

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

04 MARCH 2019

DAY 60

20

PROCEEDINGS HELD ON 4 MARCH 2019

CHAIRPERSON: Good morning Ms Norman, good morning everybody.

ADV THANDI NORMAN SC: Good morning Mr Chairperson. Mr Chairperson may I just – unfortunately by the time I wanted to draw the Registrar's attention I see that she had got three files before the Chairperson. There is supposed to be two files only U7 and U8. It would be File 7 it would be U6(a) and then File 8.

CHAIRPERSON: Okay that is fine.

ADV THANDI NORMAN SC: Thank you. And then if I may just – in the U6(a) the Chairperson would recall that that also contains Mr Pillay's statement but those who
10 arrange bundles now formally have decided to place the statement of Mr Shweni it will be marked U7. Inside it is marked – there is a divider Mr Chairperson inside that one, part 1.

CHAIRPERSON: We must just make sure that there is no confusion.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Last week when this lever arch file that I am holding was handed up.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I do not know whether it was you or one of your colleagues I thought she said it should be marked Exhibit U8 but she subsequently said no it is UA.

ADV THANDI NORMAN SC: That was me Mr Chairman.

20 **CHAIRPERSON:** Now you are talking about U7.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: You not talking about alphabet so I do not know.

ADV THANDI NORMAN SC: No in U6(a) Mr Chairman if you turn inside that there is a divider.

CHAIRPERSON: In U?

ADV THANDI NORMAN SC: U6(a) the one that you are holing.

CHAIRPERSON: You see now I have got here Exhibit UA so but you are saying U6(a).

ADV THANDI NORMAN SC: Yes that is how...

CHAIRPERSON: So – so there is more confusion.

ADV THANDI NORMAN SC: In fact Mr Chairman we will mark it for the Chairperson I should have done that but our – what we conveyed last week was that it would U6(a) not just A.

CHAIRPERSON: Well I suppose that when I thought I was told Exhibit U8 I did not hear U6(8).

10 **ADV THANDI NORMAN SC:** Oh.

CHAIRPERSON: And when it was changed to Exhibit UA I did not hear.

ADV THANDI NORMAN SC: 6.

CHAIRPERSON: Exhibit U6(a).

ADV THANDI NORMAN SC: I think maybe it is the way you conveyed it Mr Chairperson.

CHAIRPERSON: So...

ADV THANDI NORMAN SC: But we will mark it properly for you.

CHAIRPERSON: Ja but you – you – I mean even this – so the Exhibit part must be done so let us go back now.

20 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: So this should be Exhibit U6(a)?

ADV THANDI NORMAN SC: That is correct yes.

CHAIRPERSON: And I have a suspicion that the transcript ...

ADV THANDI NORMAN SC: Will not have that.

CHAIRPERSON: Will not be referring to – in terms of last week when we were all

speaking I doubt that anybody was speaking about Exhibit U6(a).

ADV THANDI NORMAN SC: 6(a). Thank you Mr Chairman.

CHAIRPERSON: Because then I would have picked it up.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: To say what are you talking about now.

ADV THANDI NORMAN SC: Yes. No I will – I will make sure that I call up the transcript and rectify that Mr Chairperson. Thank you.

CHAIRPERSON: So it is U6(a)?

ADV THANDI NORMAN SC: Yes. And then in that file then Mr Chairperson if you
10 page through that file there is a...

CHAIRPERSON: Well maybe let us finish first.

ADV THANDI NORMAN SC: Alright.

CHAIRPERSON: What should ...

ADV THANDI NORMAN SC: Then what follows...

CHAIRPERSON: And then there is 7, File 7 in regard to that one. File 7 of – is that in order? That U – Exhibit U6(a).

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: It is written Volume U.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** And then File 7 of...

ADV THANDI NORMAN SC: Yes that is in order and then...

CHAIRPERSON: That is in order.

ADV THANDI NORMAN SC: Thank you. And then below that it would have Andre Pillay and then you will have Shweni.

CHAIRPERSON: Well it does not have Shweni.

ADV THANDI NORMAN SC: It simply says Andre Pillay.

CHAIRPERSON: And it has got Andre Pillay and below that Sup.

ADV THANDI NORMAN SC: Oh thank you, thank you. Then we will correct that during the tea break Mr Chairperson.

CHAIRPERSON: Ja just make sure that what I have is exactly the same as what you have.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And what the witness has is exactly the same as what we both have.

ADV THANDI NORMAN SC: We all have. Thank you.

10 **CHAIRPERSON:** And then there is the File 8 Volume U5 File 8.

ADV THANDI NORMAN SC: That is correct.

CHAIRPERSON: What should that be?

ADV THANDI NORMAN SC: This should be – because we have U7 and then this will also is – if the Chairperson pages through the very first page in that file has got Volume U7 part 2. Does it have – Volume U7.

CHAIRPERSON: Ja it has that.

ADV THANDI NORMAN SC: Yes. And then it will say Part 2.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That is correct.

20 **CHAIRPERSON:** Ja so that one is Exhibit U6 and then it is (a).

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: This one should be Exhibit U7?

ADV THANDI NORMAN SC: Yes let us make this one Exhibit U7 Mr Chairperson please?

CHAIRPERSON: Any alphabet to go with it or not?

ADV THANDI NORMAN SC: No alphabet.

CHAIRPERSON: Okay I have got that. It does not – on the spine it does not tell me whose statements are inside.

ADV THANDI NORMAN SC: Whose statements yes.

CHAIRPERSON: I will correct that Mr Chairperson.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Because all these we have done. I do not know. They must have picked up an extra bundle.

CHAIRPERSON: Ja.

10 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: Then obviously the next one Exhibit U9 it seems.

ADV THANDI NORMAN SC: No that is the same – a different one.

CHAIRPERSON: If that will be done on the spine as well.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Before it – we have to use it.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: We will attend to them during the tea break Mr Chairperson.

20 **CHAIRPERSON:** Okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: H'm.

ADV THANDI NORMAN SC: Thank you. Mr Chairperson today we calling another witness and his name is Sincedile Ebenezer Shweni. He is present. May he be sworn in please?

CHAIRPERSON: Okay thank you. Registrar do that.

REGISTRAR: Please state your full names for the record?

MR SINCEDILE EBENEZER SHWENI: My name is Sincedile Ebenezer Shweni.

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

MR SINCEDILE EBENEZER SHWENI: No I do not.

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

MR SINCEDILE EBENEZER SHWENI: Yes.

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

10 me God.

MR SINCEDILE EBENEZER SHWENI: So help me God.

REGISTRAR: Thank you.

MR SINCEDILE EBENEZER SHWENI: Thank you.

ADV THANDI NORMAN SC: Thank you. Mr Shweni you will – you have two lever arch files in front of you.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: The one is marked Volume U6(a) File 7, do you see that?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: And if you open that file.

20 **CHAIRPERSON**: Well do you want to make sure first that it is marked the way it should be marked all the files he has.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And in particular talk about Exhibit what Exhibits they are.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: As opposed to whatever else.

ADV THANDI NORMAN SC: Is there. If you turn over that file please. You will see – do you see that is written Volume U and then in brackets it is 6(a).

MR SINCEDILE EBENEZER SHWENI: No it is written Volume U.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: File 7 of.

ADV THANDI NORMAN SC: There is no 6(a)?

MR SINCEDILE EBENEZER SHWENI: There is no 6(a).

ADV THANDI NORMAN SC: Alright. Ms – can I just ask that it be marked 6(a). Thank you. And then below that you will see it has got Andre Pillay sup and then does it have
10 your name?

MR SINCEDILE EBENEZER SHWENI: Yes it says Shweni Part 1 witness.

ADV THANDI NORMAN SC: Yes. Thank you. And then the second one is marked Volume U File 8, do you see that?

MR SINCEDILE EBENEZER SHWENI: Yes I see that.

ADV THANDI NORMAN SC: Yes. That will be marked Exhibit U7. It is not – it has not been marked could you mark it Mpho Exhibit U7. But does it have Shweni Part 2 on the spine?

MR SINCEDILE EBENEZER SHWENI: Yes it has.

ADV THANDI NORMAN SC: Thank you. Thank you. If you turn – take Exhibit 6(a). If
20 you – halfway the file there is a divider marked U7?

MR SINCEDILE EBENEZER SHWENI: Yes I can see.

ADV THANDI NORMAN SC: Are you on there?

MR SINCEDILE EBENEZER SHWENI: Yes I can see Chair.

ADV THANDI NORMAN SC: Thank you. And if you turn over that page it will have an index and it will have your statement, is that your statement of Sincedile Ebenezer

Shweni, do you see that?

CHAIRPERSON: Well let us finalise first which Exhibit you want me to have in front of me?

ADV THANDI NORMAN SC: 6(a) Mr Chairperson.

CHAIRPERSON: U6.

ADV THANDI NORMAN SC: U6(a). U6(a).

CHAIRPERSON: U6(a). So...

ADV THANDI NORMAN SC: It is easy to forget the U.

CHAIRPERSON: Yes.

10 **ADV THANDI NORMAN SC**: It is U6(a).

CHAIRPERSON: You see the fact that you say 6(a) means that you must have omitted 6 last week.

ADV THANDI NORMAN SC: Or maybe on Friday maybe that is what happened.

CHAIRPERSON: On Friday yes.

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: We need to refer to each Exhibit the way...

ADV THANDI NORMAN SC: Yes it is.

CHAIRPERSON: The correct way.

ADV THANDI NORMAN SC: Yes that is correct.

20 **CHAIRPERSON**: So that whoever reads the transcripts does not get confused.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Ja okay so.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Where should I go here?

ADV THANDI NORMAN SC: If you go in the middle there is a divider an orange

divider that is marked – and it will be marked U7 that one, the orange one.

CHAIRPERSON: Maybe you tell me the page?

ADV THANDI NORMAN SC: It will – it starts with the first page. But just after the orange divider Mr Chairperson.

CHAIRPERSON: Well the orange divider is not at the beginning and there are quite – it looks like there are quite a few orange dividers. If you tell me the page where it starts that will be easier?

ADV THANDI NORMAN SC: No it will start with page 1.

CHAIRPERSON: Page...

10 **ADV THANDI NORMAN SC**: It will be – it is – there is to be an index after that.

CHAIRPERSON: Is it not paginated the whole bundle is not paginated?

ADV THANDI NORMAN SC: No. No Mr Chairperson because if you recall this is partly the bundle that has Mr Pillay's supplementary statement.

CHAIRPERSON: Ja but each bundle must be paginated throughout so that it is easier because if you tell me – if you have got pagination for the whole bundle and you tell me what page.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Then it is easier then if I am looking for the page of a particular statement.

20 **ADV THANDI NORMAN SC**: Yes. Where you come across the index when you page through Mr Chairperson there is a divider and then it is followed by an index and the statement. It will not be in the beginning because that contains Mr Pillay's. Might I assist Mr Chairperson?

CHAIRPERSON: Did you say Exhibit U6(a)?

ADV THANDI NORMAN SC: That is correct yes.

CHAIRPERSON: The one that has got Andre Pillay's supplementary statement on the spine?

ADV THANDI NORMAN SC: Yes. Yes.

CHAIRPERSON: Okay and then there is an index at the beginning?

ADV THANDI NORMAN SC: No that is not the index that we are referring to this morning Mr Chairperson.

CHAIRPERSON: Ja where is the index that you are referring to?

ADV THANDI NORMAN SC: To be in the middle. May I assist Mr Chairperson if I could just be handed up your file quickly just to page?

10 **CHAIRPERSON**: Well I just want to check because it is not going to help if each time you have to assist me.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I see for example that this lever arch file has got at least in regard to some pages AFP539, is that not a pagination that goes right through?

ADV THANDI NORMAN SC: No, no it does not go right through Mr Chairperson because what they have done they have put in this witness's evidence in the same bundle but as marked as U7.

CHAIRPERSON: Okay I think I have got it but you talked about an orange?

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON**: An orange divider. Is this the one you called orange?

ADV THANDI NORMAN SC: It looks orange to me. Yes. Is that use the colour blind?

CHAIRPERSON: I do not think I have seen – I do not think I have seen an orange this colour.

ADV THANDI NORMAN SC: That is the one Mr Chairperson it should be marked U7.

CHAIRPERSON: Okay I have found it.

ADV THANDI NORMAN SC: Thank you. And then there is an index and then followed by a statement. Has the Chairperson found it? I would like the witness to just identify the statement.

CHAIRPERSON: Found where the statement is. I found the statement.

ADV THANDI NORMAN SC: Thank you. Thank you.

CHAIRPERSON: I do not know about the index but I have...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: That is what we want the statement.

ADV THANDI NORMAN SC: Thank you very much. Yes. Thank you may I just...

10 **CHAIRPERSON:** This is not a statement in the bundle that I used to prepare. The one I used to may have notes that I had made. So arrangements might have to be made.

ADV THANDI NORMAN SC: To replace that.

CHAIRPERSON: That I get the one which might have my notes.

ADV THANDI NORMAN SC: We will do that Mr Chairman.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Alright.

ADV THANDI NORMAN SC: Thank you. Thank you. Mr Shweni if you turn – you have seen the bundle – your statement – you found it?

20 **MR SINCEDILE EBENEZER SHWENI:** Yes.

ADV THANDI NORMAN SC: Could you look at page 28 of that statement?

MR SINCEDILE EBENEZER SHWENI: Page 28 I do not have page 28. Oh on the top, the top yes.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: SES028?

ADV THANDI NORMAN SC: That is correct.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: It will – ja those are the page numbers.

MR SINCEDILE EBENEZER SHWENI: Okay sorry.

ADV THANDI NORMAN SC: It will be SES yes 028.

MR SINCEDILE EBENEZER SHWENI: Okay.

ADV THANDI NORMAN SC: Do you see there is a declaration and there is a signature of a deponent. Is that your signature?

MR SINCEDILE EBENEZER SHWENI: It is my signature Chair.

10 **ADV THANDI NORMAN SC:** And you signed that on the 15 February 2019?

MR SINCEDILE EBENEZER SHWENI: That is correct.

ADV THANDI NORMAN SC: Okay thank you. Do you regard the contents of this statement true and correct?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Okay. You made the statement voluntarily?

MR SINCEDILE EBENEZER SHWENI: Yes I made the statement voluntarily.

ADV THANDI NORMAN SC: Yes thank you. And then if you take the next bundle which is Exhibit U7. Just to identify your statement there. If you – if I may direct the Chairperson to go page 645 of that bundle.

20 **CHAIRPERSON:** What is the page number?

ADV THANDI NORMAN SC: Page 645. Have you found it?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: Oh sorry. Is the Chairperson – has Chairperson found the page 645?

CHAIRPERSON: Yes but why are you keeping these – the main statement and the

supplementary statement in two different bundles?

ADV THANDI NORMAN SC: Mr Chairperson I – we have a new section that does bundles and they have got a system that they have created which they have explained to us – in fact the Chairperson will find that these – in fact from – if you page through that volume you will realise that it is a continuation of the annexures to the main statement. So the question is then the supplementary follows the very last annexure to the main statement. Then the supplementary was received after that. Then it has – it follows that sequence.

CHAIRPERSON: Ja but it is much better that a supplementary statement should be –
10 should come immediately after the main statement because they must be read together, is it not?

ADV THANDI NORMAN SC: The only difficulty that Mr Chairperson is that then the annexures will have to follow the supplementary even if there are annexures to the main statement.

CHAIRPERSON: Well if need be you can then make another copy to come immediately after the statement – main statement.

ADV THANDI NORMAN SC: We will do that okay.

CHAIRPERSON: It creates duplication but that is better rather than read the main statement in one bundle...

20 **ADV THANDI NORMAN SC:** We will do that.

CHAIRPERSON: And go and look for the supplementary statement in another bundle.

ADV THANDI NORMAN SC: We will do that then Mr Chairperson.

CHAIRPERSON: But whoever is preparing these things they are subject to you, the evidence leaders because you must know – you must decide how best to present the evidence and if their way does not agree with your way – your way must prevail.

ADV THANDI NORMAN SC: Unfortunately my – Mr Chairperson it agreed with my way.

CHAIRPERSON: [Laughing].

ADV THANDI NORMAN SC: But now that the Chairperson is point – if it does not agree with the Chairperson then we will change it but it is how I had asked them to prepare it.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: And so that main statement is followed by all of its annexures and then the supplementary follows that and with its annexures.

10 **CHAIRPERSON:** Ja.

ADV THANDI NORMAN SC: Yes. But if it is not convenient...

CHAIRPERSON: It may be...

ADV THANDI NORMAN SC: To the Chairperson we will change it.

CHAIRPERSON: It may be – it may be that we must also talk in due course about other aspects of how some of these recent bundles have been...

ADV THANDI NORMAN SC: Created.

CHAIRPERSON: Put together.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** The sequence of documents. Sometimes a document that is supposed to be at the beginning you find right in the middle.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And – so we might have to talk about that.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: But that is fine for now. Okay let us proceed.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Mr Shweni at page 645 there is

a statement that goes up to page – I will give you the next page – sorry. Without the annexures – that goes up to page 656. Could you turn to page 656?

MR SINCEDILE EBENEZER SHWENI: Yes I am here Chair.

ADV THANDI NORMAN SC: Is that your statement?

MR SINCEDILE EBENEZER SHWENI: Yes it is.

ADV THANDI NORMAN SC: Is that your signature appearing at page 656?

MR SINCEDILE EBENEZER SHWENI: Yes it is.

ADV THANDI NORMAN SC: Are the contents of the statement true and correct?

MR SINCEDILE EBENEZER SHWENI: They are.

10 **ADV THANDI NORMAN SC**: And is that your – did you actually depose to that statement on the 26 February 2019?

MR SINCEDILE EBENEZER SHWENI: Yes I did.

ADV THANDI NORMAN SC: Okay and did you make this statement; the supplementary statement voluntarily?

MR SINCEDILE EBENEZER SHWENI: Yes I did.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Mr Shweni you might have to raise your voice a bit. Ja and do not be too far from the mic.

MR SINCEDILE EBENEZER SHWENI: Okay.

20 **CHAIRPERSON**: Okay alright.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: So that everyone can hear you in the room.

MR SINCEDILE EBENEZER SHWENI: I will do so Chair.

CHAIRPERSON: Okay. Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Could we then go back to

Exhibit 6(a). You can put aside the bundle that has got your supplementary statement we are going to the U6(a). Thank you. For the record Mr Shweni.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: You will be opening the statement that has got U7 in the middle. Is that the one? The main statement U7.

MR SINCEDILE EBENEZER SHWENI: Yes mine is at the beginning Chair.

ADV THANDI NORMAN SC: No, no that is the wrong file. I said – that is the supplement – that you are opening the Part 2 of the statement.

MR SINCEDILE EBENEZER SHWENI: No I am at Part 1.

10 **ADV THANDI NORMAN SC:** Oh is it – oh you Part 1; okay.

MR SINCEDILE EBENEZER SHWENI: Page SES002.

ADV THANDI NORMAN SC: Alright okay. Thank you. Now could you just for the record place on record your qualifications please?

