reading just the first two paragraphs of the statement.

CHAIRPERSON: Okay, yes?

MR JABULANE ALBERT MABUZA: Which is on 541, it is a statement dated the 11th of June, we keep on saying the statement says it's from the Chairman of Eskom, Dr Ben Ngubani.

"I'm advised that Carte Blanche will be airing an interview with Eskom Group

Executive for generation Mr Matshela Koko alleging that Eskom's coal contracts were not concluded in accordance with the procurement procedure. I am concerned about the recent media speculation and sensationalism around the procurement of coal. Eskom stands firm by its process and undertaken to conclude extension of its coal supply agreement with its suppliers."

The Chairman continues:

"I am satisfied that due process has been followed and we can be proud of the savings achieved by the Executive Team to date."

10 I just thought it's important that we – the context of what this statement is.

CHAIRPERSON: I was trying to go back to the statement Mr Mabuza because I had moved away from ...(intervention)

MR JABULANE ALBERT MABUZA: It's on page 41, 541.

CHAIRPERSON: 541, thank you. Now I do think that what we have read is important.

MR JABULANE ALBERT MABUZA: It is the first two paragraphs Chair, you took us to paragraph 4, the end of paragraph with their less than 5 and 80%.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: But the germane point in the statement and its genesis was on hearing that Carte Blanche will be airing something this was a
20 statement that was seeking to blunt whatever that interview was going to be saying because it was done now, it was to be added.

CHAIRPERSON: I see that on page 542 paragraph 3 I said the paragraphs are not numbered but paragraph 3 from the top the statement says?

"Eskom rejects any insinuation of favouritism towards suppliers such as Tegeta who are willing to step in to avert the coal supply crises and allow

Eskom to meet the winder demand.”

So he is saying that they reject that there was any favouritism towards (indistinct).

MR JABULANE ALBERT MABUZA: Ja Chair, that's what the statement says.

CHAIRPERSON: Ja that's what the statement says.

MR JABULANE ALBERT MABUZA: We understand now what happened building up to this statement.

CHAIRPERSON: Yes, yes.

ADV VINCENT MALEKA SC: Mr Mabuza are you comfortable that we should now round up with reference to your statement?

10 **MR JABULANE ALBERT MABUZA**: Okay, I'm comfortable Chair.

ADV VINCENT MALEKA SC: Yes, from page 24, paragraph 68 you deal with deficiencies in Eskom's procurement processes. We are grateful for your suggestions but these are the matters which the Chairperson would reflect on when he considers appropriate recommendations flowing from such funding as he would make.

Then from page 27 you deal with specific transactions and I would like to go through each of them fairly quickly.

MR JABULANE ALBERT MABUZA: Alright.

ADV VINCENT MALEKA SC: The first is New Age, do you see that?

MR JABULANE ALBERT MABUZA: Yes I can see that.

20 **ADV VINCENT MALEKA SC**: We have already told the Chairperson that this is a matter that the legal team will deal with as a cross-cutting matter because it affects also procurement in other State Owned Entities. Is there any matter that you would like to raise with us concerning TNA Media?

MR JABULANE ALBERT MABUZA: Chair nothing save as to say really in the scheme of things at a low of 10million and a high of 43million. There is much we should

concern ourselves about than the relative numbers and their relevance to materiality.

ADV VINCENT MALEKA SC: The next transaction is the one that you have talked about at length, it's the McKinsey/Trillion transaction, we have looked at it, we raised with the lawyers, we raised with the lawyers of Eskom one matter arising from that litigation. It is before the Court, is there anything that you would like to share with us insofar as your evidence is concerned?

MR JABULANE ALBERT MABUZA: Chair I think we have established enough of some of the parties that were involved, how they've enabled Optimum and Tegeta, how McKinsey got – brought into Eskom, how Trillion got sent which in the process to be
10 supplied Eskom and the only point we want to make here Chair is we have spoken at length about the – maybe the three executives, ie Matshela Koko, Anohd Singe and Suzanne Daniels. There are a number of other executives that we wouldn't encourage and urge the Commission that did maybe helped it his job , if it sought to interview there's people we illustrate what in our view was their role, but we don't intend to spend time on them, except just to correct, which is where I was heading earlier when a bit, not at one about which document we're using, the Chair will remember I spoke of a certain lettering.