MR SINCEDILE EBENEZER SHWENI: I have a BCom degree in Accounting and a Post Graduate Diploma in Accounting. I qualified as a Chartered Accountant in South Africa.

ADV THANDI NORMAN SC: When did you qualify as a Chartered Accountant?

MR SINCEDILE EBENEZER SHWENI: I wrote my exam in 1995 and then did my Articles and I fully qualified in 1998.

20 **ADV THANDI NORMAN SC:** Thank you. And where – I understand you are now – it is common that you are employed by Eskom, am I correct?

MR SINCEDILE EBENEZER SHWENI: Since 2001 yes I have been.

ADV THANDI NORMAN SC: Yes and how did you rise within the ranks of Eskom?

MR SINCEDILE EBENEZER SHWENI: Well I started in 2001 as a Senior Financial Analyst working in the Generation Department. Generation Finance in the Generation

Division. I stayed there for three years and then there was an opportunity for a promotion at the Eskom Treasury Department and I joined them in 2004. And I was seconded for a year outside of Treasury Department to Project Development Department. When I returned and then I was promoted to a Corporate Specialist after that year and a half of secondment. So since then I have been a Corporate Specialist.

ADV THANDI NORMAN SC: Thank you. What do your duties entail as a Corporate Specialist?

MR SINCEDILE EBENEZER SHWENI: My duties entail putting together and compilation of the corporate – of the financial funding plan which forms part of the corporate plan. Mainly once that is compiled I engage with the lenders to raise
10 financing for the organisation from different sources of financing export traded agencies, development financing institutions and then from time to time we do interact with the lender community. So but in the main it is to raise funding for Eskom.

ADV THANDI NORMAN SC: Yes. You are familiar with what is referred to as the Huarong Transaction, am I correct?

MR SINCEDILE EBENEZER SHWENI: Yes I am familiar Chair.

ADV THANDI NORMAN SC: Yes could you just in the first page of your statement you deal – you mention the persons that you dealt with insofar as this transaction is concerned.

20 **MR SINCEDILE EBENEZER SHWENI:** Yes [mumbling] Chair.

ADV THANDI NORMAN SC: Yes could you just mention the persons and their positions?

MR SINCEDILE EBENEZER SHWENI: The first person I mentioned is Mr Anoj Singh who was the then Chief Financial Officer. And his role in the transaction he was a signatory of the term sheets. And Mr Caleb Cassim who is the current Chief Financial

Officer he is the signatory to the two board submissions and also was – took part in the short term financing discussions. I also mentioned all board members including Doctor Pat Naidoo the Chair of the IFC and the new board members who were involved when I presented and we had discussions on the transaction. Fourth person I mentioned is Mr Andre Pillay who is the – was the initial key point in treasury for Huarong who is the current Treasurer at the moment. The next person is Ms Kgatliso Goitsemondimo she was involved in the procurement process that featured Huarong both RFI and RFP request for information and request for proposal. I mention number 6 Mr Poobie Govender who was the General Manager in Special Projects. He was involved in the project or asset development aspect of the transaction. Next is Ms Gabriela Palacios-Flusk who was the legal advisor but she joined in the transaction much later. She has got a construction contract expertise. Second before last is Ms Lerato Mahinini who is our Investor Relations Manager at Treasury. She was involved in arranging the meetings and the trip, mainly the trip to China. Last one is Mr Thabaleng [indistinct] who is the member of the team she assisted in putting together one memorandum.

ADV THANDI NORMAN SC: Yes thank you. And could you briefly Mr Andre Pillay did testify on Friday as you may be aware and he gave the Chairperson the background as to how they met representatives of Huarong. Could you just tell the Chairperson about your first interaction with the representatives of Tribus and Huarong?

20 **MR SINCEDILE EBENEZER SHWENI:** Yes Chair the meeting was arranged to around about 1 June 2016. I attended the meeting there were quite a number of people that were invited to the meeting. Some of them could not make it so I ended up with Mr Rajeev Thomas who was the CEO of Tribus. So we had a brief discussion. He explained the concept to me and then I gave the feedback to Andre. That was succeeded by a meeting with all the parties that were invited in the previous meeting

except for Ms Judy Rafael. Attending the meeting were Mr Rajeev Thomas on the flip chart demonstrated the concept. The people that were present in that second meeting was Mr Andre Pillay himself, myself, Mr Poobie Govender which I mentioned. A gentleman by the name of Prish Govender who was the General Manager in Project Development and he came along with his colleague Wim Terblanche.

ADV THANDI NORMAN SC: Yes so how was this concept received? At that point I understand these are initial stages of the concept or the proposal but how was it received by the Eskom team?

MR SINCEDILE EBENEZER SHWENI: Well it is not something that we never did at
10 the treasury but the colleagues in the room Mr Prish and Mr Poobie Govender they seemed to be aux fait so it was going to be the first of its kind that we were dealing with so we had to get our hands around it. But it was well received that this is something that we could look into and pursue and follow certain processes.

ADV THANDI NORMAN SC: Yes. You – at that point – at that time you reported to Mr Andre Pillay and I believe you still report to him, is that correct?

MR SINCEDILE EBENEZER SHWENI: Yes that is correct Chair.

ADV THANDI NORMAN SC: Thank you. Now – then the meeting – the concept is put to you as Eskom.

MR SINCEDILE EBENEZER SHWENI: Yes.

20 **ADV THANDI NORMAN SC:** And then thereafter you deal with the process of unsolicited proposals because Mr Andre Pillay told us that it was an unsolicited proposal and then you deal with the process that Eskom has in its policy as to how these are to be handled.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes could you just refer Chairperson going through the

process.

MR SINCEDILE EBENEZER SHWENI: The process, yes. That is correct Chair we treated this as an unsolicited proposal and we have got a document that guides us but we will get into that document at a much later stage because it is in the supplementary. But at a high level the process is as follows: Whoever comes with the unsolicited proposal meets a – one of the treasurer representatives and usually and in most cases Andre is part of that initial discussion. So he will rope in whoever he feels should also be part of the conversations and, and then we had discussions and the next step in the process would be to do some backing or verification of the entity especially if the entity

10 is fairly new like Huarong and I, I, I make a statement that myself, White & Case we did the high level verification but it happened at the various stages of the process, but ideally that high level should happen right at the beginning and then the counterparty will give us a term sheet which we will evaluate. If there is a requirement for us to exchange some information we will protect confidentiality of our information by getting into a non-disclosure agreement with that counterparty. In this instance I do not think at that stage we were going to share non-public information. So there was no need to share that. Then the proposal if it is palatable to the needs and requirements of Treasury then we would take it either through an open tender process which we call a request for proposals or if it is a bespoke transaction which we feel that he, it is this and

20 counterparty is the only party that will give us the solution, the procedure or the, the practice note allows not to go the, the RFP route. However the recent National Treasury Regulations require that if we go that route meaning we do not go the open tender then we will have to write a motivation to the National Treasury of a sole source and say, motivate why this is the only entity that is giving us the solution. However with respect to Huarong we although they mentioned that their proposal was bespoke we

decided to err on the cautious side so we went the, the RFP route. Once the RFP is evaluated by the team and the procedure states how the team should evaluate what it should look for declarations of interest and all those things and the proposal is acceptable by the team then it needs to go to what we call Treasury Assets and Liabilities Committee. It is a Committee made up of the Heads of various sections of the Treasury. They also allow some attendees in the, in the Committee to participate but decisions are made by, by the members. It is discussed there and it is approved for recommendation to the CFO. In this instance this proposal did not go to, to the, to the ALCO. So it did not fulfil that requirement. So once ALCO [intervenes].

10 **ADV THANDI NORMAN SC:** Before, before you deal with that.

MR SINCEDILE EBENEZER SHWENI: *Ja.*

ADV THANDI NORMAN SC: And you maybe saw that you do not have to come back it.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Do you know of the reasons why it was never referred to ALCO?

MR SINCEDILE EBENEZER SHWENI: I do not know Chair, but what I know is that this was overtaken by events and the event being the Chair of ALCO at the time which is Mr Anoj Singh told Andre that they need to submit the proposal to the higher Committee
20 than ALCO which is Board Investment and Finance Committee. So that nullifies once the proposal or solution goes to the high level committees so it nullifies the need to go, to go to ALCO and he also, maybe I am jumping the gun here. It is, the proposal was also in terms of how it was presented as a term sheet. It was also signed. So if a Chairman of ALCO or the CFO puts his signature in, in a document that was supposed to have been discussed at the lower level Committees in my mind it nullifies the

requirement for it to go to ALCO.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: When you referred to Andre you are referring to Mr Andre Pillay?

MR SINCEDILE EBENEZER SHWENI: Mr Andre Pillay yes.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Thank you Mr Chair.

MR SINCEDILE EBENEZER SHWENI: Because I report directly to him.

ADV THANDI NORMAN SC: Yes, thank you. Then you, then you were going through the process, yes.

10 **MR SINCEDILE EBENEZER SHWENI:** Yes and then.

ADV THANDI NORMAN SC: If it had gone and then.

MR SINCEDILE EBENEZER SHWENI: If it had gone to ALCO.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: We would write a memorandum to CFO and then CFO would consider the memorandum and approve and recommend for, if it needs to go to high level committees like the Board IFC. Then he would put, append his signature to that and then it goes to that Committee.

ADV THANDI NORMAN SC: Yes. Yes, you continue please.

20 **MR SINCEDILE EBENEZER SHWENI:** So in 5.8 I do make, sorry in 5.7 I do make mention of the fact that by pure chance the memo was prepared because we were preparing a memo for the signing of the term sheet in December and I prepared the memo and it had a recommendation that it needs to go to Board.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: So that is how it sort of, we filled that requirement for the CFO to be informed and to look at the proposal and see whether he

recommends for higher level approval.

ADV THANDI NORMAN SC: Yes and now having, we have not reached that point where you are going to deal with the actual proposal.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: But the fact that ALCO then was; that step was, was, was jumped does that have any impact negative or positive to the handling of the process as a whole, of the proposal as a whole?

MR SINCEDILE EBENEZER SHWENI: In my mind yes Chair. ALCO is quite a, a very, they have got a, very rigorous process of interrogating proposals because of the
10 elements that were in this proposal. First of all it was new and maybe the terms and conditions of that proposal not maybe they are quite onerous. They, they would have had several interactions and iterations of interrogating the, the, the proposal.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: And perhaps it would not have gone through ALCO.

ADV THANDI NORMAN SC: So not.

CHAIRPERSON: Is it; I am sorry.

ADV THANDI NORMAN SC: I beg your pardon.

CHAIRPERSON: Is it normal for a proposal to go to a higher level like the CFO you
20 were talking about without going through that Committee?

MR SINCEDILE EBENEZER SHWENI: In the Treasury environment it is not normal that we do things that way.

CHAIRPERSON: Yes and, and you, would your expectation be that if it went to the CFO if a proposal that had been unsolicited if it went to the CFO without going through that stage the CFO should return it to that Committee. Is that what you would expect?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Thank you Mr Chairman and at this point when Mr Anoj Singh said look this must go to IFC did he advance according to your knowledge any reasons why that step was going to be jumped?

MR SINCEDILE EBENEZER SHWENI: I do not have any knowledge of that Chair.

ADV THANDI NORMAN SC: Yes, thank you and then you, you have annexed most of the annexures from, if, if I may just, just to complete this picture. If for example you go to Annexure SS1. It is just where you deal with the correspondence arranging the meetings. Am I correct?

MR SINCEDILE EBENEZER SHWENI: That is correct Chair.

ADV THANDI NORMAN SC: You have referred to it in the earlier paragraphs and then SS2 is the same, but then SS3 is the White Case, White & Case email.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Which we had raised and referred to extensively on Friday with Mr Andre Pillay.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Because he had annexed it to his papers.

MR SINCEDILE EBENEZER SHWENI: Yes.

20 **ADV THANDI NORMAN SC:** With the leave of the Chairperson we will not deal with that, but just briefly because you have dealt with it at this early stage of your, of your, of your evidence. What was the input of that memo from White & Case?

MR SINCEDILE EBENEZER SHWENI: The, the input of that memo at high level they, they highlighting some structural questions in terms of how this entity or Huarong what we need to interrogate in terms of these entities. So it deals with that verification so

that once we interrogate those, the structure of, of Huarong and its parent company.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Which they, they, in the proposal they are highlighting quite extensively then it would be able to give us who is who.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: In the whole structure of the, of, of the, of the group.

ADV THANDI NORMAN SC: Yes and were they at that early stage that is March.

MR SINCEDILE EBENEZER SHWENI: Yes.

10 **ADV THANDI NORMAN SC:** Around March 2017.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Were they recommending that this, this is a structure that, this is something that you must go along with, sign if you have to sign?

MR SINCEDILE EBENEZER SHWENI: No, in actual fact in this email they are making reference to the meeting that happened.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: But their actual recommendation is that at this stage because there is no clarity in terms of who this entity is we should not sign the term sheet.

20 **ADV THANDI NORMAN SC:** Yes and then.

CHAIRPERSON: Just before you proceed.

ADV THANDI NORMAN SC: Sorry. Yes.

CHAIRPERSON: When you were explaining the various steps in the process which is, which are followed when there is an unsolicited proposal. I understood you to, to say that a term sheet would come in at some stage. Now I just want to confirm that that is

what you were saying. That is what you said in relation to what is normal procedure.

MR SINCEDILE EBENEZER SHWENI: Yes Chair it is normal.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: After the proposal.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Has been sketched to us.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Expectation is that we will get a term sheet.

CHAIRPERSON: Yes. Well I may have misunderstood Mr Pillay. I thought he was
10 saying you know a term sheet is not part of what is the usual process. Maybe he meant
the specific terms in the specific term sheet that was used in regard to Huarong maybe
were not usual but you say it is normal to have a term sheet?

MR SINCEDILE EBENEZER SHWENI: Yes it is normal to have.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: A term sheet for. Us to proceed.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: To engaging the, the lender.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Or the proposed lender.

20 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: We need to have the term sheet which sets the
tone.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: And the basis of our.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: Discussion.

CHAIRPERSON: Okay, alright.

ADV THANDI NORMAN SC: Thank you Mr Chairman. If, my, my recollection was that he was saying the signing of the term sheet was, is what was not normal.

CHAIRPERSON: Oh, the signing.

ADV THANDI NORMAN SC: The signing of the term sheet.

CHAIRPERSON: But the term sheet would be part of.

ADV THANDI NORMAN SC: But it, it.

CHAIRPERSON: Ja.

10 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: But it would not be signed?

ADV THANDI NORMAN SC: Yes, Mr Chair.

CHAIRPERSON: Okay, alright.

ADV THANDI NORMAN SC: Thank you. Maybe.

CHAIRPERSON: Would you confirm that?

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: Mr Shweni?

MR SINCEDILE EBENEZER SHWENI: Yes, I can confirm in my eight.

CHAIRPERSON: Thank you.

20 **MR SINCEDILE EBENEZER SHWENI:** 10 years or so of doing funding.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: Execution.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: I have never signed.

CHAIRPERSON: You do not sign a term sheet.

MR SINCEDILE EBENEZER SHWENI: Never signed a term sheet.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: Okay. So that.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: That is what was unusual in the sense?

ADV THANDI NORMAN SC: Yes Mr.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes.

10 **CHAIRPERSON:** Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman and then you also in paragraph 5.2, you do not have to go back. That is when you are dealing with the process. You have attached a memo and the emails that you received. If you could turn to page 37. That is SS4

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: And then that appears at page 38.

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: And then there is an email there from [indistinct].

MR SINCEDILE EBENEZER SHWENI: Yes.

20 **ADV THANDI NORMAN SC:** To you.

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: That email is, I find it to be quite important in line with your evidence. If you could just read the summary and the conclusions. First tell us who [indistinct].

MR SINCEDILE EBENEZER SHWENI: [Indistinct], if, if you see then on the addressee

Chair there is a person named Beke Moloi. Beke Moloi.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Yes. Beke Moloi is the one I contacted initially. She worked in the Business Intelligence Section of, of the business. I approached her when we were faced with a number of entities that were cropping up in the Huarong structure, requesting her to, to do some verification checks. So she asked [indistinct]. So [indistinct] was a colleague or is a colleague of, of Beke Moloi.

ADV THANDI NORMAN SC: Yes, thank you.

MR SINCEDILE EBENEZER SHWENI: Okay.

10 **ADV THANDI NORMAN SC:** Could you just tell the Chairperson what were their findings then?

MR SINCEDILE EBENEZER SHWENI: So should I read the summary?

ADV THANDI NORMAN SC: Yes, yes the summary yes.

MR SINCEDILE EBENEZER SHWENI: Okay. So the summary and the conclusion reads as follows:

“The information found could not establish a link between China Huarong Asset Management Company to Huarong Investment Company Limited and Ideva International Group.”

The second point is:

20 “There is no information available in the public domain about Ideva International Group Limited.”

The third point is:

“Jianbao Chen, he is the only Director and shareholder as indicated in the email from [indistinct] leaser of Norton Rose Fulbright South Africa responding to email from

Matthew Richard of White & Case.”

Next point is:

“He is the joint Chairman and Joint Chief Executive Officer of another company called Sino Energy and International Holdings Group Limited.”

Next point is:

“Mr Chen has been Managing Director of Beijing Ideva Energy Management Company Limited since 2001/2003.”

ADV THANDI NORMAN SC: 2011.

10 **CHAIRPERSON:** 2011 and 2013.

MR SINCEDILE EBENEZER SHWENI: Sorry, sorry, 2011 and 2013, apologies. Next point is:

“No information can be found about Beijing Ideva Energy Management Company Limited.”

The last point is that:

“Mr Chen graduated from [indistinct] Politics Institute China where he majored in Economics and Management and holds a Master’s Degree from School of Economics and Management of Tsinghua University China. He has been a Managing
20 Director of different companies. Mr Chen has an extensive experience in Corporate Management.”

So those are the findings.

ADV THANDI NORMAN SC: Thank you and then, so you have these findings and you had requested that your Intelligence Section investigates this part?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Who did you convey these findings to?

MR SINCEDILE EBENEZER SHWENI: I conveyed the find, the findings to Andre because I reported everything that I did to him and also to our, I think Gabriela at the time.

ADV THANDI NORMAN SC: Yes and if you page thorough.

MR SINCEDILE EBENEZER SHWENI: And, and also.

ADV THANDI NORMAN SC: Sorry.

MR SINCEDILE EBENEZER SHWENI: To, to White & Case.

ADV THANDI NORMAN SC: Thank you. Then if you page through at page 42. So the
10 same emails. Could you just read what you convey to Mr Moloi there?

MR SINCEDILE EBENEZER SHWENI: “Informally...”

Is that where I?

ADV THANDI NORMAN SC: Yes. That is where you start yes.

MR SINCEDILE EBENEZER SHWENI: “So informally as discussed see
constitutional doc not convincing at all and this is the party to
which the money must be paid to. Kindly check other
companies in the structure including China Huarong Asset
Management Company who is meant to be the holding
company of Huarong Investment Company Limited.”

20 **ADV THANDI NORMAN SC:** Yes. So then this is what triggered then their response
which you have just read?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: That is what triggered their response.

ADV THANDI NORMAN SC: The.