In the documents here we refer to certain names of executives, I just want to correct to the extent and impression might have been inadvertently created elsewhere.

20 **CHAIRPERSON:** Yes, yes.

MR JABULANE ALBERT MABUZA: That the Govender we're referring to his name is Mr Prish Govender not to be confused with another Mr Govender, who is an executive at Eskom. I thought it's important that we correct that. We do not go too much to talk about Ms Ayanda Ntewa but we would also encourage that she and Mr Madelani would be of great help to the Commission in its work if there was time spent on them but I

don't intend to do that today.

ADV VINCENT MALEKA SC: Thank you for that correction because the reference to Mr Govender caused great consternation of over the weekend. The next transaction is the Impulse International Pty Limited. We have reflected on what you have said there and the sum total of it is that you have reported this transaction to law enforcement authorities including the Hawks and the SIU.

MR JABULANE ALBERT MABUZA: Correct Chair.

ADV VINCENT MALEKA SC: Chair I don't think anything further arise from this for the present purposes and the last one is the accounting services or auditing services
10 relating to Nkonke Incorporated and it's her accounts KPMG amongst others. Quickly can you take us through what your concerns are in that regard?

MR JABULANE ALBERT MABUZA: Chair maybe before I step off, we do say of those people that have been mentioned It may also be worth a while to – we don't spend too much time on it to look at how the former Group CEO Mr Brian Molefe himself got implicated in what we considered to be a scheme to defraud Eskom in assisting (indistinct) to acquire Optima, but that in the interest of time I am not going to ,highlight it, it may well be – well they referred to the CEO and CFO without putting a name to it.

CHAIRPERSON: I just want to say Mr Mabuza that although we said we are going to
20 finish at two o'clock I don't want us to leave out, I don't want you to leave out something that you consider important to say, so – but there may be things where you think you have dealt with sufficiently in the statement you don't want to add but if there is something that you consider important to say do feel free to do so.

ADV VINCENT MALEKA SC: Yes, thank you Chair. Mr Mabuza we have indicated to you earlier on that that issue the Tegeta acquisition of Optimum Coal will be dealt with

in the course of the coming days.

MR JABULANE ALBERT MABUZA: Just say that Chair, I'm sorry I'm trying to get myself to my concluding point to see what have I covered before.

CHAIRPERSON: Okay do not rush too much I will give you enough time.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Just listen to Mr Maleka's question and when he is done I will give you enough time to...

MR JABULANE ALBERT MABUZA: Thanks Chair.

CHAIRPERSON: Look at what you wish to look at.

10 **MR JABULANE ALBERT MABUZA:** Thanks Chair.

ADV VINCENT MALEKA SC: Yes. You have indicated that the commission should look into the conduct of the ex-group CEO in relation to the Oakbay/Tegeta's acquisition of Optimum Coal as a matter of concern to you, correct?

MR JABULANE ALBERT MABUZA: Correct Chair.

ADV VINCENT MALEKA SC: Yes. I wanted to assure you that the commission will do so.

MR JABULANE ALBERT MABUZA: Thank you Chair.

20 **ADV VINCENT MALEKA SC:** There is another issue that the commission is looking at in relation to him and this is the question of the payment of the pension retirement which is now before the courts. Maybe you can elaborate on the status or the current status of the court process, do you know?

MR JABULANE ALBERT MABUZA: Yes Chair at all the various lower levels there has been a decision that Mr Molefe needs to repay the money to the pension fund this he has taken on appeal so it is still out there I think he is now petitioning – I think so the Chief Justice on this.

ADV VINCENT MALEKA SC: Chair we will investigate the current status but you did invite us to give you a copy of the full bench judgment.

CHAIRPERSON: Yes. I would like that ja.

ADV VINCENT MALEKA SC: Yes we will. Yes.

CHAIRPERSON: Thank you ja.

ADV VINCENT MALEKA SC: Mr Mabuza I was at Nkonke.

CHAIRPERSON: Maybe to the – maybe we may as – I may as well mention this. There has been reference to one or two applications that are presently pending.