MR SINCEDILE EBENEZER SHWENI: Because we, we, we had asked for some information through White & Case and then that information was supplied to White & Case via their legal counsel which is Norton Rose.

ADV THANDI NORMAN SC: Yes and then if you have done, done that email in fact I have read it incorrectly the way in which an email is supposed to be read but the, the one following the one that you have just read 7 June 2017 you will see that quite a number of people are copied in the email from Mr Richard Matthew.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Where he deals with these very concerns about, about
10 the structures about Ideva, about the China Huarong and, and all that.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: So in other words those people would have been alerted to these difficulties at the same time as you were informed?

MR SINCEDILE EBENEZER SHWENI: At the same time or shortly before.

ADV THANDI NORMAN SC: Or shortly before.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes, thank you and then you also deal, if I can just go through your annexures so that you do not go back.

MR SINCEDILE EBENEZER SHWENI: Yes.

20 **ADV THANDI NORMAN SC:** Because you dealt with them in the early parts of your statement.

MR SINCEDILE EBENEZER SHWENI: Correct.

ADV THANDI NORMAN SC: You deal with SS5 which is also still the same emails saying more or less the same thing?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes and you have at page 57 what is marked as, as, as six.

MR SINCEDILE EBENEZER SHWENI: Okay.

ADV THANDI NORMAN SC: Which is the term sheet that you referred to?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: In your statement?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Mr Pillay has referred to this term sheet yesterday on Friday, I beg your pardon.

10 **MR SINCEDILE EBENEZER SHWENI:** Yes Chair.

ADV THANDI NORMAN SC: On Friday and he was taken through the key issues that were sort of a bone of contention between the Eskom Team and Huarong. Am I right?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: And those would appear at page 59. I just want you to confirm whether those are the issues or matters that you took issue with. Is it going to be reflected in your evidence later? Page 59, you have got paragraph 5, the facility fee.

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: Of 1.6 percent and what else did you take issue with on that page?

20 **MR SINCEDILE EBENEZER SHWENI:** Cancellation fee.

ADV THANDI NORMAN SC: Yes and the percentage.

MR SINCEDILE EBENEZER SHWENI: So for facility fees the percentage and the period that that when it is going to be payable.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: We do take also on the annual commitment fee

and.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: And the cancellation fee, yes.

ADV THANDI NORMAN SC: Yes. So those were the matters that were raised?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes. Now if you go back then to your statement and you have told us the procedure how it had to be followed and you have told us what was omitted which is ALCO at this point.

MR SINCEDILE EBENEZER SHWENI: That is right.

10 **ADV THANDI NORMAN SC:** Let us then proceed and see, because you have told the Chairperson that inasmuch as there was possibly no need to go the RFP route you decided that you should err on the side of the caution and you embarked on that?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: Thank you. Could you then just proceed then from where we left off at paragraph 5?

MR SINCEDILE EBENEZER SHWENI: Yes, if you proceed to.

CHAIRPERSON: Before you proceed.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** You said that whereas Treasury or as Eskom you feel that a particular unsolicited, unsolicited proposal comes from an entity that is the only entity that can execute it or that can do that job you do not issue RFPs, and RFP. Now my question is how do you know that they are the only ones who can do that when you have not invited other possible or invited the public to come forward?

MR SINCEDILE EBENEZER SHWENI: Ja. So that is that is the strong motivation that you have to put across to National Treasury based on their directives that this is the

only entity. I have tested the market. There is nobody who can provide that. Hence for us we did not opt for that route, because we did not know whether there is nobody out there in the market who can provide the same solution. So we decide to open it up to the market so that we do not make that mistake.

CHAIRPERSON: Oh. Is the position then normally where you are not going to go the open route? You test the market in some other way first. Is, is that what, before you conclude that the people who have sent you the proposal are the only ones who can do that job. In other words you have a way of testing whether there are other people out there or not? I heard you talk about testing the market. How do you test the market?

10 **MR SINCEDILE EBENEZER SHWENI:** The.

CHAIRPERSON: In that context.

MR SINCEDILE EBENEZER SHWENI: Yes. Chair I am and I must qualify I am not too au fait with some deep procurement processes.

CHAIRPERSON: Okay, okay.

MR SINCEDILE EBENEZER SHWENI: But a request for information.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Would be sent in that regard and a request for, for information you would not contract out of it and if the response from the request for information is only this person.

20 **CHAIRPERSON:** Hm.

MR SINCEDILE EBENEZER SHWENI: then you do not go into the open market.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: Requesting for firm proposals.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC:

MR SINCEDILE EBENEZER SHWENI: So I think in the motivation that you would write to National Treasury is that after the market using request for information.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: And this was the only respondent or person who responded and hence I am not opening up into the market. I will negotiate with this, on a bilateral basis.

CHAIRPERSON: Okay. Well it maybe that it is not something that you, you deal with regularly in terms of procurement as you say. It is just that I have heard you said before and I did not understand why, what harm it would cause even if you thought that
10 a particular entity is probably the only one that can do the job what harm it would cause to invite anyone of the public who might be able to provide the same service and then when there is nobody then you say okay then this is the one, because it just seems to me that there might be room for wrong things when you, you are able to say no these are the only people who can do this without allowing the public to come forward if they have got, if there are people who, who, who can do the job, but as you say it might not be something that you, you, you are able to deal with fully.

MR SINCEDILE EBENEZER SHWENI: Well Chair the normal practice in Treasury and we are sort of the subset of that entire procurement area is we for any new ideas and consent we will not contract without testing the market.

20 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: So I was just talking from a theoretical perspective.

CHAIRPERSON: Yes, okay.

MR SINCEDILE EBENEZER SHWENI: But the market would be tested.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: Using the RFI.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC:

MR SINCEDILE EBENEZER SHWENI: And if that is the route that that department would follow and there is only one respondent perhaps they are allowed to go the sole source route.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: Bu they need a very strong motivation and approval.

10 **CHAIRPERSON:** Hm.

MR SINCEDILE EBENEZER SHWENI: By National Treasure.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: As to why they are going the sole source route.

CHAIRPERSON: Hm, hm.

MR SINCEDILE EBENEZER SHWENI: But we, we normally err on the side of caution.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: For new proposals to open it up to the public form a Treasury perspective.

20 **CHAIRPERSON:** *Ja.* Well maybe you do provide an explanation. You, you say they would do the RFI and that that is the way of testing the market.

MR SINCEDILE EBENEZER SHWENI: That is correct.

CHAIRPERSON: And if the RF, the response is to an RFI show that nobody is coming forward, this is the only one. Then that is the basis on which you say there is no need to issue an RFP?

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: Okay, thank you.

MR SINCEDILE EBENEZER SHWENI: Yes and also further to add, to add Chair the practice note that I referred to.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: In the supplementary it, it does not talk about the sole entity.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: But what it talks about it talks about the bespoke nature of the proposal.

10 **CHAIRPERSON:** Yes, okay.

MR SINCEDILE EBENEZER SHWENI: So if, if, if that.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: The proposal is something that you cannot find, you think you cannot find anywhere.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: And it allows for you to engage.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: With that particular entity on a bilateral basis.

CHAIRPERSON: Okay, thank you.

20 **ADV THANDI NORMAN SC:** Thank you. Thank you Chair. Then you deal in paragraph 6 with the request for information which you have just mentioned to the Chairperson.

MR SINCEDILE EBENEZER SHWENI: Yes Chair my involvement in that I was requested, this was run by Kgatlhisgo Goitsemodimo and she advised me that the, this was issued and she invited me to assist with the evaluation of that and Huarong was

part of those that responded to the request for information.

ADV THANDI NORMAN SC: Yes and then can you just take us through that process?

Would it also be just like the RFP be advertised in a newspaper? How, how, how is this RFI sent out to the public?

MR SINCEDILE EBENEZER SHWENI: Yes Chair. It, it would follow the similar route.

Currently we are advertising our portal and National Treasury's portal. So we compiled as document which gets signed by our Treasurer, Mr Pillay, getting approval from CFO.

So we would write a memo for the CFO to let him sign the, the RFP/RFI letters. Then once that is done we get in touch with our Tender Office and they advise us in terms of

10 how to put it in the, in the portals.

ADV THANDI NORMAN SC: Yes. Now let us not talk theoretically. Let us talk about this particular one. Did you see this one? Did you see that it was advertised in the portal, National Treasury portal? Did you get?

MR SINCEDILE EBENEZER SHWENI: No.

ADV THANDI NORMAN SC: Documentation to show you that this particular RFI was indeed issued?

MR SINCEDILE EBENEZER SHWENI: No Chair I did not.

ADV THANDI NORMAN SC: You did not?

MR SINCEDILE EBENEZER SHWENI: No.

20 **ADV THANDI NORMAN SC:** Thank you.

MR SINCEDILE EBENEZER SHWENI: Because I was not involved in the, in the issuance of that RFI.

ADV THANDI NORMAN SC: Alright, but then you are invited to a meeting on 4 November?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: To discuss the evaluation?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Did you attend the meeting?

MR SINCEDILE EBENEZER SHWENI: Chair I attended the, the meeting. It was a bilateral meeting between me and Ms Goitsemodimo. My recollection.

CHAIRPERSON: I am sorry. I am sorry. I am sorry. Where about in the statement are we now?

ADV THANDI NORMAN SC: Paragraph 6. I beg your pardon Mr Chairman. It is paragraph 6.

10 **CHAIRPERSON:** Okay, alright. Thank you.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Yes. You may proceed.

MR SINCEDILE EBENEZER SHWENI: Ja. My recollection of the conversation that I had with Ms Goitsemodimo was the difficulty she was encountering in, in the fact that we cannot contract out of the RFI. I do not know how she was informed that we could. She was in discussions with our procurement colleagues outside of Treasury to try and clarify what the processes are. So that was the main conversation around the RFI, we never got to look at the details of the proposals and what they were containing, because I think our understanding was that it was going to be a futile exercise if we do
20 the evaluation based on the fact that we were never going to contract out of that.

ADV THANDI NORMAN SC: I'm not following, you are invited to the evaluation meeting.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: And what did you evaluate?

MR SINCEDILE EBENEZER SHWENI: We didn't evaluate the proposals.

ADV THANDI NORMAN SC: At all?

MR SINCEDILE EBENEZER SHWENI: Not at all, not at this stage, the proposals we evaluated them at the RFP stage, so the conversation was around the challenges that Goitsemodimo was experiencing with regard to this whole RFI process.

ADV THANDI NORMAN SC: Okay, now ...(intervention)

CHAIRPERSON: I'm sorry, just confirm if I'm right, I'm getting the impression that what you are saying is you are invited to an evaluation but actually you found that this was an evaluation in circumstances where there had not been an RFI, and that was wrong but the person who had invited you may have understood it differently and you say
10 that's wrong because you can't contract out as you put it of RFI.

MR SINCEDILE EBENEZER SHWENI: The title of the invitations says RFI evaluation, so I'm sure there's a lot of background checks and consultations that she did.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: By the time we get to the meeting the conversation was not this is how we're going to evaluate but the conversation was about how we proceed because now she's been advised of being informed that this process, this RFI process it really does not have an evaluation that is required when we do the RFP so that we can award to anybody because you cannot do that under the RFI process, so that was the main contention of the conversation.

20 **CHAIRPERSON:** We may be talking on the same – of the same thing. You are saying, and you must just confirm if I'm correct, you are saying an evaluation happens after an RFP, not before an RFP, is that right?

ADV THANDI NORMAN SC: An evaluation with the intention to award the contract yes.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: So at RFI stage you don't do such evaluation.

CHAIRPERSON: Yes, but is there any evaluation of any kind that is done at RFI stage?

MR SINCEDILE EBENEZER SHWENI: There would be Chair because you evaluate all the proposals and see perhaps which ones you would perhaps shortlist for RFP or the one that you can take for a sole source that I have alluded to, so there would be an evaluation.

CHAIRPERSON: Yes, so the difference would be the purpose.

MR SINCEDILE EBENEZER SHWENI: Yes the difference is the purpose, so the
10 purpose for the RFI is just to give an indication that who can provide what in the market in terms of the solutions that you are looking for but you cannot contract out of that process, that is what Ms Goitsemodimo was advised.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: And that was the main discussion between the two of us.

CHAIRPERSON: That's what she was advised at the meeting?

MR SINCEDILE EBENEZER SHWENI: No, no before.

CHAIRPERSON: Before the meeting.

MR SINCEDILE EBENEZER SHWENI: So when I got to the meeting for she said to
20 me Sincedile we've got this problem.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: We've got the proper results but we cannot contract out of them, I think in her mind I don't know who advised her, in her mind she thought the process for the RFI could lead us to the conclusion and award of the contracts.

CHAIRPERSON: Yes, oh so your understanding then is that at some stage she had understood that at RFI stage you could grant a contract so to speak.

MR SINCEDILE EBENEZER SHWENI: Yes sir, yes.

CHAIRPERSON: But before you got to talk to her she had been advised differently about taking a different position, she accepted that you can't contract out at that stage.

MR SINCEDILE EBENEZER SHWENI: That's my understanding

CHAIRPERSON: And you simply confirmed that as well in discussion with her that you also thought the same, that was your understanding to that, it couldn't be done at that stage?

10 **MR SINCEDILE EBENEZER SHWENI:** Well I didn't know much about the RFI Chair because I've never been involved in any RFI, I only do just RFP's.

CHAIRPERSON: Okay.

MR SINCEDILE EBENEZER SHWENI: So I think this was the first time that we went that route.

CHAIRPERSON: Okay, alright, so but in terms of what you said the heading of the invite to this meeting had been what she said to you namely that this could not be done, did it mean that the meeting could not proceed really for its objective.

MR SINCEDILE EBENEZER SHWENI: For what it was stated, meaning to go through the proposals.

20 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: And evaluate, in actual fact I think the intention normally if she – this is what she did on the RFP, she invited me for the evaluation and what we did was to source some support and ideas of how we need to run the evaluation, who needs to be part of the team, so I don't think the discussion at that stage for the RFP was to go through the proposals but was to talk about the strategy in

how we are going to approach the evaluation.

CHAIRPERSON: Okay, alright, thank you.

ADV THANDI NORMAN SC: Thank you, thank you Mr Chairman. Then following on the Chair's questions then what was going to become of this RFI process that Eskom had embarked upon, if there was not going to be an evaluation of the process?

MR SINCEDILE EBENEZER SHWENI: Well she it's more information that you've received but it had to be abandoned and if the intention was to award this to go the RFP route so that you can fulfil that objective.

ADV THANDI NORMAN SC: And then in abandoning the process I would take it that
10 all those who had responded to it would be told, I just want to test it, I don't know how the process works but I would imagine you've invited people to give you information on this proposal, they've responded to you and then you realise that oops we can't evaluate so what do you do, do you inform the people that look we've received your information but because the process that you embarked upon doesn't enable us to contract out of the RFI we are going to abandon it, or how does the process work?

MR SINCEDILE EBENEZER SHWENI: I could check with her but as a matter of course at the end of whatever process we would write and inform the participants. In actual fact to a point Chair in terms of why we are proceeding to your point some of the participants in the market because I think they're fully aware of the fact that no
20 contracting can come out of the RFI they didn't even participate and then they participate in the RFP, because they know this is just for information.

ADV THANDI NORMAN SC: Okay, thank you. Thank you Chair. Then let's move on, you deal with the in paragraph 7 with SS6 and SS14 which are the term sheets, SS6 at least from Huarong, am I right? Sorry, thank you alright, you do that in paragraph 7?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: What was this review all about that you mentioned and that you deal with in that paragraph?

MR SINCEDILE EBENEZER SHWENI: Well Chair when we get the term sheet you will review whether the acceptability and whether we're comfortable with the proposed terms and conditions on the timesheet, so that's the review.

ADV THANDI NORMAN SC: Yes, and you did that with the Huarong ...(intervention)

MR SINCEDILE EBENEZER SHWENI: I did that with the Huarong term sheet and I think I attached a term sheet where I've got my review comments.

ADV THANDI NORMAN SC: Yes, and then at this point Eskom is still running with the
10 one proposal from Huarong, correct?

MR SINCEDILE EBENEZER SHWENI: Can you ...(intervention)

ADV THANDI NORMAN SC: At this point the only term sheet that Eskom has is from Huarong?

MR SINCEDILE EBENEZER SHWENI: I don't think so. No I don't think so because at various stages we do have unsolicited proposals that we evaluate, so it could not have been that we were running with Huarong.

ADV THANDI NORMAN SC: Oh did you review any other term sheets?

CHAIRPERSON: I think what Ms Norman is talking about is in relation to this Huarong proposal.

20 **ADV THANDI NORMAN SC:** Yes that's correct.

CHAIRPERSON: That's the only term sheet you got namely from them, that's what she's talking about.

MR SINCEDILE EBENEZER SHWENI: Yes, yes, that's the only one I got from them on the – through Andre on the 18th, that's the only term sheet from them.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: But I thought what she was saying Chair with due respect is that other than Huarong were we busy with any other transaction.

CHAIRPERSON: I think what she meant is other than Huarong did you get a term sheet from anybody else relating to this particular issue that Huarong sought to address in the unsolicited proposal? I think that's what she was talking about.

ADV THANDI NORMAN SC: Yes thank you.

MR SINCEDILE EBENEZER SHWENI: So we moved away from the RFI, you're just talking in general.

ADV THANDI NORMAN SC: No I am following your paragraph 7, because you're
10 saying that there were meetings and you were reviewing the indicative term sheet, so the question is the term sheet that you're referring to is the Huarong term sheet and no other?

MR SINCEDILE EBENEZER SHWENI: Yes that's it, that's the one I'm referring to in paragraph 7, is the Huarong term sheet.

ADV THANDI NORMAN SC: Okay did you at any point review other term sheets from any other proposer?

CHAIRPERSON: In respect of the ...(intervention)

ADV THANDI NORMAN SC: Yes in sort of the same concept that Huarong was proposing?

20 **MR SINCEDILE EBENEZER SHWENI:** Not the same concept.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: This was the only concept.

ADV THANDI NORMAN SC: This was the only one.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Thank you. So really looking at it Huarong would have

qualified a sole source?

MR SINCEDILE EBENEZER SHWENI: Sure.

ADV THANDI NORMAN SC: In Eskom's terms?

MR SINCEDILE EBENEZER SHWENI: Sure.

ADV THANDI NORMAN SC: Okay.

MR SINCEDILE EBENEZER SHWENI: Because we didn't have anything either following from the RFI and the RFP that was similar to Huarong.

ADV THANDI NORMAN SC: And then if then at this point you're already satisfied that there's no one else, this is the only term sheet that we are dealing with, why not make
10 submissions to National Treasury and say this is the sole source and this is what we want to go with?

MR SINCEDILE EBENEZER SHWENI: For the same reason that I said Chair that the information we got was that some of the entities when you do the RFI they know that there is no real outcome in terms of the award, so it will be very dangerous of us to take what we got from Huarong as something that nobody else could propose, hence in the RFP process now we've got additional proposals and it was maybe to play safe for us so that we stand the test in terms of the correct process that we follow, and we could not – I don't think at this stage when we evaluated in terms of paragraph 7 we were looking in comparisons but where I was evaluating just the term sheet in its own for
20 what are the terms and conditions that were there were acceptable, but not in relation to other proposals that we would have been reviewing at the time.