ADV VINCENT MALEKA SC: Yes.

10 **CHAIRPERSON:** In one or other high courts that Eskom has brought or has lodged in relation to one or two matters. I think one of them might be McKinsey.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Or Trillian or both. It may be helpful even if there has been no decision to look at the affidavits. Obviously they are public documents. It may be helpful to look at the affidavits there and see to what extent the information that is there may assist in terms of what we have as well.

ADV VINCENT MALEKA SC: Chair we have looked at the affidavits and we thought we had looked at enough of them.

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** But we were told when we met the [indistinct] that there are supplementary affidavits also.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: But the quantum of documentation starts from the one end to the other end of a table. We do not want to trouble you with that for now.

CHAIRPERSON: Okay ja then ...

ADV VINCENT MALEKA SC: But we will certainly canvass the affidavits and the stance taken by the parties.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: When hopefully McKinsey takes the witness box for you because it relates to them.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And it relates to Trillian.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Insofar as Trillian is concerned we will canvass the issue
10 as and when the relevant [indistinct] of Trillian takes the witness stand.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: No, no that is fine.

ADV VINCENT MALEKA SC: But we do not want to trouble you with.

CHAIRPERSON: Ja no if it is so much paperwork as long as you have indicated that you as the legal team are applying or have applied your minds to the affidavits or some of the affidavits as long as you will have looked at them you will be able to identify those that you might think I should see.

ADV VINCENT MALEKA SC: Yes, yes.

20 **CHAIRPERSON:** Ja.

ADV VINCENT MALEKA SC: No we have and I am sure my colleagues working on the Transnet.

CHAIRPERSON: Yes also ja.

ADV VINCENT MALEKA SC: Evidence they have also done it because it has this continuous contractual relationship between the two state owned entities.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Mr Mabuza I was at Nkoke and I had asked you to sum up quite quickly what your concerns are in that regard?

MR JABULANE ALBERT MABUZA: I need to find my notes on that.

ADV VINCENT MALEKA SC: Page 37 of your statement.

MR JABULANE ALBERT MABUZA: Ja it would appear to us that the Eskom executives sought to unduly influence the appointment of Nkonke as a sub-contractor and information had obtained that Nkonke the accounting firm was acquired by the Gupta associates and this was to be the executives were trying to influence that KPMG
10 appoints Nkonke as a sub-contractor for the purposes of Eskom's work. And to this end Eskom had paid Nkonke about R63 500 770,00 as a sub-contractor to KPMG which was flat as an irregular expenditure and we just conclude that we have placed – we have laid a criminal charges in Sandton and the Hawks and the SIU are investigating. But we then also noted that there were weaknesses on the panel approvals and the management of sub-contracting process so that is – that was our issue on Nkonke Chair.

ADV VINCENT MALEKA SC: Thank you for that. We have some suggestions to make to the Chairperson how the matter should be taken forward without prejudicing the SIU investigation and or the Hawks investigation. The last transaction oh no not the last –
20 ja the last transaction is – no the second last is Warung. You have dealt with this issue at length when you were dealing with the disciplinary proceedings instituted against Mr Maritz. Is there any other issue you want to add in the light of what you have said on Friday?

MR JABULANE ALBERT MABUZA: Ja Chair there is nothing else to add either than to now confirm that as I state in paragraph 114 that under ongoing pressure from Mr

Ngubane the Chairman of Eskom board at the time and following a meeting with Ms Lynne Brown the former Minister the former Interim Group Chief Executive of Eskom Mr Sean Maritz executed the Asset Development and Finance Agreement in October 2017 shortly after Mr Johnny Dlala was removed as Interim Mayor Group Chief Executive in the face of internal advise against this and without the requisite authority and approvals. So the – we argue that these were not coincidences these were things designed to arrive at a particular point by putting certain people once more in line with that statement that the game changer was new leadership. We have got to embed this trait through – these traits throughout the organisation and change the leadership. The

10 commission would have heard of the status of that that we have said no we are not paying that fee and we have refused coffee time with the Chair of Warung and they must go to court and force that we do not intend to do anything further.