ADV THANDI NORMAN SC: Yes you see this is where my difficulty is, please correct me if I'm misunderstanding your evidence. Eskom issues an RFI, it gets proposals according to you, but those don't get evaluated because you can't contract out of an RFI. So Eskom's intention then is to issue and RFP, but the already you have a review

of the one term sheet belonging to the one company, I just want to understand why would that be happening because the plan is that we are going to issue an RFP so that everyone else can put in a proposal, so why then was it decided that you must review this particular term sheet without you having at least embarked on that process that you're contemplating.

MR SINCEDILE EBENEZER SHWENI: Sorry Chair I misunderstood your question.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: This term sheet that we reviewed was not part of the deliverables for the RFI. So the RFI process abandoned with everything
10 including Huarong but parallel to this then a term sheet is sent to me by Andre to review, because he received the term sheet from Huarong so we did not isolate, if that's your question, from the RFI process to say here's a term sheet now, this is a separate and independent process from the RFI.

ADV THANDI NORMAN SC: So I take it that you would have received a completely different term sheet from the one that was submitted in the RFI process?

MR SINCEDILE EBENEZER SHWENI: No, no when they made their submissions in all their submissions they submit one and the same thing, even in RFP process what they submitted was the signed term sheet which was signed before the – yes.

ADV THANDI NORMAN SC: So the same term sheet that was submitted in the RFI
20 was the same one that you reviewed?

MR SINCEDILE EBENEZER SHWENI: Yes, correct.

ADV THANDI NORMAN SC: But now given to you under different circumstances.

MR SINCEDILE EBENEZER SHWENI: Yes, not under the umbrella of RFI.

ADV THANDI NORMAN SC: So what was that process called, in terms of the procurement processes of Eskom, the process now that you are embarking on of

reviewing this one term sheet outside the RFI process what is that process called?

MR SINCEDILE EBENEZER SHWENI: It's the same process that I alluded to earlier where you receive the term sheet after the engagement, so it is the process that is before the RFP.

ADV THANDI NORMAN SC: Right, let's not waste time on – I will link this up with your evidence actually going forward. Now let's then ...(intervention)

CHAIRPERSON: Before we may have spoken at cross-purposes, earlier on you spoke about you said that you cannot contract out of RFI.

MR SINCEDILE EBENEZER SHWENI: Correct.

- 10 **CHAIRPERSON:** Now I think what you meant was you can't conclude a contract pursuant to an RFI process, is that right? In other words you can't appoint a service provider as a result of only the RFI process.

MR SINCEDILE EBENEZER SHWENI: That's correct.

CHAIRPERSON: Yes, so for some of us when you say contract out of it means something else, it means exclude the RFI process, you can't exclude the RFI process, you can't exempt yourself from the RFI process, it means the RFI process is obligatory, in other words you don't have an option to skip it, so – but now I understood what you meant, you meant that you can't appoint a service provider pursuant only to the RFI process.

- 20 **MR SINCEDILE EBENEZER SHWENI:** That's correct.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chair, thank you for that. Then you deal with the contentious terms of – on that term sheet.

MR SINCEDILE EBENEZER SHWENI: On this Chair?

ADV THANDI NORMAN SC: Yes, we have already dealt with them, do you want to talk

to that paragraph quickly as to what you found to be concerning, you have already highlighted them from the one that I referred to, the fees.

MR SINCEDILE EBENEZER SHWENI: Yes Chair the bone of contention was the fees, the what they term facility fee, and also the ...(intervention)

CHAIRPERSON: Oh I'm sorry, Ms Norman you need to keep an eye on the watch, you know when we don't take the break at quarter past it affects because then we must come back at twenty five to, whereas it's much better to adjourn at quarter past and resume at half past. I'm sorry Mr Shweni we will have to take the adjournment now. We will resume at half past eleven.

10 **ADV THANDI NORMAN SC**: Thank you Mr Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes you may proceed Ms Norman.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Could you then continue Mr Shweni and deal with what you – the major concerns whereas you deal with them in paragraph 8.

20 **MR SINCEDILE EBENEZER SHWENI**: Yes Chair. The major concerns on the term sheet were the pricing of the transaction it was pitched at libor plus 750 initially which is something that we have never seen before. And the fees including the facility fee, the cancellation fee, the commitment fee, the appraisal fee and the deposit fee or deposit, security deposits that was in the term sheet. So those were the – the contentious items but the upfront fee became number 1 in terms of those because that is what we had as the term sheet suggests we had to pay on the signature of the framework agreement which was upfront. I think the others were quite important as well however because

they were coming much later on in the process. The focus was mainly not that they were not as important as this one focus became this upfront facility fee.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: And I also say in the paragraph that there were interactions and Mr Poobie Govender who I mentioned what his position was played a very important or very active not important part in explaining some of these fee levels in his own understanding and background.

ADV THANDI NORMAN SC: You make a distinction that this was not simply a pure financing transaction.

10 **MR SINCEDILE EBENEZER SHWENI:** Yes.

ADV THANDI NORMAN SC: And how was it different from what you usually deal with within Eskom?

MR SINCEDILE EBENEZER SHWENI: The normal financing Chair is well get a term sheet and we negotiate the loan agreement and – or facility agreement then we just get the money so that we apply to whatever purpose that facility agreement is for. This structure compared to that we were going to give a project to asset to Huarong, they will develop those projects together with their appointed engineering procurement and construction entities and that will done under a special purpose vehicle and Huarong will also go and raise funding and put money into that special purpose vehicle so we
20 would not be interacting with the lenders as we would do in that normal course of business. And once the project is funded using the funds that Huarong has galvanised and the project is constructed then it gets handed over to us for use under a lease agreement. So it is a lease – so it is asset lease kind of structure. But in the pure financing we just go and raise money, we get the money and then we pay the contractors ourselves.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: So I think that is the major distinction between the two – the two structures. And that really complicated I would say our lives were not as simple as we would go and borrow money in the ordinary course of business because we had to deal with the lot of entities, the structure that Huarong was proposing in their proposal.

ADV THANDI NORMAN SC: Yes. And you also in the same paragraph make mentioned that sometimes when Eskom is confronted with projects like those which are – that you are not familiar with you would engage services of an advisor to advise you
10 as to how to go about it.

MR SINCEDILE EBENEZER SHWENI: We – yes Chair I think I was making an example. The context of that was to state the different types of upfront fees that we would use to have. So instances – I mean this we did way back in 2009 we have never done it again where we are not sure of the product that we are going to – the treasury product that we are going to utilise and it is proposed. In this instance it was an export credit agency financing which we were not quite familiar with. Then we solicited the services of a financial advisor who was acting for us, who was advising us and once the transaction is successful then we would pay that advisor sort of a success fee. So that is the context in which that advisor was mentioned.

20 **CHAIRPERSON:** Yes. Thank you. And then in the next paragraph you deal then with the signing of the term sheet in December of 2016 and you say that the circumstances under which it was signed are not very clear to you and I want to understand you were within treasury, you working under or reporting to Mr Andre Pillay, did you go there to ask why were we going to sign it?

MR SINCEDILE EBENEZER SHWENI: I did Chair.

CHAIRPERSON: I am sorry the next paragraph being?

ADV THANDI NORMAN SC: Being paragraph 9 I beg your pardon Mr Chairman.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: If you can mention them [indistinct].

ADV THANDI NORMAN SC: Just the paragraphs I will do so thank you.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Paragraph 9 – yes.

MR SINCEDILE EBENEZER SHWENI: My recollection Chair is that when I was asked
10 to put together a memo because we are going to sign the term sheet Andre's response
is that Anoj made a proposal that the term sheet must be signed which is not common
practice for us.

ADV THANDI NORMAN SC: And you also deal in the same paragraph with the trip to
China.

MR SINCEDILE EBENEZER SHWENI: Yes Chair my – my assessment of the situation
was that shortly after the signing there were arrangements for the trip to China so for
me it appeared as if this was a good gesture before that trip to China so that they can
go when they face the Chinese principles that at least we have got something that we
have – we have agreed upon. So that is – it was not said to me that is the reading of
20 me signing the indicative term sheet shortly before the trip to China.

ADV THANDI NORMAN SC: Yes and you make a comparison of some of the
proposals you made in the term sheets and you attach those. Is there anything other
than what you have told the Chairperson that you want to highlight where you deal with
the various corrected term sheets or is it what you have told comprehensive enough
that you do not have to go back to those?

MR SINCEDILE EBENEZER SHWENI: You mean this paragraph?

ADV THANDI NORMAN SC: Yes, yes.

MR SINCEDILE EBENEZER SHWENI: Or?

ADV THANDI NORMAN SC: Where you deal for instance you deal with the corrected version in Annexure SS22, yes.

MR SINCEDILE EBENEZER SHWENI: Oh ja it is the versions of the term sheets.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: As I was reviewing so I would say I have looked at it this is – this term sheet seems fine.

10 **ADV THANDI NORMAN SC:** Yes.

MR SINCEDILE EBENEZER SHWENI: Yes. So it is not – it is for the same proposal.

ADV THANDI NORMAN SC: It is for the same proposal yes.

MR SINCEDILE EBENEZER SHWENI: Same proposal not different proposals.

ADV THANDI NORMAN SC: Yes but in the end you were also of the view that it could be signed?

MR SINCEDILE EBENEZER SHWENI: Yes I did say ja.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Especially considering the non-binding nature of it.

20 **ADV THANDI NORMAN SC:** Yes.

MR SINCEDILE EBENEZER SHWENI: So when I reviewed I said look it is – for what it is worth it is okay for us to proceed.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: I did say that.

ADV THANDI NORMAN SC: Thank you. We have dealt with the signed one with Mr

Pillay yesterday it is the same one that you put up as Annexure SS23, am I correct?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Thank you. And then you deal with the preparations then for the trip to China.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: At this point there is no RFP in place?

MR SINCEDILE EBENEZER SHWENI: There is no RFP in place because it in December/January.

ADV THANDI NORMAN SC: Yes.

10 **MR SINCEDILE EBENEZER SHWENI:** When the preparations are being made.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: And Chair in that I was asked – well I was told that there is going to be trip to China and it involves CDB which is China Development Bank.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Which we had a relationship at that point in time. We had a facility signed and I was not involved in that transaction, my colleague Judy Raphael was the one handing that transaction. So my response was I mean if the discussions are not about something quite substantial as the signing of the facility
20 agreement you just going there for a term sheet and there is a trip about China Development Bank Judy is the one that is most appropriate to go so I did not go. So what I did I introduced Rajeev to Lerato who was assisting us with the arrangements. That is what that paragraph says.

ADV THANDI NORMAN SC: Yes. Did Judy go – Ms Raphael, July Raphael did she go?

MR SINCEDILE EBENEZER SHWENI: No she did not go the only people that went to China was Mr Anoj Singh, Andre Pillay, Poobie Govender and Prish Govender. Judy did not go.

ADV THANDI NORMAN SC: Yes. If then Judy Raphael was the one who was dealing with the development – China Development Bank did you not find it odd that she would left out of the trip if part of the trip was to meet with the China Development Bank?

MR SINCEDILE EBENEZER SHWENI: Ordinarily yes I did.

ADV THANDI NORMAN SC: I cannot hear you.

MR SINCEDILE EBENEZER SHWENI: I did.

10 **ADV THANDI NORMAN SC:** You did?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: And did you get – did you ask from Mr Pillay as to why is Judy being left behind because she was dealing with this – she aux fait with the – with this China Development Bank loan?

MR SINCEDILE EBENEZER SHWENI: Well Chair I did not get involved in this. As I saying in the arrangements.

ADV THANDI NORMAN SC: Yes.

20 **MR SINCEDILE EBENEZER SHWENI:** So I introduced Lerato to Rajeev so I found it odd at the end when they left that Judy was not part of it so I did not get involved in the preparations so that during the course of the preparation I went to ask the question.

ADV THANDI NORMAN SC: Yes. And you have attached the correspondence between Lerato as you mention her together with Mr Rajeev Thomas?

MR SINCEDILE EBENEZER SHWENI: That is correct yes.

ADV THANDI NORMAN SC: On the preparations?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: As to the logistical ...

MR SINCEDILE EBENEZER SHWENI: Arrangments.

ADV THANDI NORMAN SC: Arrangments.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Mr Andre Pillay told the Chairperson that Eskom actually paid for the trip to China. That Eskom paid for that trip.

MR SINCEDILE EBENEZER SHWENI: It is usual for us to pay for our trips. I confirmed with the – with Lerato as to who paid for the trip and Lerato said Eskom paid for all the arrangements. The only thing that they might not have paid for was the
10 transfers in between well when they get to China – transfers in between various entities.

ADV THANDI NORMAN SC: In fact...

MR SINCEDILE EBENEZER SHWENI: But for...

ADV THANDI NORMAN SC: Sorry.

MR SINCEDILE EBENEZER SHWENI: For travel and accommodation to and from Eskom covered those expenses.

ADV THANDI NORMAN SC: Yes. If I may just – just to wind up that point. If I may refer the Chairperson to SS23 which appears from page – sorry – I beg your pardon SS25 to SS28. The correspondence between Mr Rajeev Thomas and – maybe just to
20 take the Chairperson to page 258.

CHAIRPERSON: Is that on the other bundle?

ADV THANDI NORMAN SC: No, no it is still the same bundle Mr Chair. Page 258.

CHAIRPERSON: Well...

ADV THANDI NORMAN SC: SS27.

CHAIRPERSON: The last page on this bundle that I am having is page 238 – 232.

ADV THANDI NORMAN SC: No that cannot be.

CHAIRPERSON: Ja page 232 is the last page on this one.

ADV THANDI NORMAN SC: Mr Chairperson I will have to sort that out because all – what is the last page on yours Mr Shweni?

CHAIRPERSON: That is Exhibit....

MR SINCEDILE EBENEZER SHWENI: It is 25 or S – on SS27? It is 25 or S – on SS27?

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: It is 259.

10 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: Well it is Exhibit U6(a).

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The last page on mine is 232.

ADV THANDI NORMAN SC: Thank you. Mr Chairman we will have to look in – I do not know how that could have happened when the copies were made from the same bundles but I will look into it. May I just ask the witness to just read it so that in the meantime the Chairperson can get the gist of what I want to convey. Could you just read what Lerato was saying to Mr Rajeev Thomas and his response please?

MR SINCEDILE EBENEZER SHWENI: So it was – start backwards?

20 **ADV THANDI NORMAN SC:** Backwards yes.

MR SINCEDILE EBENEZER SHWENI: So on page 259.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Okay that is Rajeev Thomas.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: On 259 so let me go to Lerato's.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Which is on page 258.

ADV THANDI NORMAN SC: 258.

MR SINCEDILE EBENEZER SHWENI: She is saying:

10 “Dear Rajeev please see attached programme for scheduled 3
as requested. May you kindly assist with the following: May you
please assist us with transportation from Beijing Capital
International Airport to the Reeds Carlton 1 [indistinct] Fung East
Street [indistinct] for Mr Prish Govender, Mr Poobie Governder
on Tuesday 10 January 2017. Their flight is scheduled to arrive
at 14:40. Please also let me know if you can assist with all
transfers including airport transfers and logistics from
Wednesday 11th to Friday 13 January 2017. Please note that the
delegates are scheduled to depart from Beijing International
Airport at 18:30 on Friday 13 January 2017. Please take that
into consideration when you plan the site visit. Please confirm
that this start time of the meetings on Wednesday, Thursday and
Friday so that we can indicate on our schedule. Please also give
us a bit more information regarding the proposed site visit.
20 Lastly let me send me the name, designation and contact details
of the contact person in Beijing. Looking forward to hearing from
you.”

ADV THANDI NORMAN SC: Yes and his response?

MR SINCEDILE EBENEZER SHWENI:

“Hi Lerato please be assured that we will take care of all logistics

requirements of delegation from Eskom.”

ADV THANDI NORMAN SC: Yes. Did you ever try and establish as to what sort arrangements did they then pay for the Eskom delegation?

MR SINCEDILE EBENEZER SHWENI: From who?

ADV THANDI NORMAN SC: From Rajeev Thomas? Mr Rajeev Thomas’s group. Oh that is the Huarong group. What is it that they actually paid for those officials?

MR SINCEDILE EBENEZER SHWENI: Sorry no I did not.

ADV THANDI NORMAN SC: You did not look into that?

MR SINCEDILE EBENEZER SHWENI: No I did not get into the details of the
10 arrangement.

ADV THANDI NORMAN SC: Yes will you – will you be in a position to get that information [indistinct]?

MR SINCEDILE EBENEZER SHWENI: I can request from Lerato.

ADV THANDI NORMAN SC: Yes. Thank you.

MR SINCEDILE EBENEZER SHWENI: Yes. But – but it seems consistent to I do not know the exact details.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: But it seems consistent with what she told me that for what was happening internally once they land Huarong will take care of those
20 transfers and everything else.

ADV THANDI NORMAN SC: Yes thank you. Thank you Mr Chairman. Then you deal the outcomes – with the outcomes in the same paragraph 11 – paragraph 11 you say: “Trip to China and the Outcomes” could you just speak to that please?

MR SINCEDILE EBENEZER SHWENI: Yes there was a letter that I attached which is from Mr Thomas I think it is Annexure SS29.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Thanking the...

CHAIRPERSON: What page is that now?

ADV THANDI NORMAN SC: This is page 13 of the statement, paragraph 11 Mr Chairperson. We took Mr Andre Pillay through that – those – that correspondence.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: The letter that he wrote and the letter that Mr Thomas wrote back to him.

MR SINCEDILE EBENEZER SHWENI: Yes. Okay. Ja. So that is what I – so it about
10 that letter or both those letters and the response and one thing that I did not say in my statement which I found as I was working through my emails is that Andre sends the – his response to me to say: Please read – please read this response before I sign. So the paragraph talks about the letter and that the – and the fact that Mr Pillay confirms in his response that this would be subjected to further analysis. So following that there was the signing of the binding term sheet.

ADV THANDI NORMAN SC: Yes. Why do you say that that is the outcome of the China trip?

MR SINCEDILE EBENEZER SHWENI: Well that is the evidence because I was not there.

20 **ADV THANDI NORMAN SC:** Yes.

MR SINCEDILE EBENEZER SHWENI: That is the evidence that I have in terms of where those discussions have – what transpired let me put it that way.

ADV THANDI NORMAN SC: Yes. Did you get ...

MR SINCEDILE EBENEZER SHWENI: What transpired...

ADV THANDI NORMAN SC: Did you get an impression that these discussions – these

discussions resulted in the parties agreeing that this would be signed when they returned to South Africa or...

MR SINCEDILE EBENEZER SHWENI: From reading Rajeev's letter?

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: But from reading Andre's response that was not the case.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: So that – that could have been at the discussions but from reading Rajeev's it creates the impression that what we spoke
10 about especially with regards to the rates and everything else it is agreed but reading Andre's response it is not.

ADV THANDI NORMAN SC: It is not. Thank you. And you also deal in the same paragraph then with the submission which we also discussed with Mr Andre Pillay.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: It is the same submission at SS32, am I correct to the IFC board and their extract and what they approved as the board?

MR SINCEDILE EBENEZER SHWENI: Yes and I will – I was not involved in the preparation of this submission but I was just tabulating the order of events so on enquiring from Andre he said Anoj told him as I said initially that he must go and
20 present this to the IFC. That is when I was explaining why the [indistinct] could not have been presented. So the submission was Monday to negotiate and conclude and then IFC gave the – gave us the mandate just to negotiate and said but not conclude. So that is what I am dealing with there.

ADV THANDI NORMAN SC: And you also deal – I beg your pardon – I beg your pardon Mr Chairman. You also deal with that in paragraph 12 at page 13. You also

deal with what happened then after – that led up to the signing of the term sheet.

MR SINCEDILE EBENEZER SHWENI: Yes Chairperson.

CHAIRPERSON: I am sorry. I am sorry. You say paragraph 12 page 13?

ADV THANDI NORMAN SC: Yes, yes Chairman.

CHAIRPERSON: Which lever arch file are you using?

ADV THANDI NORMAN SC: The same one that we dealing with before break Mr Chairperson.

CHAIRPERSON: Exhibit U6(a).

ADV THANDI NORMAN SC: 6(a), U6(a) that is the one yes.

- 10 **CHAIRPERSON:** Okay please just hold on. I think you must please make sure I think during lunch this lever arch file Exhibit U6(a) must be paginated throughout as lever arch file if that can be done? Because this thing of – you talking about page 13 that relates to the particular statement and not page 13 of the whole bundle is creating problems. So if that can be done please.

ADV THANDI NORMAN SC: Thank you. The other alternative Mr Chairperson would be to just take out all of that and put it in a separate bundle altogether.

CHAIRPERSON: But also during the lunch break will you and those who can assist you just please go through my files, the witness files and your files make sure that every page is the same.

- 20 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: And that I have got everything that you have got and that the witness has got because as you – as you had a few minutes ago I did not have some of the pages towards the end.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: That you and the witness have. So if during the lunch break we can

have that sorted out so that after lunch we do not have these problems.

ADV THANDI NORMAN SC: Thank you. Thank you Chair. Has the Chairperson found page 13?

CHAIRPERSON: Page 13?

ADV THANDI NORMAN SC: That is correct.

CHAIRPERSON: Ja I have got thank you.

ADV THANDI NORMAN SC: Thank you. The witness was going to talk to paragraph 12.

MR SINCEDILE EBENEZER SHWENI: Yes Chair in preparation for the signing of this
10 binding term sheet I made comments on the later versions of – or the latest versions of
the term sheet and those comments were sent to Rajeev communicated to my principle
Andre. There was a point where he referred me and I think I was still querying some of
these fees and the pricing so he referred me to his letter that he sent to Andre. And he
said to me please go and talk to your boss in a little bit of dismissive kind of way. Not an
engaging in terms of their issues that I was raising. So but unfortunately that time
Andre was not there I did say – seen one of the emails to say I will speak to Andre
when he comes back on Monday on that. So he referred me to both – to both letters. I
– my recollection with that I would have mentioned that but I do not remember the
details of the conversation. So we prepared for signing. I asked one of my colleagues
20 lthabeleng to prepare a signing memo. I gave him background in terms of the memo
that I prepared for the signing of the non-binding term sheet and the term sheet itself.
So the memos were prepared and the signing took place on the 14 March at Megawatt
Park and I was present at the signing.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: So the memo for the signing in line with the

signing request recommended that we could sign the term sheet.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: What we did not do was to solicit at this stage the services of the internal legal but in the next paragraph I did – do mention that this was against the advice of the external legal.

ADV THANDI NORMAN SC: Yes. So at this point when then everybody is preparing memos for the signing Eskom is happy that this should be brought forward – should be supported? That the term sheet could be signed that is the support that – especially treasury department of Eskom which was led by Mr Andre Pillay and you being part of
10 it.

MR SINCEDILE EBENEZER SHWENI: The issues were still there. The issues were still not resolved but in line with the signing request or instruction the memo says we are okay to sign.

ADV THANDI NORMAN SC: Yes. Is there any particular reason why legal internal was not at this time engaged on this matter?

MR SINCEDILE EBENEZER SHWENI: I honestly do not know Chair. We engaged internal legal at a very late stage of the process. And we should have engaged them much earlier so I think we went along with white and case's advice. Perhaps the thinking was that we still early days in the process but in my view I think we should
20 have gathered a multi-disciplinary team from the onset considering the intricacies and the complications of this – of this proposal.

ADV THANDI NORMAN SC: Yes. But then in the next paragraph, paragraph 13 at page 14, 14 you deal then with the white and case memo or advice that they had given.

MR SINCEDILE EBENEZER SHWENI: That is correct.

ADV THANDI NORMAN SC: Yes. And that advice too was not followed, is that

correct? That is what you deal with in that paragraph.

MR SINCEDILE EBENEZER SHWENI: Yes how I knew about the advice is via emails and I read it but it seems as if I was proceeding with the signing of the term sheet against white and case's advice. That advice was not followed.

ADV THANDI NORMAN SC: Yes. And then over the next page you deal with the most important matter of the RFP at paragraph 14 page 15. Could you just take us through that process?

MR SINCEDILE EBENEZER SHWENI: Yes, yes Chair. I opened the paragraph with what we dealt with initially on the RFI which is that Kgathliso advised me that because
10 we could not contract out of RFI – RFP had to be issued.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: So my involvement so she ran with the process – my involvement was during – also during the evaluation phase. So I would have sat with he to discuss the strategy but I also allocated to be part of the team that were evaluating proposals including Huarong. So Huarong pitched – they submitted their proposal which was in a form of a term sheet predominantly and other annexures but the term sheet that they submitted in the proposal was the term sheet that was signed on the 14th. And that in itself sort of created a little bit of uncertainty on how we going to proceed going forward as the – as the entire team not necessarily the team that was
20 evaluating proposals with Huarong. Because what happens the teams are allocated we go as teams to go and review the proposals. We gather as a big group to go through all the proposals. So when we gathered as a big group the question was posed which in all honesty I could not answer Chair, because I was objectively putting myself you know as if I have never dealt with Huarong but the reason this was allocated to me is because of my background. So I was not going to stand in that Committee and defend

and say no this is the reason. So the Committee asked how do you proceed with this because it seems as if it is far down the line. There is signed term sheets. There has been discussions. So the conclusion of the, of the Evaluation Committee is that you just do not know how to deal with this. Let us take it out of, of this process. There were other similar proposals. Not similar in nature or in the outcome of the discussion, but they were similar in the sense that there were other parallel processes which were running. I, for instance the bond process was already, we, we, we had a bond process communitisation. So when we identified some of those proposals as well. We said this looks like a duplication. So let us take them out of, also the Committee decided to take

10 them out of the, of the RFP process but it was not for the same reason. Let me emphasis Chair. It was not for the same reason that Huarong was taken out, because Huarong had, was advanced. I think there is a report that the, my colleague was running with a process that she outlined in terms of how we are dealing with Huarong, how we are dealing with the other, the other proposals.

ADV THANDI NORMAN SC: So I will not be correct then to suggest that Huarong was favoured in this whole process, because Huarong's proposal had already served before Eskom. Their term sheets had been reviewed and Huarong puts in the same term sheet that is signed in December and none of the other people who make a, or entities that make proposals to Eskom have had that advantage. So at that point would I be

20 correct to say that the RFP really was just a sham?

MR SINCEDILE EBENEZER SHWENI: It is a difficult question Chair. Not by the Committee that was evaluating that because I was part of that meeting. The Committee that was evaluating the proposals did not set aside Huarong because it, it received extraordinary favour compared to the others. It is just the Committee did not know how to deal with that. Perhaps outside of the Committee that was evaluating you

could say that Huarong had a bit of a, of a head start compared to, to the others because none of the others had their time sheets signed. None of the other proposals or entities perhaps had visits that that, that that were paid. In that regard you could argue that Huarong had, had a head start.

ADV THANDI NORMAN SC: Yes and then I would putting in a head start it is like they are in a race like your athletes. They are not athletes. We are talking a procurement process. They are not just simply given a head start but they are actually favoured in the sense that the other, in the RFP it is not stated am I correct that there is a proposal that you already have. We have looked into it. You have gone to China to do whatever
10 investigations that you were doing. The term sheet for this particular entity has been signed. So just so you know if you do or you are interested to, to submit your proposals just know that there is already an entity. That does not come out in the RFP. Am I correct?

MR SINCEDILE EBENEZER SHWENI: In the RFP letter that is sent out to the public, no.

ADV THANDI NORMAN SC: No. Now, so it cannot be therefore that they were, they simply had a head start. They were actually favoured looking at the actions of Eskom up to that point when the RFP was issued?

MR SINCEDILE EBENEZER SHWENI: [Intervenes].

20 **CHAIRPERSON:** When you say they you mean Huarong?

ADV THANDI NORMAN SC: Huarong, yes, yes thank you.

CHAIRPERSON: Ja. You remember there is Huarong and there are others?

ADV THANDI NORMAN SC: Yes, the other, yes, yes. Huarong was, was favoured, yes.

MR SINCEDILE EBENEZER SHWENI: Well you could argue but Chair it is difficult to

put on the RFP letter that is going onto the market. Well I am not an expert on that. My colleague could, could respond much better but it, to me it is not appropriate to put on the RFP letter that is going onto the market that by the way we might be receiving a proposal from an entity that has a signed term sheet and, because you do not know whether they are going to tender. So, so to, to put that into the RFP letter for me or letting the market know that this is what is coming not knowing at the point in time when you signing or issuing that that RFP letter you would receive something from Huarong with a signed term sheet and we have gone to China.

ADV THANDI NORMAN SC: Yes and then in the assessment then of that proposal
10 supposed that you are correct that you cannot put it out there but then it means the public is kept in the dark as to the interactions that Eskom has had with one of the entities that submit a proposal. The public does not know, because the whole process of the public participation process is to make sure that public knows exactly what is happening within that process. Am I right?

MR SINCEDILE EBENEZER SHWENI: Correct Chair in the sense that the public did not know.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: When we are evaluating, because we, the closed the, during the closed period ideally we do not negotiate or talk about the RFP
20 that the, the proposing or proponents have put forward. So nobody would know who bid and nobody would know who did not bid.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: And under what circumstances and what is contained therein. So.

ADV THANDI NORMAN SC: Then.

MR SINCEDILE EBENEZER SHWENI: So we will be guided as well by some confidentiality in terms of letting know how many bids. We do not even tell during that process and some of the banks when they come and visit. They do fish around not necessarily for this one, but for other proposals wanting to know who, who bid. We, we keep that very closed.

CHAIRPERSON: Well let, let us get some clarification. I understood Mr Andre Pillay last week to be saying that the proposals that were submitted were not competing with Huarong's proposal and that Eskom had different funding requirements, because that did arise. Is that your understanding as well or am I confusing anything?

10 **MR SINCEDILE EBENEZER SHWENI:** That that is correct Chair. I can demonstrate that with an example. If we go out into the international bond market there is one thing that we are looking for is R20 billion sourced from the international investors.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: So that is that is one product.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: That we are looking for.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: So there is, is homogeneity in terms of what.

CHAIRPERSON: Yes.

20 **MR SINCEDILE EBENEZER SHWENI:** What we want.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Whereas for this one.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: Because it was innovative funding we could get anything from the likes of Huarong to and some of them they submitted by the way

some conventional proposals which in their mind they thought they were innovative. So you could get a wider, a wide range of proposals and so it is very difficult when you do the evaluation to say this one comes first. This one is number two, this one is number three, because you are comparing different offerings.

CHAIRPERSON: But if you, well in this kind of situation was not Eskom's position that one, we need funding. Two, we know how much we need. We need so much and when you then issued the RFP you were asking anyone out there or the investors to come forward and make a proposal whether they could give you the money that you wanted and what the terms and conditions would be or what features that arrangement
10 would have and then you have Huarong, you have somebody else effectively doing the same. Namely I can give you funding. This would be the terms and conditions that I want or these are the features or important features of the arraignment I want to have with you and therefore as Eskom you look at the different ones, but in the end you want to end up with the money on the best terms that you can have from different entities. Was that not the position?

MR SINCEDILE EBENEZER SHWENI: That was the position Chair bearing in mind that the different entities would not be providing a proposal for one funding solution. So you would get exactly what you are saying, but it will be the other one proposing another product. The other one would be proposing another product, because this was
20 quite open. It was not a closed request to say this is what we are doing. We are doing the bond or just doing the export credit agents.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: It could be anything. So, but what you are saying it is correct.

CHAIRPERSON: Well the part that I want to make sure I understand clearly is the

proposition that they were not competing, because I am thinking if as Eskom you want let us say you wanted 10 billion for argument sake. They all want to give you R10 billion or maybe some do not, cannot afford to give you R10 billion but they are proposing they can give you five billion maybe you can get another five billion somewhere else, but they all want to give you the money that you want and what, what would be different would be the terms and conditions under which they want to give it to you. That is what I would, I would imagine. Some of the terms I would imagine might be the same, say the same, same features but there must be some difference somewhere I would imagine and, and then I would think that as Eskom you then have a

10 look at all of these and stick to choose the one that offers you something that best suits your situation. So if that is the situation I do not understand how it is said they are not competing. I can understand maybe that they are not competing if one was to give you five billion, another one wants to give you five billion and then maybe in terms of the terms you know maybe you can have it, deal with this one for five billion have a deal with another one for five billion. Then you have your 10 billion, but maybe they are not competing in that sense, but I am not sure that I understand the idea that they are not competing if they all want to give you the money that you want but under different terms and conditions.

MR SINCEDILE EBENEZER SHWENI: The only difference here Chair is that yes the

20 terms and conditions would be different and yes what we are looking for is this bag of money at the end, but it is the manner in which this bag of money is being delivered to Eskom. So if I were to use the example of the water. In a homogenous situation we would say we want so many litres of water, but it can only be bottled water and so many the quantity, but in this instance yes we know the quantity that we wanted, but the suppliers could bring the water in bottles. They can give them in glasses, in whatever

different form. Hence the different products which could not be competing. Whereas if we said specifically the delivery of water must come only via one means which is bottled water then all the proposals that we have although they different in terms and conditions but they will be competing. So in this instance that is that is not the case. My knowledge of water might not be too appropriate.

CHAIRPERSON: But these people who we are talking about it is their business to lend money. Is it not or they make money out of lending money?

MR SINCEDILE EBENEZER SHWENI: Yes. Yes, Chair that is correct and they have got different products.

10 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: Which they use to lend money. For example we had institutions submitting proposals, one institution.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: And they say for us we think what is innovative it is A, it is B and C.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: And they are talking about three different ways of satisfying the same requirement of giving us money.

CHAIRPERSON: Hm.

20 **MR SINCEDILE EBENEZER SHWENI:** And these are so different in nature and characteristics.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: Such that you cannot evaluate them and say this is, comes as number one because they are just distinct. So you would have one entity doing that.

CHAIRPERSON: But each one of them, each one of them wants you to choose their proposal. Is it not?

MR SINCEDILE EBENEZER SHWENI: That is correct. Whatever we are comfortable with. That is correct Chair.

CHAIRPERSON: Yes. So if, because if you choose, if you choose their proposal they will make money out of the transaction.

MR SINCEDILE EBENEZER SHWENI: Correct Chair.

CHAIRPERSON: They do not want you to choose somebody else's proposal, because then they lose out. Is it not?

10 **MR SINCEDILE EBENEZER SHWENI:** Correct Chair.

CHAIRPERSON: So why are you saying they are not competing? Each one wants to have a transaction with Eskom and that transaction will give them certain benefits.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: Another one wants the same transaction with Eskom in terms of being the one who is chosen.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: You know, because if they are chosen that transaction will give them certain benefits and I would image that when one is chosen and the other is not chosen the one that is not chose does not feel good about that because business that they
20 thought they would do or money that they thought they would make out of the transaction now somebody else will make that money.

MR SINCEDILE EBENEZER SHWENI: Yes Chair. I think competing in the sense that you saying it is correct.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: But competing, I do not know what Mr Pillay.

CHAIRPERSON: But.

MR SINCEDILE EBENEZER SHWENI: I do not know what Mr Pillay was saying.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: But competing in terms of the same or homogeneity of the product.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: This RFP was.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Was right.

10 **CHAIRPERSON:** *Ja*, maybe that is what he was talking about, but I think both Ms Norman and I looking at issues of procurement we are looking at competing simply to say the purpose of any Government department or entity issuing an RFP is precisely to say I want to see what is out there. I want them to compete and then I will take the one that gives us the best terms and conditions and they are committing and everyone wants to be the one to, one that is chosen and then just like any, just like a tender you know. Ultimately one is chosen. The others who are not chosen are not happy about it, but if they have no grounds to take the issue further that is the end of it. So you would say in terms of the, you would accept that in terms of the fact that all these entities want to conclude a transaction with Eskom?

20 **MR SINCEDILE EBENEZER SHWENI:** Yes.

CHAIRPERSON: They are competing, but in competing they come up with.

MR SINCEDILE EBENEZER SHWENI: Different.

CHAIRPERSON: Solutions that are maybe very different from one another?

MR SINCEDILE EBENEZER SHWENI: Absolutely.

CHAIRPERSON: *Ja*, okay alright.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman, thank you. Could you just read the last paragraph of paragraph 14 at page 15?

MR SINCEDILE EBENEZER SHWENI: “The Huarong proposal met most of the requirement of the RFP. However during the evaluation process it was difficult to determine how to deal with it since it had progressed much further (say with a signed term sheet and Board approval to negotiate compared to other proposals).”

Is that the paragraph?

ADV THANDI NORMAN SC: That is the paragraph and then just move forward.

10 **MR SINCEDILE EBENEZER SHWENI:** “There were other proposals that were also set aside to be dealt with under separate processes (make an example of the bonds, export credit agencies and communitisation).”

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Yes, I think the discussion we have just had takes us back to here and actually it arose from this, from the fact that if you accept that Huarong and the other entities that make proposals were competing in the sense that we have discussed if you accept that the question is how is this competition being conducted in circumstances where one of the competitors has already got a term sheet signed, a
20 binding term sheet signed with Eskom because that seems to be an unacceptable way of dealing with this situation.

MR SINCEDILE EBENEZER SHWENI: Clearly Chair that is, I think that is the point that Ms Norman was raising and I used the example of a head start because this entity is not competing as we have discussed. One, even though they are bringing in a unique and different solution on the same level playing field compared to the others.

So your point is valid. Hence the concern that raised by that was raised by the Evaluation Committee if I can use that to say these guys are not on the same level as the other people. We just do not know how to deal with them.

CHAIRPERSON: Well at this stage the term sheet that had been signed was the binding one. Is it not?

MR SINCEDILE EBENEZER SHWENI: That is correct Chair.

CHAIRPERSON: So once if one has regard to the terms of the binding term sheet, I know that last week we did have a look at its terms much more closely than we may have done this morning, but had you not in effect that is Eskom by signing that term
10 sheet effectively and for all intents and purposes said to Huarong we will have a transaction with you. We will have a transaction with you in terms of this.