ADV VINCENT MALEKA SC: Yes and Chair we have had discussions with the lawyers of Mr Maritz and they have preliminarily indicated that they would want to participate in the commissions processes with a view to present his version.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: So there are logistically arrangements that are being made ...

CHAIRPERSON: Okay.

20 **ADV VINCENT MALEKA SC:** In order to facilitate that level of participation. Mr Mabuza the last one is Dong Feng and it is also a matter which is before the courts Chair.

MR JABULANE ALBERT MABUZA: Yes Chair this matter as said relates to a tender that was awarded for Duvha Unit 3 Recovering Projects to Dong Feng after an open tender. The contract was signed in March 2017. Alstom trading as General Electric

and an unsuccess – as an unsuccessful tenderer brought an urgent application in court against Eskom to stop Eskom from awarding – implementing the awarding of the Dong Feng tender to Dong Feng pending a review application which seeks to set aside this award. Murray and Roberts Shanghai Electric Consortium another unsuccessful tenderer intervened in the application for the same purpose. The – it would appear that part of their objection relates to the status, the BEE status that was granted to Dong Feng here they attach that the BEE commission had issued a draft report findings that Dong Feng did not comply with the BBEE Act of 12 March 2018. The recommendation is made in this draft report have been implemented by the new board
 10 that comes from the commission. The matter is still proceeding in the Pretoria High court and additional information I might just add Chair in my position as Chair I had been approached by one of the parties that had challenged this to offer a way in which this matter can be expedited. I was advised by the legal team that the matter where it is at must be left where it is in the court.

CHAIRPERSON: Okay thank you.

ADV VINCENT MALEKA SC: I can tell you Mr Mabuza that I know a little more about this because of my involvement in it. So we will leave it in the courts until the courts pronounce on it. I have been asked to correct a statement that you made that when Mr Maritz signed the Warung letter or sort of contract or letter the Chairman at the time
 20 was Mr Zethemba Khoza and not Mr Ben Ngobane.

MR JABULANE ALBERT MABUZA: Correction noted I apologise Chair.

ADV VINCENT MALEKA SC: Yes. There are two other transactions which I have not picked up from your statement and I would like your comment on them. Because there has been a historical assessment of those transactions by amongst others Dentons in relation to the far reaching cost over runs relating to Eskom's capital expenditure

arising from those transactions. The first is the new billed project relating to Kusile.

MR JABULANE ALBERT MABUZA: Yes Chair.

ADV VINCENT MALEKA SC: Off the cuff do you know what was the initial capex for that project?

MR JABULANE ALBERT MABUZA: Chair I think the initial capex – I need to – the initial capex of Medupi was 60 – 70 billion in round numbers. The initial capex of Kusile would have been 80 billion.

ADV VINCENT MALEKA SC: Where is the cost?

MR JABULANE ALBERT MABUZA: Chair I would ...

10 **ADV VINCENT MALEKA SC:** As we speak today?

MR JABULANE ALBERT MABUZA: I would and I am subject to correction by two or three billion either way. The Medupi project today would be standing at about 120/150 billion. And Kusile would be around 130/140 billion.

ADV VINCENT MALEKA SC: Which is twice more than the...

MR JABULANE ALBERT MABUZA: Give or take.

ADV VINCENT MALEKA SC: Give or take.

MR JABULANE ALBERT MABUZA: Give or take and its ten years or so late. And it is still not producing the intended output.

20 **ADV VINCENT MALEKA SC:** I take it that Eskom you have made investigations on why there is this time and cost over-run of this scale?

MR JABULANE ALBERT MABUZA: Yes Chair those processes are currently underway. Primarily because these two new bills were put in place with the view of meeting anticipated demand and as a choice that let us rather build new than maintain those ones that were already coming to end of life. So unfortunately the said cocktail has finally transpired. We have not maintained the ones that were coming close to life

– to end of life. The ones that we have spent so much money to build have not been complete, have not come on stream. The few units that have come on stream non-commercially albeit have not produced the required throughput so we facilitating now behind – between fixing them to produce what they are meant to do and also going to try and breath in new life in those that we were – they were between cold reserve to actually decommissioning.