MR SINCEDILE EBENEZER SHWENI: That could have been. Chair I.

CHAIRPERSON: In other words what I am doing I just want you to give me the benefit of your own understanding and interpretation of this signed term sheet in the context of what was still to be done only to look at other proposal you know. Whether you would not agree, you would not say that the signing of that term sheet having regard to its terms could be regarded as for all intents and purposes Eskom having said to Huarong we will have a transaction with you because the terms are agreed?

MR SINCEDILE EBENEZER SHWENI: I think the; my understanding Chair is that we
20 will proceed to have discussions because that is my understanding of what the term sheet presents. We will have proceed to have discussions subject to whatever approvals that you might have as the organisation, but the signing of the term sheet save for the contradictions that were there which I think you are saying you discussed you kind of agree or knock yourself or give the impression that this is the understanding on which the negotiations and discussions will take place without my deviation from

what we have signed, but that might not with due respect Chair translate to the fact that if negotiations do not go well then because we have signed a binding term sheet we will have an agreement.

CHAIRPERSON: Yes, yes.

MR SINCEDILE EBENEZER SHWENI: Signed at the end.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: So I think.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: That will be subject to the discussions/

10 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: But my understanding is that this is the basis and maybe there is room but not much room.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: For deviation.

CHAIRPERSON: Yes. So it should be expected that a term sheet a binding term sheet is likely to lead to the signing of an agreement but it is not guaranteed that an agreement will be signed. Would that be the right way of putting it?

MR SINCEDILE EBENEZER SHWENI: That is a fair expectation yes.

20 **CHAIRPERSON:** Yes okay, but would you accept that with regard to the other entities who have made a proposal if they were to know before their proposals are considered or if they were to know that before their proposals were considered Eskom had already signed a binding term sheet with one of their competitors. Would you accept that there would be, they would feel aggrieved or would you say they would not feel aggrieved or is it something difficult to, to say as you say?

MR SINCEDILE EBENEZER SHWENI: It is difficult.

CHAIRPERSON: Look at the rules of fair competition.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: Section 2.1.7 says there should be fair competition and by doing an RFP you are trying to adhere to rules of fair competition.

MR SINCEDILE EBENEZER SHWENI: *Ja.* Look from, clear from that perspective and the fact that this is, it is signed and the implications of that signing has, you have, we have discussed that there might be slight no room for much deviation. So these guys that you are engaging of the competition are not on equal footing as I saw it. It is more likely to result in those parties not being happy.

10 **CHAIRPERSON:** You yourself would not regard it as fair to do things that way. Would you?

MR SINCEDILE EBENEZER SHWENI: No.

CHAIRPERSON: Yes, you would not, *ja.* *Ja.* I thought that that was the thrust of your Committee's concern when you said when you met you did not know how to deal with the Huarong proposal because there was this signed, this binding term sheet that had been signed. Was that the thrust of your Committee's concern?

MR SINCEDILE EBENEZER SHWENI: Yes and the fact that this has already solicited some mandates. So that was the term sheet and also the fact that this Huarong proposal has been tabled to solicit mandates to well.

20 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: One mandate to negotiate and conclude.

CHAIRPERSON: Yes. Now you did tell us already but I would like you to repeat because I want to be sure that I understood correctly what you then decided to do as a Committee in the light of this situation. In the light of Huarong's proposal which already had a binding term sheet that had been signed.

MR SINCEDILE EBENEZER SHWENI: Chair because the Committee did not know what to do with it. So it took it out of the process. So saying when we continue with evaluation the Huarong proposal when we score and say these are the proposals that we are going to proceed with will not be part of this. So let us take it out of this process so to say.

CHAIRPERSON: So the; your Committee was there to evaluate the proposals. Is that right? What was the purpose of your committee?

MR SINCEDILE EBENEZER SHWENI: Well it's the evaluation committee, so the team does the evaluation, and see whether this meets the requirements of the RFP and then
10 we go and fit back in the bigger committee and that's the big evaluation committee we've said we just don't know how to deal with this so let's take it out of the process.

CHAIRPERSON: Yes, yes. So you then proceeded to evaluate the other proposals that did not have that binding term sheet?

MR SINCEDILE EBENEZER SHWENI: That's correct Chair.

CHAIRPERSON: Okay thank you.

ADV THANDI NORMAN SC: Thank you Mr Chair. So if one were to ask you how did the evaluation end what would your answer be?

MR SINCEDILE EBENEZER SHWENI: There were proposals which were my recollection which were up for continuation that could proceed with this but we need to
20 follow the process, write report so that we get an approval, but that RFP was abandoned.

ADV THANDI NORMAN SC: Thank you, so ...(intervention)

CHAIRPERSON: I'm sorry, if the Huarong proposal was accepted ultimately and there was a contract entered into by Eskom with Huarong based on the terms on the binding term sheets, of course whatever else they might have agreed additionally later on, but

substantially based on that, would there be room, would there have been room for Eskom to make use of any of the other proposals, room or need to make use of any of the other proposals that your committee was evaluating?

MR SINCEDILE EBENEZER SHWENI: Yes Chair, we would because the evaluation of those proposals as I said they were unique in nature so they would have been, in fact as I said Huarong was the only one who was offering this, but we looked at the suitability of other proposals as well, so those would also fill in funding requirement depending on whether the proposals were accepted to Eskom.

CHAIRPERSON: I take it that what you are saying means that Huarong's proposal
10 wasn't going to result in as getting the total amount that it wanted in terms of the RFP that had been issued, because if Huarong was chosen as the one and it was going to give you the amount that you wanted as Eskom I can't see why you would need the other proposals.

MR SINCEDILE EBENEZER SHWENI: Chair even though the amount that was proposed by Huarong was quite significant and substantial which was one of the benefits that we saw as the team, but that amount would have been – would have benefitted the (indistinct) best because in terms of this structure this was not going to be the best way we receive the bag of money like the other banks, but it would have been paid to the special depots vehicle where the projects, identified and approved
20 projects, were being constructed so it would have benefitted Eskom over the period so that the amount whether it's 1.5 or two billion it would not have benefitted Eskom immediately in one period, because there would have been back to back kind of a milestone arrangement to say when this project is being constructed at certain points in time which perhaps the project is constructed over two to three years this is where the "benefit flows to Eskom", so you would look into other projects that will complement the

funding requirement for that particular period including what Huarong will benefit for that particular period. I'm not sure if I am making sense.

CHAIRPERSON: So I guess that what you are saying goes back to what we touched on when we talked about whether these proposals were completing, what you are saying is Eskom, by Eskom accepting Huarong's proposal didn't mean that Eskom's funding requirements would be met in full?

MR SINCEDILE EBENEZER SHWENI: Correct Chair, not in full.

CHAIRPERSON: It would meet, Huarong would meet certain requirements, funding requirements of Eskom but not all of them?

10 **MR SINCEDILE EBENEZER SHWENI**: And largely depending on the spending profile of that project which has been identified and submitted and constructed by Huarong, say for whatever reason the spending profile of that amounts to 85% of the funding requirement for this year and Huarong executes successfully that project then it means 85% of the funding requirement in via this structure would have been fulfilled, but if for that period it satisfies 50% but because the project is being constructed over a year or two or three years then only that portion.

CHAIRPERSON: But the funding requirements of Eskom that were covered by the RFP that was issued were they all the requirements that Eskom needed to be taken care of as at that time, in other words when these other entities made proposals and
20 Huarong had its proposal if Huarong was given a contract as you have said it wouldn't have met all the requirements, satisfied all the requirements of funding that Eskom had, so the others may then come in. Could one talk about kind of I don't know whether topping up is the right term, but in other words Huarong is unable to cover all the funding requirements of Eskom so they cover what they can and then Eskom looks at what other entities can cover.

MR SINCEDILE EBENEZER SHWENI: Chair that's correct, and that is even correct within the line within the funding plan under which this RFP was issued, which is structured projects, but you must remember Chair the funding requirements of the organisation were not only going to be fulfilled, but that by that line item, there were other components as well in the funding plan which were going to exploit various times to fulfil the entire but if we zoom in into that line which is the shorter products and Huarong benefit, or for lack of a better word disbursement based on that structure fulfils only 50% of what was tabulated in that line, which I'm not quite sure what it is, then we would have to top up with the others.

10 **CHAIRPERSON:** Yes okay, no that's fine. So all the other entities that made proposals whose proposals your committee was looking at their proposals also fell under the same line that Huarong fell under.

MR SINCEDILE EBENEZER SHWENI: That's correct Chair because it was for that line.

CHAIRPERSON: I guess hence your concession that in the sense in which I put it to you they can be said to have been competing, because if one like say Huarong was able to satisfy all the requirements under that line then there would be nothing to give to the others, am I right? Under the fly.

MR SINCEDILE EBENEZER SHWENI: Yes if Huarong becomes the only first
20 preferred and we decide not to give to the others, maybe I need just to qualify my last response Chair, and I did indicate initially that even though this was meant to capture none-conventional funding products, but we did get proposals which could fit in the other lines of the funding proposal, and it was for the same reason that those proposals were sort of taken out to say because there's a process for international born ECA's so we will not consider them here. So I just wanted to qualify that not all the proposals

that we received were particularly fitting into that line, we just got a wide mix.

CHAIRPERSON: Yes, okay no thank you, that was clarified, thank you.

ADV THANDI NORMAN SC: Yes thank you Mr Chairman. So I just want to understand in the procurement industry and correct me if I'm wrong, I'm not sure that there's a process where you can actually say I am going to set this one aside, it's either you disqualify or you accept a proposal. Or am I wrong?

MR SINCEDILE EBENEZER SHWENI: I don't know.

ADV THANDI NORMAN SC: I'm just trying to understand ...(intervention)

CHAIRPERSON: Well he did say that procurement is not particularly his area, ja.

10 **MR SINCEDILE EBENEZER SHWENI**: Yes.

ADV THANDI NORMAN SC: Thank you, maybe ...(intervention)

MR SINCEDILE EBENEZER SHWENI: But what you're saying seems to make some sense.

ADV THANDI NORMAN SC: Yes maybe I shouldn't say procurement, maybe I should just say evaluation, when you evaluate you either disqualify or you accept.

MR SINCEDILE EBENEZER SHWENI: Yes.

20 **ADV THANDI NORMAN SC**: Yes, so when you say then Huarong was set aside what does that actually mean? Huarong's proposal, because of its nature according to you was or the fact that it had advanced from the others it was set aside, what do you actually mean?

MR SINCEDILE EBENEZER SHWENI: We wouldn't proceed to deal with it under this process effectively. I think you're just kicking this out of that RFP process.

ADV THANDI NORMAN SC: Okay.

MR SINCEDILE EBENEZER SHWENI: So I don't want to use the words disqualify or anything.

ADV THANDI NORMAN SC: Yes so ...(intervention)

CHAIRPERSON: Maybe my understanding, and you can just confirm, my understanding is that you were simply saying we don't know how to deal with the Huarong proposal because there is already a binding term sheet.

MR SINCEDILE EBENEZER SHWENI: Correct.

CHAIRPERSON: Evaluation is supposed to take place before there is anything binding. So we will deal with these ones that do not have any binding term sheets and deal with them, we don't know what to do with that one and we will leave it to somebody else to decide what should be done, but we are not going to evaluate it, I think that's
10 what you meant.

MR SINCEDILE EBENEZER SHWENI: That's what I meant to say yes.

CHAIRPERSON: Yes, they were not going to evaluate it but they were not saying it's being disqualified or whatever but they're simply saying as a committee we won't evaluate it.

MR SINCEDILE EBENEZER SHWENI: Yes and even though I mean to add to what to what you're saying to even though the proposal met I did mention the statement most of the requirements of the RFP but in all honesty the committee just did not know what to do with it.

ADV THANDI NORMAN SC: Thank you. In answering some of the questions you
20 used word that the RFP process was abandoned.

MR SINCEDILE EBENEZER SHWENI: Nothing came out of RFP, I mean we – the report was written as far as my understanding from my colleague but we never contracted out of that so even some of the qualifying proposals which were there we never followed up with the entities and say we are going ahead with your proposal, my understanding is that was not the case.

ADV THANDI NORMAN SC: Yes thank you, so then if Mr Pillay told the Commission that that process was not abandoned that cannot be correct?

MR SINCEDILE EBENEZER SHWENI: If he said it was not abandoned?

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Well the correct version is my understanding, my knowledge is that we never contracted out of that and I think it was during the time of when we're facing all these qualifications.

CHAIRPERSON: So when you say it was abandoned to the extent that you may have said that you mean the steps that normally follow after an evaluation when there's been
10 an RFP were not followed in this case.

MR SINCEDILE EBENEZER SHWENI: That's correct Chair to still ...(intervention)

CHAIRPERSON: When you can pursue it.

MR SINCEDILE EBENEZER SHWENI: Yes, to say we like proposal five and six, we don't like the rest so let's write to them so that we can contract ...(intervention)

CHAIRPERSON: Appoint the service provider.

MR SINCEDILE EBENEZER SHWENI: Appoint out of – we can issue an award based on this, that never happened so that's what I mean about being abandoned.

CHAIRPERSON: That's what you mean ja, okay, thank you.

ADV THANDI NORMAN SC: Thank you and then paragraph 15, page 16 just hardly a
20 month thereafter Eskom is engaged in negotiations with Huarong, could you just take us through that process, that is a month, hardly a month after the RFP process had commenced and on the 12th of April 2017 could you just talk to that please?

MR SINCEDILE EBENEZER SHWENI: So clearly Chair the word, the opening word of that paragraph is quite telling because when I say parallel, because it was at the period that that sort of closing report or the report that was compiled by my colleague it was

not written and issued, so the assumption is that this RFP is not closed, so hence the word parallel, so Mr Poobi Govender checked on my emails on the 10th of April, he sent an email and I'm included in that email and apologies I did not put that as part of this because I found it later, that now that the RFP has been signed, sorry now that the term sheet has been signed and based on discussions on the term sheet we need to commence discussions on Alfa, it was still Alfa at that stage, so that is how that was the genesis of the agreement and meetings were set up and he alludes the fact that we – our legal is ready so the other parties they must just indicate their availability to which I think Rajeev responds to say the – Alet on (indistinct) advise and (indistinct) insert
 10 agenda for the meetings to come, so that had then – I did take part on some of the – especially the start-up meetings and the signed term sheet and there was a presentation as well, were part of the pack that we sent to White & Case, and during this process which was a little bit drawn out I did telephonically involve, think about Ms Gabriela Palociois-Flusk because we worked with her on other transactions and we were still working with her on export credit agency financing and I said look there's a lot of asset development construction element involved in this discussions for the Alfa, there isn't much for financing, would you be interested to be part of it, so I invited her to some of the conference calls.

ADV THANDI NORMAN SC: So then the RFP is not concluded so to speak but then
 20 Eskom decides that you're going to run with this proposal by having engagements and then make sure that the agreement is signed, if we agree?

MR SINCEDILE EBENEZER SHWENI: I agree because I did say in the supplementary statement Chair that this was – this is a contravention of any normal procurement sort of regulations where one would while the procurement process is up and running on the side you engage with the same entity for the same proposals, I

make the example of the banks, that when we've got an RFP valuation process running and we have to see the banks we tell them that we're not about to discuss any of your proposals, in fact we tell them that we're in a process, if you're going to talk about anything to do with this then we're not available for discussion so it is in contravention.

ADV THANDI NORMAN SC: Yes and then in paragraph 16 you deal with the fees issues already highlighted and the concerns that you highlighted.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Unless there is anything in particular that you wish to highlight right up to page 19 because this is where maybe you could up to 16.3 deal
10 with those matters roughly, what is it that you were raising, but you've already talked to those unless you feel that you want to emphasize any of the matters that you had raised there?

MR SINCEDILE EBENEZER SHWENI: Chair this is quite a long paragraph, but I need to highlight the fact that this as I said initially one of – well we realised or we realised that the quantum in terms of these fees that's based on the fact that the term sheet was signed already, it is not that open for discussion, in actual fact with the advice or comments from White & Case during our interaction we do mention the fact that look the ship has sailed, I think they were talking about the 1.6, the matching had slightly improved from up by 30 basis points, so there was never rigorous discussions following
20 the signing of the term sheet about the quantum, those rates, so the discussion was mainly about how do we structure now this upfront fee or facility fee such that it's to the benefit of Eskom, so that's what the discussions were all about and they got very heated, especially between Andre and Mr Rajeev Thomas, they would not accept some of the structuring proposals that we were coming with, I do mention in the statement that he mentioned to me at some point, in actual fact he called me as he was driving to

work to say he called me by that name to say I am being threatened here, I said by whom, he said Rajeev. It was at that point that Mr Rex Madida whom personally I have not met for as much as I met Rajeev because Rajeev used to interact quite regularly, it was at that point that Mr Rex Madida came and told me that look the reason you won't be seeing much of Rajeev is that China decided to take him out of the transaction because of this consternation between him and Andre so China will be dealing with us so can you please intervene. So we spoke about that and he invited me to speak to him outside about life, which I did not follow up on that.

So but I do mention, I mean the other paragraphs as you correctly say Chair
 10 was just to compare those fees with what we were used to up to 16.3.

ADV THANDI NORMAN SC: Yes, and then you deal with the Idiva issue, because it also relates to the structure as it was brought to your attention by White and Case, could you just briefly tell the Chairperson what those concerns were and how that entity was going to relate to Eskom?

MR SINCEDILE EBENEZER SHWENI: Yes Chair as I said we're not talking about the verification of the entities but this is something that didn't happen, I find it happened over time and one of the reasons we had to dig deeper into the structure of the Huarong Group which included Idiva that did not have a direct line to the parent company was the fact that this facility fee for about R400million on signing or on
 20 whatever term signing in fulfilment of CP's was going to be paid to this entity, so that gave rise to White & Case and the back-end, the interaction to try and dig deeper as to who they are. So as we are digging deeper and wanting financial information and everything that we could lay our hands on in terms of this entity I was presented with a set of financial statements which were qualified and I queried this to say that we cannot deal with an entity like this then Rajeev provided me soon after that same financial

statements for the same period with an unqualified or clean sort of opinion. So that is how this Idiva came about and that leads to the sub-process as well.

ADV THANDI NORMAN SC: Yes thank you, maybe before we move to that which is a slightly new topic Mr Chairperson I see the time now on my watch is one o'clock, I'm not sure if it is convenient to adjourn for lunch.

CHAIRPERSON: Yes we will take the lunch adjournment and resume at two, we adjourn, thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **ADV THANDI NORMAN SC:** Thank you.

CHAIRPERSON: Yes Ms Norman.

ADV THANDI NORMAN SC: Thank you Mr Chairperson. We tried to rearrange the files to reflect the copy that the witness has and our copies.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: In line with our copies.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Part 1 is – we have taken out Mr Pillay's statement.

CHAIRPERSON: Ja.

20 **ADV THANDI NORMAN SC:** From that bundle. So it would start with Mr Shweni's as you – as Exhibit U7.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Start with his statement and his annexures but they go to the next file which is Exhibit7 that is File 6(a) that I was referring to.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And then unfortunately because of the volume of the

annexures they spill over to the next file.

CHAIRPERSON: Yes okay.

ADV THANDI NORMAN SC: And the supplementary statement is in that one.

CHAIRPERSON: That is fine.

ADV THANDI NORMAN SC: Thank you Mr Chairperson. If you may proceed then Mr Shweni. You mentioned that you had received two sets of financials from Ideva?

CHAIRPERSON: Which – in which paragraph are we?

ADV THANDI NORMAN SC: We are still in paragraph 16.3.1 at page 19. You had statements with unqualified and opinion and others which were not qualified.

10 **MR SINCEDILE EBENEZER SHWENI**: Yes that is correct Chair. And we – well I raised the discomfort I mean to Mr Rajeev so this Ideva entity even afterwards still remained it is unsatisfactory with regards you know how the turn of events on the qualification and also the fact that we still did not have the right verification from White and Case and from our business intelligence with respect to this entity.

ADV THANDI NORMAN SC: Yes. And then if I may just refer the Chairperson to Exhibit U7 at page 441. That would be the other one. Exhibit U7 is that other file please. Page 441.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you Mr Chairperson. Make [indistinct] SS44. I
20 think make reference to that.

MR SINCEDILE EBENEZER SHWENI: Ja got it.

ADV THANDI NORMAN SC: Have it? Thank you. Could you just turn to page 441 of that Exhibit – of the Annexure sorry? Are you there?

MR SINCEDILE EBENEZER SHWENI: I have got it.

ADV THANDI NORMAN SC: Thank you. If you look at it you will see that the income

statement is for the period 15 August 2012 to 31 December 2016. You see that?

MR SINCEDILE EBENEZER SHWENI: Yes. Yes.

ADV THANDI NORMAN SC: So as an accountant what does that mean to you? If you get a statement like this from any entity that is 2012 to 2016, what does that mean?

MR SINCEDILE EBENEZER SHWENI: It means there were no financial statements prepared from the period of what date of incorporation to subsequent period in between the end date suggesting that this entity could be just a shell sort of company. There is not trading or whatever activities.

ADV THANDI NORMAN SC: Yes. And then if you go down you have revenue there.

10 What does the minus mean there?

MR SINCEDILE EBENEZER SHWENI: It is a zero.

ADV THANDI NORMAN SC: It is a zero. What does that mean in accounting terms?

MR SINCEDILE EBENEZER SHWENI: It means they are not generating any revenue.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: There is no activities in the company that gives them any revenue.

ADV THANDI NORMAN SC: Yes thank you. And then if you turn page 445 the company that you are talking about is?

MR SINCEDILE EBENEZER SHWENI: Ideva.

20 **ADV THANDI NORMAN SC:** Thank you. Page 445.

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: Yes under revenue could you just read to the Chairperson what is stated there?

MR SINCEDILE EBENEZER SHWENI: “No transactions were concluded to generate any revenue during the period.”

ADV THANDI NORMAN SC: Yes. So this is the vehicle wherein the money was going to go?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: So it had no track record of having traded and it had no revenue?

MR SINCEDILE EBENEZER SHWENI: Nothing Chair.

ADV THANDI NORMAN SC: Thank you. Now the next thing that you move to is the application that then treasury made to the South African Reserve Bank.

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

10 **ADV THANDI NORMAN SC:** That is at page 16.3.2.

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Have you now moved to – back to the...

ADV THANDI NORMAN SC: I beg your pardon, yes back to Exhibit ...

CHAIRPERSON: Ja you must just – ja just make sure.

ADV THANDI NORMAN SC: I always just forget.

CHAIRPERSON: We know.

ADV THANDI NORMAN SC: Yes thank you. Exhibit – back to the statement Exhibit 6(a), Exhibit U6(a). At page 19 paragraph 16.3.2. You say that you put together an
20 application to the South African Revenue Services?

MR SINCEDILE EBENEZER SHWENI: Reserve Bank.

ADV THANDI NORMAN SC: Ag South African Reserve Bank.

MR SINCEDILE EBENEZER SHWENI: That is correct.

ADV THANDI NORMAN SC: Yes and then you say you were surprised when your application was approved could not understand that, why would it be surprising

because it was your application?

MR SINCEDILE EBENEZER SHWENI: Well Chair I was expecting some – the South African Reserve Bank to come back with a lot of queries because this was not a standard.

CHAIRPERSON: I am sorry what paragraph are we on now?

ADV THANDI NORMAN SC: 16.3.2

CHAIRPERSON: Okay, alright.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Because this was outside of the normal
10 standard applications. The information that I put in the application more especially with respect to the complex structure of the group and I explained in the application what each and every group stands. In my mind I thought that would trigger some interaction.

ADV THANDI NORMAN SC: Yes. Can you just...

CHAIRPERSON: So was this surprise the actual approval.

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

CHAIRPERSON: As opposed to the condition?

MR SINCEDILE EBENEZER SHWENI: Not the condition.

CHAIRPERSON: To – this was the actual approval that was – that you found surprising?

20 **MR SINCEDILE EBENEZER SHWENI:** Yes personally I thought Chair the Reserve Bank would come back with ...

CHAIRPERSON: Queries?

MR SINCEDILE EBENEZER SHWENI: With a lot of queries.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: In terms of that.

CHAIRPERSON: Yes okay.

MR SINCEDILE EBENEZER SHWENI: I even made the comment at some stage that I really did not think that I put this application that well that it would not generate any questions. Perhaps it was not as explicit as I thought I did.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: What...

MR SINCEDILE EBENEZER SHWENI: In terms of the concerns that we had.

ADV THANDI NORMAN SC: Yes. I am just trying to – can you just deal with that aspect. The concerns that had been brought to your attention by White and Case, by
10 legal internally at this point, concerns that you yourself had raised?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Relating to everything that had to do with the term sheet insofar as to impact on Eskom. All of those concerns did you pen those down when you were making your application to SARB?

MR SINCEDILE EBENEZER SHWENI: No I did not Chair because the concern that I would pen down was relating to the – to this Ideva and the structure so I did not pen down the concerns around the fees. I did not pen down the concerns around the margin and everything else. So the concern that I am talking about which I was expected the SARB to revert with in terms of was around the structure. Because
20 remember in the previous paragraph what we were dealing with is the validity of validation of these entities and the reason for us making the SARB application was mainly because of this Ideva entity that we were going to put the money into not necessarily about the other aspect of the term sheet.

ADV THANDI NORMAN SC: But then from what you have told us that would have been the very issue that would have been of concern to you the structure of Ideva.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: The fact that it had no track record.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: No trading record at all.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: And is that how you put it to SARB that this Ideva company.

MR SINCEDILE EBENEZER SHWENI: No.

ADV THANDI NORMAN SC: Which is going to receive whatever it receives is an entity
10 we have checked now somebody had said it was a shoe company it is registered in the
British Virgin Islands, it has no revenue, track record has no revenue whatsoever, did
not have financials for this period, those concerns would have formed the integral part
of your application.

MR SINCEDILE EBENEZER SHWENI: Chair from hindsight now that you raising it and
I was – it did not occur to me at the time in terms of how explicit should I be at the time
I did not raise it to say these are the concerns that we have.

ADV THANDI NORMAN SC: Yes so then how does it become a surprise when it is
approved if you have not stated that information to SARB then how does it become a
surprise then when the application is approved?

20 **MR SINCEDILE EBENEZER SHWENI:** Because of the extent of the information that I
put even though I was – it was not explicit because this was beyond – way beyond the
standard that we – that we normally put in our applications. Look Chair I can – I can
just add perhaps to say – perhaps it is unreasonable expectation of me to have been
surprised if I do not layout in the bare what the concerns were. But the – my orientation
in the treasury department from the people that we are dealing with the SARB day in,

day out in terms of the activities they orientated me around the licence that Eskom had to trade with the SARB which is not necessarily right so to say so I had to – and secondly the relationship that we had with SARB maybe compared to the other organs of state like the Department of Public Enterprise and National Treasury that relationship is a bit on an arm's length transaction. So for me and granted I never enquired as to how sufficient this application is for SARB to come back with the queries so I wanted to air on the cautious side so that I do not risk that relationship so I just put the information not necessarily quite extensively.

ADV THANDI NORMAN SC: Without the information that would have made SARB to
 10 say I do not want to approve this would it be correct for me say what you put up was actually misleading because you left out the very essence of the concerns that you had which might have caused SARB not to approve the application?

MR SINCEDELE EBENEZER SHWENI: I did not think about that at the time Chair.

ADV THANDI NORMAN SC: But when you look at it now this is 2019 when you look at what you put in and what you ought to have to put in do you realise or would you agree with me that what you put in was somewhat misleading?

MR SINCEDELE EBENEZER SHWENI: Yes Chair just – perhaps SARB would have come to a different conclusion if I had put that information on the application. However where I was sort of even – my thinking at the time I agree with you now. My thinking at
 20 the time is that SARB could come back and say “why do you lodge an application with us if you still have got – you do not have your house in order. You raising these concerns about Ideva, you raising these concerns so go and sort out those issues and then you revert to us with a proper application when everything has been sorted?” But – and I could have been wrong I admit but those are some of the things and guarding this relationship so those are some of the things that were going on in my mind.

ADV THANDI NORMAN SC: Yes but what...

MR SINCEDILE EBENEZER SHWENI: Because...

ADV THANDI NORMAN SC: I beg your pardon. I thought you had finished.

MR SINCEDILE EBENEZER SHWENI: I am done.

ADV THANDI NORMAN SC: Thank you. But what would have been wrong with that approach from SARB because from what you have told the Chairperson there was this transaction was not going to put money in Eskom's pocket immediately.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: So there was no urgency from what you have told us so far so if SARB had said "Look you have not complied with ABCD and E go back and comply with that" how would that have affected the process that you were following with this proposal?

MR SINCEDILE EBENEZER SHWENI: It would not have Chair because we had the – the – I do not want to say the luxury of time we had the time because we are not rushing to get the money immediately but it did not occur to me at the time.

ADV THANDI NORMAN SC: Yes. Would I be correct also to say or to suggest to you that what appears to have been clear was that inasmuch as Eskom had all these difficulties around this transaction the officials wanted this transaction to go through?

MR SINCEDILE EBENEZER SHWENI: Not necessarily.

20 **ADV THANDI NORMAN SC:** Alright let us test that.

MR SINCEDILE EBENEZER SHWENI: Well personally I can speak for myself.

ADV THANDI NORMAN SC: Yes. No but we have just dealt with the SARB issue.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: If you were keen to make sure that everything that is supposed to be complied with is complied with your SARB application would have been

different. That we have agreed.

MR SINCEDILE EBENEZER SHWENI: Say that again?

ADV THANDI NORMAN SC: If you wanted to make sure that there is compliance with everything.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Your SARB application would have been different from what it is because you would have told SARB your concerns about these entities and why you think this transaction would be risky to Eskom.

MR SINCEDILE EBENEZER SHWENI: Now yes but at the time that did not occur to
10 me.

ADV THANDI NORMAN SC: No but what exactly was it that was happening at the time which would have made just about everyone to do things wrong. We know that the term sheets were never signed but they were signed. We know that before the RFP's issued people go to China and that has never happened according to your evidence. The RFI process gets abandoned. The RFP process is not proceeded with because of the complexity of the proposals and the differences in the proposals. All of these are happening in this transaction. Now the question is: What is it that was happening which we do not know which Chairperson does not know that was making it possible or possible for the officials or those who were making all these memos that we have – that
20 you have mentioned to say that approve this, this must go through, the term sheet must be signed. You know why – what was actually happening at the time?

MR SINCEDILE EBENEZER SHWENI: Chair that is quite a difficult question. But personally the issue of the signed term sheet that had a cancellation fee on it and making – and that cancellation fee states that if in the process we frustrate the negotiations and the conclusion that haunted me in a way because I wanted to make

sure that I do not stand in the way and be the one who kind of frustrates the process. The example of the SARB that we are talking about if that application be perhaps in my mind were to lay bare all the problems and all you saying to SARB do not approve because we have all those problems and I would not be the one to trigger that cancellation because it could be read that we frustrated the process in terms of negotiation and conclusion and in bad faith. So that is the other thing that was – that was playing in my mind in terms of this thing has been signed so it is really we need to tread quite carefully. The second thing Chair that was happening in the environment the only person personally I could trust so was just myself and I do not know the – the

10 extent to which other people are having different mandates to what we trying to achieve so one had to protect himself in one way or the other such that we – you not in a way – you not in a way so to speak to conclude this [indistinct] and the fee. But predominantly Chair it is – what was happening to me in my mind was the fact that I would not be the one to trigger this cancellation fee.

ADV THANDI NORMAN SC: Even if ...sorry Mr Chair.

CHAIRPERSON: No fine.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Let us go back a little bit. This application to the Reserve Bank I see your statement does not say it – what it was for, what was it for?

20 **MR SINCEDILE EBENEZER SHWENI:** It does not say Chair – the application itself it is for Reserve Bank to approve. That will have dealings with a foreign entity and funds will be flowing to that foreign entity.

CHAIRPERSON: Oh so when you as Eskom are going to be paying money to a foreign entity you need to – the approval of the Reserve Bank?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

CHAIRPERSON: Okay. Now I would imagine that there would be factors that the Reserve Bank would take into account in making a decision on such an application and those facts – some of those factors would count against approving and others would support approving an application such as that, is that correct?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

CHAIRPERSON: Yes. And I would imagine that those factors would be known to people at Eskom who makes such an application to the Reserve Bank, is that right?

MR SINCEDILE EBENEZER SHWENI: Ja that is correct Chair.

CHAIRPERSON: And that when making such an application to the Reserve Bank
10 somebody at Eskom would need to place before the Reserve Bank as much information as possible to enable the Reserve Bank to make an informed decision one way or another, is that correct?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

CHAIRPERSON: And such factors would have been known to you as well when you made this [indistinct] application, is that correct?

MR SINCEDILE EBENEZER SHWENI: Well Chair at the time this was the very first application that we did which was sort of outside of the standard. So you quite correct there that I should have detailed the whole structure of the transaction, what was happening even the concerns. So that they make an informed decision but at the time
20 because this was the first time so I did not know where to draw the line with regards to what information do I provide or not.

CHAIRPERSON: But the concerns that were known to you both those that you held yourself and maybe those that were held by others that may have been mentioned now they might have all coincided and everyone who had concerns had the same concerns I do not know but what we do know is that definitely you had certain concerns and we

know that I think White and Case also had concerns.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: Now there might have been an overlap or it might have been exactly the same concerns. Now would those concerns have been relevant to the Reserve Bank's decision to approve or not to approve the application?

MR SINCEDILE EBENEZER SHWENI: I think the more the information and putting those concerns it would have been.

CHAIRPERSON: And if that is so you appreciate to – do you not that it would therefore have been important that if they remain – those concerns remained not addressed were
10 then when at the time you made the application to the Reserve Bank they should have been disclosed to the Reserve Bank so that they could then take an informed decision?

MR SINCEDILE EBENEZER SHWENI: Chair from hindsight I agree with you.

CHAIRPERSON: Yes. And not putting them into the – and not disclosing them was not right?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

CHAIRPERSON: And the importance of disclosing such information cannot be overemphasised because you do not want the Reserve Bank to approve an application that actually should not be approved, is that right?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

20 **CHAIRPERSON:** Ms Norman.

ADV THANDI NORMAN SC: Thank you Mr Chairman, thank you.

MR SINCEDILE EBENEZER SHWENI: So this is one of the professional errors of judgment in terms of not being fully transparent with the Reserve Bank but at the time Chair I do not think there was an intention to mislead but it is misleading I agree. There was no intention from my end to mislead hence I put the information but it was not

sufficient.

CHAIRPERSON: Well the – one of the parts that causes one concern is that you yourself have told me that you were surprised when the application – when the Reserve Bank approved the application. And now we know from what you have said that you did not disclose to the Reserve Bank information that was relevant and should have been disclosed. The question and I think Ms Norman may have asked the question is how could you be surprised when you did not disclose information that was important to the Reserve Bank to know before making the decision?

MR SINCEDILE EBENEZER SHWENI: Chair I think now that this has been brought to
10 the fore and to my awareness at the time it was a difficult balance to strike as to what information do I – I agree there was no way that the Reserve Bank could have read in between the lines and to say there is a problem here.

CHAIRPERSON: Sometime last week I think I mentioned to a witness – one the witnesses who came here last week or to counsel who was leading evidence that when we deal with these matters that we are dealing with in regard to procurement there could be situations where non-compliance is a bona fide error on the part of somebody who – whose duty was to make sure that there was compliance. But there could be situations to where non-compliance is deliberate and not a result of a bona fide error or even negligence. It is because it is part of a scheme you know to say look you know if
20 we comply with this or that we are not going to achieve what we want to achieve therefore we are not going to comply because we have a certain agenda or objective that we want to secure. So it becomes important that you look at this from those angles because there may well be somebody who will say but was this – was this a bona fide error on Mr Shweni's part or was it something else. So it is important to appreciate that. Sometime last week I think I mentioned to a witness – one the witnesses who

came here last week or to counsel who was leading evidence that when we deal with these matters that we are dealing with in regard to procurement there could be situations where non-compliance is a bona fide error on the part of somebody who – whose duty was to make sure that there was compliance. But there could be situations to where non-compliance is deliberate and not a result of a bona fide error or even negligence. It is because it is part of a scheme you know to say look you know if we comply with this or that we are not going to achieve what we want to achieve therefore we are not going to comply because we have a certain agenda or objective that we want to secure. So it becomes important that you look at this from those angles

10 because there may well be somebody who will say but was this – was this a bona fide error on Mr Shweni's part or was it something else. So it is important to appreciate that.

MR SINCEDILE EBENEZER SHWENI: Thanks, thanks Chair I still reiterate.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: From my end there was no intention.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: And it did not occur to me. I think if you at the point in time because this was a very point to stop the process without any challenges. Because this would have been the decision of an external party. Internally some of the

20 submissions that were made as I alluded to the IFC for example it was done by passing certain processes so there could have been people at powerful positions not for – deciding not to follow the processes but this was an external and other examples as well. But this was an external entity that we were dealing with and now that Ms Norman has put this to my attention I think if we had put all the concerns and everything and maybe be surprised on the other side where SARB's says why do you divulge all of

these you know without resolving them this is a premature application to be surprised on that side would have been more cautious than not laying it out on the bare.

CHAIRPERSON: Well another question is this are you supposed, were you supposed to send to the Reserve Bank an application for the approval that was required that you had reservations about? I am saying that you had reservations about simply because it seems to me that you did have reservations about its prospects of success. That is why you say you were surprised that it was granted, it was approved. So are you supposed to send an application to the Reserve Bank for approval in circumstances where you yourself think that it is not satisfactory or are you only supposed to send to
10 the Reserve Bank something that you are supporting. You are in a position to support yourself?

MR SINCEDILE EBENEZER SHWENI: Normally Chair the Reserve Bank approval in our pure financing transactions we would do it closer to the signing, especially if we are dealing with foreign entities, closer to the signing and the conclusion of the loan agreement. Under those circumstances we already know where we are going with this transaction. So generally we would lodge an application for something that we.