ADV VINCENT MALEKA SC: Mr Mabuza I picked up somewhere I am not too sure whether it is in your statement or other public documentation that Eskom had been concerned about those two projects to a point where it has laid criminal charges and or
10 referred the matter to the SIU for investigation?

MR JABULANE ALBERT MABUZA: That is correct Chair.

ADV VINCENT MALEKA SC: Do you know the status of the investigations concerned?

MR JABULANE ALBERT MABUZA: No Chair not to the detail. I have seen some material over the weekend and I would not want to go into that. I would need to be very, very certain about my facts.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Mr Mabuza I have explored what I wanted to ask you. If there are any concluding remarks you would like to make the floor is yours.

MR JABULANE ALBERT MABUZA: Chair may I consult my legal team?

20 **CHAIRPERSON:** Okay maybe we – you might need five minutes to do so.

MR JABULANE ALBERT MABUZA: Even less Chair.

CHAIRPERSON: Ja okay. I will adjourn for a few minutes or maybe let us say – ja I will adjourn for a few minutes and somebody will indicate to us once you are done but it will not be later than five past one.

MR JABULANE ALBERT MABUZA: I agree Chair.

CHAIRPERSON: Okay we adjourn.

ADV VINCENT MALEKA SC: Five past two.

MR JABULANE ALBERT MABUZA: Five past two.

CHAIRPERSON: Oh yes five past two.

MEETING ADJOURNS

MEETING RESUMES

CHAIRPERSON: Yes Mr Maleka.

ADV VINCENT MALEKA SC: Mr Mabuza has had an occasion – sorry an opportunity to consult with his lawyers now.

10 **CHAIRPERSON**: Yes.

ADV VINCENT MALEKA SC: And I am sure he would like to make closing remarks.

CHAIRPERSON: Yes Mr Mabuza.

MR JABULANE ALBERT MABUZA: Yes Chair thank you very much. Chair we – what we had hoped to do and will continue to help to do is to assist the commission in its work but we say the context of capture at Eskom we have already been stated – I have said that the stage for capture was at Eskom and that time line was between March 2015 and December 2015 where various structures were put in place. It is also at the same time that we also need to look at the people because it is one thing to change structures. The people that were brought into Eskom at the time at board level at
20 executive level as we have indicated that around March 2015 four senior executives were suspended owing to that gap vacancies existed and two acting senior executives as in the acting CEO and the acting CFO were brought into Eskom and that material date of the 20 July where of the four executives just to recap it was Matona was the acting CEO, Tsholo Molefe was the acting CFO, Dan Marokane and Koko Matshela those four were suspended. Matshela was Koko was brought in back on the 20 July.

As we have seen in the various images that we have demonstrated that that started to not only indicate the interaction with the businessman as in Salim Essa it also in there – that email he makes the point that the game changer was changing the executive leadership. And that change – that game changer spirit an ethos should be allowed to permeate and be embedded in the organisation at levels below. So we also need to see this in the context of Eskom's size I indicated on Friday Chair that if Eskom was a listed company Eskom would have been number 2 if not number 1 in its size if you just look at their revenue. The revenue of Eskom is around R190 billion. They are – what they buy – what they spend is if you just look at coal it is just shy of R100 billion. They
 10 buy many other things so they are big as a target that if you get hold of them you can really be in business and you can live well for a long time. Whether you can sleep well is another question. And its impact on the economy the systemic impact of Eskom in the economy.

CHAIRPERSON: Well maybe whether you can sleep well depends on what is happening with law enforcement agencies.

MR JABULANE ALBERT MABUZA: Well Chair we do hope that in the fullness of time it would be shown that crime does not pay. But for date – to date we have unfortunately seen people whom we know have broken the law, people whom we know that they have stolen and they continue to flounder their ill-gotten gains almost to create to
 20 society that it is good to do this thing. You do not need to go to school. You do not need work. You do not need to pay your taxes. What is the point of doing this if I can sit in some hotel foyer with a laptop on free wi-fi and get tenders? As I have demonstrated at the hearing on Friday but how do say to a person whose company has just been set up a week before you call for tenders? If they have ever seen anything they have seen 10 million and you give them a contract for R1.5 billion. So

unfortunately one hopes that at the end of the work of this commission that ethos would be brought back to society that you do have to work hard. You do have to work hard and pay your taxes and spend your after tax money as you see fit. So from your lips Chair to the legal process and the various prosecution processes that are in place we do hope we will get to that point. So I was saying the systemic nature of Eskom and its impact on the economy it is such that it is important that not only structures but people that are placed in Eskom who have demonstrated and it has been seen that this has been multi-layered. This capture has been multi-layered and it is not enough to just deal with structures you need to get people not only of skills, not people of capabilities

10 but peoples of upright standing. People of ethics because the amount of authority you give to these people requires such that you do not keep on second guessing them. What we have seen here, we have seen people of skills for which they were – the basis on which they were placed at Eskom but they had other skills which Eskom can do best without. So we also leaving the commission with a list of names Chair we have covered four or so of those names but I think it is important that I place on record that there are fifteen or so names that I strongly encourage that the commission invite these ladies and gentlemen to help the commission in its work and in no order of importance Brian Molefe, Matshela Koko, Mr Sean Maritz, Mr Anoj Singh, Ms Suzanne Daniels, Mr Prish Governor, Mr Edwin Mabelane, Ms Ayanda Ntetha, Mr Charles Kallima, Mr Abram

20 Masongo, Ms Mia Bana Naidoo, Mr Zethemba Khoza, Mr Eric Wood, Mr Ben Ngubane, Doctor Ben Ngubane, Mr Salim Essa. We think they would be of great help to the commission's work and Chair just to close. I said earlier and I hope I have managed to convey why it is our belief that corruption is just the name the real game is procurement. Let us look into that area. Thank you very much Chair. Thanks for the privilege and we remain available should the commission think we can be of further

help and this note and these lists that I have read we are happy to submit with a little paragraph of the points we trying to make that the commission can be assisted.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Thank you.

CHAIRPERSON: No thank you very much Mr Mabuza. I am sure that the – I mean the some of those names are already well known to the legal team and to the commission in terms of what has been placed before the commission but I have no doubt that the names will be given to the legal team. But thank you for coming to give evidence in regard to Eskom as Chairperson of the board of Eskom that started in January last year
10 and thank you for indicating your commitment to come back should the commission ask you to come back. I have no doubt that other people within Eskom in the leadership of Eskom will also be sharing that commitment to come and give evidence before this commission in regard to matters that fall within their knowledge. Thank you very much you are excused.

MR JABULANE ALBERT MABUZA: Chairman thank you very much.

CHAIRPERSON: Thank you.

MR JABULANE ALBERT MABUZA: And wish you luck.

CHAIRPERSON: Thank you very much. Yes Mr Maleka.

ADV VINCENT MALEKA SC: Chair that concludes today's proceedings.

20 **CHAIRPERSON**: Ys.

ADV VINCENT MALEKA SC: And tomorrow you will hear a lot about Brakfontein from Ms Hofmeyr.

CHAIRPERSON: Yes, yes no that is fine. We will adjourn for today and then we will resume tomorrow. Tomorrow will it be fine if we resume normal time or should we resume early – should we start earlier. Now maybe Ms Hofmeyr might be able to assist

there. You know that we do not want to lose any time but...

UNKNOWN COUNSEL: Indeed.

CHAIRPERSON: But I know – I see that we have actually made sure we have got the nine to ten hour and now we have got the one to two hour which caters for the two to four time that we will not be sitting. But tomorrow how is the situation?

UNKNOWN COUNSEL: Chair we have made arrangements with the witness to be here at ten o'clock.

CHAIRPERSON: yeS.

UNKNOWN COUNSEL: We were not aware of an early start for tomorrow.

10 **CHAIRPERSON:** Ja.

UNKNOWN COUNSEL: I do envisage needing more than the ordinary hours of sittings.

CHAIRPERSON: Hours ja.

UNKNOWN COUNSEL: So I think ten o'clock should be fine.

CHAIRPERSON: Okay, okay no that is fine, that is fine.

UNKNOWN COUNSEL: Thank you Chair.

CHAIRPERSON: We will then adjourn until tomorrow at ten o'clock. The commission adjourns.

INQUIRY ADJOURNS