CHAIRPERSON: You support.

MR SINCEDILE EBENEZER SHWENI: We support and we are quite comfortable with.

CHAIRPERSON: Yes, yes.

20 **MR SINCEDILE EBENEZER SHWENI:** It is that, it is just that in this instance this company to which we are going to pay the money cropped up in the middle of the process and we realised that we were going to deal with a foreign and one of the steps that we need to follow, because it was not brought up initially is to go and lodge an application.

CHAIRPERSON: So the; in terms of the norm you would not send to the Reserve Bank

an application that you are; that you do not support or you are not comfortable with?

MR SINCEDILE EBENEZER SHWENI: That is correct Chair, because at the time of us colluding the loan agreement we are proceeding with the signing.

CHAIRPERSON: Now this one we are agreed that you are not comfortable or you had serious reservations about it. We agreed about that?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

CHAIRPERSON: Yes, but were you obliged to send it nevertheless despite your reservations?

MR SINCEDILE EBENEZER SHWENI: It is part of the process Chair. I think we were
10 ticking the box in terms of that. So that, because we having really difficulty. So once again if I laid it all bare this would have really saved us from proceeding. So the “obligation” came as a result of that to say here is an opportunity. This thing is not internal. This is with an external party. I hope the Reserve Bank with what I have put will start asking questions and when they start asking questions then I send them all the information with all the concerns. So that was the thinking.

CHAIRPERSON: You see last week part of the evidence I heard I cannot remember from which witness from Eskom, but at some stage I heard evidence last week to the effect that certain people I think gave information that would reveal that what was being done was not right and therefore would not be done, would not be pursued. I cannot
20 remember the details. So I do not know whether in your case you were making the application on the basis that you did not want it to be approved or whether you were making the application not caring whether it was approved or not or you were making the application hoping that it would not be approved, but accepting that it could be approved. So part of what I am trying to do is to understand where you stood with regard to what you wanted to achieve by being, by making the application and not

disclosing some information that should have been disclosed as we have discussed.

MR SINCEDILE EBENEZER SHWENI: Chair the intention at the end of the day was that this will was going to the gatekeeper which could not be challenged. Hence the surprise, but obviously to go back I take the fact that I should have been even more explicit and in line with the intention and so that the application goes in line with the expectation. One, the expectation was that with the queries that they would raise as I said and with the information that I would give in response to those queries then I do not think the application would have stood any chance of being successful.

CHAIRPERSON: Part of the problem with that is you are aware of factors that would
10 count against the Reserve Bank approving the application. You have the opportunity of including these factors in the application so that the Reserve Bank can make a decision not to approve or if they approved let it be up to them because they have got all the information, but you do not give them that information that could have assisted the Reserve Bank not to grant the, not to approve the application. That is part of where the problem is.

MR SINCEDILE EBENEZER SHWENI: Yes Chair I agree granted that was the error on, of judgment on my side so not to lay it bare.

CHAIRPERSON: You mentioned something earlier about you not wanting to trigger, if I remember correctly.

20 **MR SINCEDILE EBENEZER SHWENI:** Cancellation.

CHAIRPERSON: The cancellation fee.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: I took that to mean you did not want to be seen to be the one who caused the whole arrangement to be cancelled. Is that right?

MR SINCEDILE EBENEZER SHWENI: Yes Chair.

CHAIRPERSON: Is that correct? That is what you were meaning.

MR SINCEDILE EBENEZER SHWENI: Especially if I were to be proved to do that in bad faith.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Frustrate the process of conclusion and negotiation.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Because I will be the one who triggered that fee to be paid, because if I err.

10 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: On that side.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Then it has got other consequences like your fruitless.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: And wasteful expenditure.

CHAIRPERSON: Yes. If the Reserve Bank did not approve then the whole arrangement you would not be able to proceed insofar as a foreign entity would have to be used?

20 **MR SINCEDILE EBENEZER SHWENI:** That is correct Chair and maybe if I can sort of.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Follow up.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: In terms of the explanation

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: We did bring this to the attention of Huarong as we were discussing this whole Ideva and other issue.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: And they mentioned the fact that the; they were looking to apply themselves, because we had these serious concerns about this entity to apply themselves to the Reserve Bank to get a foreign account.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Into which when this money is due and payable.

10 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: It will be payable to them.

CHAIRPERSON: Ja.

MR SINCEDILE EBENEZER SHWENI: So there were a lot of engagements on this.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: So the alternative was sort of on the table. At that time when this came to the fore the application had already been lodged.

20 **CHAIRPERSON:** Hm. Now what would you say to somebody who might say well you did not give, the reason why you did not give the Reserve Bank this other information about factors that would count against the granting of approval the reason why you did not do that because then it could potentially trigger cancellation and then you may have thought that you would then be blamed for triggering the cancellation?

MR SINCEDILE EBENEZER SHWENI: No Chair that would not have triggered the cancellation.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Because it is an independent process.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: It is outside of sort of Eskom's control.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: Perhaps the only or one of the ways that it could have been is if someone gets hold of the application.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: Of which when we do these transactions the lawyers representing the lenders when they check that all the processes have been followed as part of the CPS. They do not only require the approval, but they request.

10 **CHAIRPERSON:** The application?

MR SINCEDILE EBENEZER SHWENI: The application.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: To see the sufficiency. So in my mind if someone representing, as an example.

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: The lender and they see the application and the application was a bit obstructive insofar as the approval is solicited then you trigger in that instance this cancellation clause because as much as the facts are correct and as they are but if one could argue that it deliberately went out of your way [intervenes].

20 **CHAIRPERSON:** Yes. No that, I think that is what I am having in mind.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: So in other words it is not the mere decision by the Reserve Bank.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: It is what may be argued caused the Reserve Bank to arrive at that decision.

MR SINCEDILE EBENEZER SHWENI: Yes sir.

CHAIRPERSON: So in other words whether it could not be said that your thinking might not have been that look if I put this negative information in their application and the Reserve Bank does not approve. At some stage somebody might look at the application and see that I put in all these negative things and maybe I could then be blamed and that is the reason why the reserve bank refused so in that way I triggered that is what I was talking about.

MR SINCEDILE EBENEZER SHWENI: That is the delicate balance at the time that I had to deal with.

10 **CHAIRPERSON:** Yes.

MR SINCEDILE EBENEZER SHWENI: But I could have add on, on the other side as well.

CHAIRPERSON: Ja, okay. Thank you. Ms Norman.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. Thank you. Then let us move forward then Mr Shweni. You are onto paragraph 16.3.3.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: You indicate there that Huarong was keen to proceed with the deal.

20 **MR SINCEDILE EBENEZER SHWENI:** Yes regardless of the fact that at the time we were dealing with a possibility of having some events of default triggered by the situation that we were busy handling of a qualified audit opinion but they sort of disregarded that and there are two implications with respect to this. No, have, we cannot enter into any new financing agreement if we have an event of default or a potential event of default. So that we explained to them. I think they kind of stood back for, for a while and then they came back even before that issue was finally put to bed

and the second thing is financially we are not in a good space because of the qualification we could not raise funding. So the last in our minds was securing 400 million to pay Huarong. There was financial requirements for other things. So this did not become the, because of the qualification this became a secondary, very secondary issue to us, but regardless of that they insisted on the conclusion.

ADV THANDI NORMAN SC: Yes and then you tell us about 16.3.4, page 20 about now the short term financing strategy that that came about.

MR SINCEDILE EBENEZER SHWENI: Yes. I do not know the genesis of it because I got involved in the middle, but I think it was at the point where did not solicit funding
10 and our management executive said well this is not giving us financing immediately. What we need now, I mean talking about this alpha or [indistinct], what we need now is what is going to give us cash immediately because nobody is lending to us. So even though those discussions were proceeding they did not sort of let go in terms of focusing on the conclusion of the long term facility, because in my mind I think there end goal was that once this is fine, it is concluded the facility fee would have to be paid.

ADV THANDI NORMAN SC: We have canvassed this this short term proposal because that was made when Mr Andre Pillay who says he made it on the instructions of Mr Sean Maritz on Friday with him, but then this approach did not go the RFP. It did not go the RFP process. It was simply a proposal made to them and if they would
20 agree it then Eskom would have had an agreement with them on that basis.

MR SINCEDILE EBENEZER SHWENI: It did not go through the RFP. That I can confirm.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: I was part of one or two meetings and my role in terms of this was to review the mandate letter and I see that there was a term sheet

attached, short term sheet attached to the mandate letter as well which I had my comments and one of the comments that we made to Huarong was that if we mandate you meaning giving the mandate letter to go and raise funding in China. Then we were breaching the RFP processes, because there will not be any basis for us to mandate, but I think because of those complications and the guarantee the whole thing sort of fell flat. There was, because Huarong was insisting that we cannot go and raise funding without a mandate letter.

ADV THANDI NORMAN SC: Yes and you also deal with the finalisation of the fee letter discussions. Before we get to the point where you deal with the pressure that
10 Huarong was putting on Eskom I want to talk about the fee letter quickly. What the discussions were around the fee letter?

MR SINCEDILE EBENEZER SHWENI: You mean the last paragraph to say?

ADV THANDI NORMAN SC: Yes, yes, yes.

MR SINCEDILE EBENEZER SHWENI: The discussions on the facility did not deter.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Huarong from pursuing the fee letter.

ADV THANDI NORMAN SC: The fee letter.

MR SINCEDILE EBENEZER SHWENI: The fee letter is the one that was going to pay the 400 million.

20 **ADV THANDI NORMAN SC:** The 400 million, yes.

MR SINCEDILE EBENEZER SHWENI: So it is the point that I made earlier to say even though there were discussions on the short term facility they were pushing for the conclusion of the long term which had the fee letter so that the.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Fee could be closed out.

ADV THANDI NORMAN SC: Yes and then in paragraph 16.4 page 20 you deal with what you believe were the reasons that would have made Huarong to put pressure for the conclusion of these transactions and you mentioned them from 16.4.1. Could you just take us through those briefly?

MR SINCEDILE EBENEZER SHWENI: Well by passing the processes as I have alluded to in terms of stuff taken straight to IFC and the signing. It seems as if there was a rush to and to the desired goal of signing the time sheet. There was a point where I was acting for Andre. So I went into Mr Anoj's office and I think he was away. That is not the only transaction. I do not know. In my mind I was working on, but he
10 asked you know how far are we from signing the Huarong transaction and apologies I never recorded the date, but I was in his office. Mr Poopie Govender which we were dealing with who was in constant defence of everything that was put forward by Huarong ranging from facility fees, the merchants. Not only to us but also to our colleagues from corporate finance whose justification was that this transaction is very expensive. He constantly went from his office to go and put you know to say where, when is, what is the stumbling block. Can I, where can I assist by putting a lot of pressure on us to conclude.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: And the rushed signing of the [indistinct] term
20 sheet by Mr Maritz at the end. So all those to me, well at some stage in the discussions that I have mentioned between Mr Andre Pillay and Rajeev and instances where I was asked to intervene I think it was during this qualification period we were told that the Chinese delegation is here and they want to understand what exactly is holding up the finalisation and the same gentleman that we met during the signing he came, engaged in a meeting and I think they wanted to understand you know what is

really holding up, because it seems as if the terms and conditions of the [indistinct] are almost in agreed form. So those are the points that I am putting across to say now there was only pressure for the conclusion.

ADV THANDI NORMAN SC: Would this pressure, do you say it came from Huarong or was that pressure from inside Eskom itself from the various officials within Eskom to say you must deal with this, you must conclude this transaction?

MR SINCEDILE EBENEZER SHWENI: Personally inside it was Poopie. The person whom.

ADV THANDI NORMAN SC: Yes.

10 **MR SINCEDILE EBENEZER SHWENI:** I was dealing with.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: So it was from him. Externally it was from Rajeev.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Well I think what you say in 16.4.3.1 is important especially towards the end. You want to.

ADV THANDI NORMAN SC: To refer that annexure.

CHAIRPERSON: You want, no I meant.

ADV THANDI NORMAN SC: Oh.

20 **CHAIRPERSON:** I mean the statement in paragraph 16.4.3.1.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Page 20, Mr Poopie Govender about his support for the deal.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: I am thinking that what you have there, I think what you say there especially towards the end is important. Do you want to just articulate that? His, how

he, how much he supported.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: This deal.

MR SINCEDILE EBENEZER SHWENI: First of all Chair with respect to the margin which our colleagues from Corporate Finance Treasury agreed that it was expensive he supported what Huarong put on the table by motivating the fact that Eskom in its experience has never delivered a project within budget. In actual fact the project that we are dealing with at the moment you have a cost escalation that goes up to 100 percent. So there were a lot of those dialogues between us and I really struggled Chair

10 to find some documentation. I think Mr Govender was quite smart. He would not pick up a telephone or put his views on, in writing, but I managed to find one. I think it is in SS48 where he is arguing with Mohamed. Mohamed is putting his point across that he must not be biased in terms of his conclusion and the fact that we have never concluded. So the premium that was being asked by Huarong which was reflected in their pricing it is still within what Eskom would have incurred in any event considering the fact that in this transaction the construction risk was not going to reside with Eskom, but a construction risk was going to reside with Huarong. All they were going to deliver to us is a product that is working the agreed cost would have been for the account that is my reading of turnkey. The agreed cost would have been for the account of the

20 engineering and procurement and construction contractors. Hence we would not run into this escalations that we are running into at Medupi and Kusile. So that was the point he was making. On the fees he made a point on the one point. The cancellation for example to say yes you are saying that this is not normal for Eskom to have in their term sheets a cancellation fee. It was the first time seeing it but, there is no intention. For us the intention is to proceed with this transaction. So this becomes a moot point.

On the facility fee, 1.6, I think we were comparing, he was comparing with apples with bananas because he spoke about the upfront fee that we would ordinarily in the construction environment where we award a contract to a supply give an upfront fee ranging from five to 15 percent. So if Huarong is asking for 1.6 percent and that is absolutely nothing in their big scheme of things. So every; he would constantly you know challenge everybody. To me I even doubted that he is part of this side of the negotiation table.

CHAIRPERSON: Well you do say in paragraph 16.4.3.1 that:

“His responses were very much aligned to HEA.”

10 That is Huarong.

MR SINCEDILE EBENEZER SHWENI: Yes.

CHAIRPERSON: “You could swear that he was one of them.”

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Thank you Mr Chair. Maybe you could, we want, we have referred, you have mentioned to the Chairperson Annexure SS48. Chairperson that would be found in EXHIBIT U7 at page 474.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Is that the email from Mr Poobie Govender, page 474?

MR SINCEDILE EBENEZER SHWENI: Ja. That is probably not the one.

20 **CHAIRPERSON:** Yes.

ADV THANDI NORMAN SC: Not the one that you were reading?

MR SINCEDILE EBENEZER SHWENI: Not the one is relating to the; I would not know it off by hand now which email is that, but this one.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: This is where he was putting pressure to say I

just do not understand, fully understand what is holding up the conclusion of the agreement and locking the terms.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: So it was not necessarily on the [intervenes].

ADV THANDI NORMAN SC: [Intervenes].

MR SINCEDILE EBENEZER SHWENI: And everything else.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: There was an email that I attached, but I cannot remember where it is.

10 **ADV THANDI NORMAN SC:** Yes. Thank you, but even this one was suggesting that look why delay?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Yes. No and *ja*.

ADV THANDI NORMAN SC: Thank you.

MR SINCEDILE EBENEZER SHWENI: Sometimes.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: We would say to our receptionist tell him that we are not here.

20 **ADV THANDI NORMAN SC:** Yes, thank you. Thank you and then.

CHAIRPERSON: Was he that bad?

MR SINCEDILE EBENEZER SHWENI: *Ja*, normally it was bad.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: And our receptionist if he, which we were not here when we come back he will say your friend was.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: Was here. He knew exactly.

CHAIRPERSON: Hm.

MR SINCEDILE EBENEZER SHWENI: What we are dealing with.

ADV THANDI NORMAN SC: Yes, thank you and then it is one of those pressure points you also mentioned the signing of the [indistinct] by Mr Sean Maritz.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes. Then you have taken us through the signing of the [indistinct] in the fee letter, but these are matters that we all know that these.

10 **MR SINCEDILE EBENEZER SHWENI:** Happening around.

ADV THANDI NORMAN SC: They were happening around it and the.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: The signing happened although there is legal advice against it, although there are all pointers saying that red flags do not touch it, but the signing happened?

MR SINCEDILE EBENEZER SHWENI: It happened yes.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: The signing by Mr Maritz.

ADV THANDI NORMAN SC: By Mr Maritz, yes.

20 **MR SINCEDILE EBENEZER SHWENI:** Yes, it did happen.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Perhaps maybe just to jump, I do not know whether.

ADV THANDI NORMAN SC: Yes, yes.

MR SINCEDILE EBENEZER SHWENI: To 17.

ADV THANDI NORMAN SC: Three.

MR SINCEDILE EBENEZER SHWENI: Three.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Well that is that is not the one. The one the highlight in 17.3 was that there was an update on the IFC which really the conclusion of it was that please go back and solicit all the signoffs sign legal and everything else.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: But the other thing that I am highlighting there was the request or when I was asked that I could accompany the Chairman to China. I
10 did not know what the Chairman had to do with the transaction. So it was.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: It was a bit odd, but I, I mean before I could respond that I do not have a visa. Andre said please tell him when you are approached by his office that you do not have a visa.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: I do not have, I did not have a visa at the time, but the one that I wanted to highlight was 17.6.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: Which leads to the signing.

20 **ADV THANDI NORMAN SC:** Yes.

MR SINCEDILE EBENEZER SHWENI: If that is where you were.

ADV THANDI NORMAN SC: Yes that is where I was heading.

MR SINCEDILE EBENEZER SHWENI: That is where you were heading?

ADV THANDI NORMAN SC: Yes. Yes could you tell the Chairperson what you want to deal with there?

MR SINCEDILE EBENEZER SHWENI: Yes in – well the paragraph preceding 17.6 I mean I could see that we're not meaning this, I wrote an email to Mr Pillay and told him that we should not proceed with this transaction on this basis, that 17.5 and I have attached that email.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: 17.6 on 25th I was verbally requested to update the 15th of October Board IFC and that was the first time I was involved in the writing of the submissions. We did it together with Mr Pillay and we arrived at the conclusion that the submissions, that all approvals and conclusions by various experts
10 in the organisation must be considered before proceeding with the transaction. The following day I and he gave me a very clear instruction to send this to Mr Caleb Cassiem who was the Acting CFO at the time in PDF format so I queried it as why PDF format, he said no we need to protect the information that we send because what a word version might be changed. A day later he called me and asked me to send the saved word version of the same submission, unfortunately I didn't save it I just saved the PDF but we asked our local IT guys to come and convert it back, so I sent it, the conclusion in terms of that submission in terms of the recommendation was totally different to the earlier version and that was supposed to be situated for the Round Robin and I learnt that the meeting actually sat and that was on the day or day before
20 the loan was in Adfa and the term sheet was signed by Mr Maritz. I think that's what that paragraph entails.

ADV THANDI NORMAN SC: Thank you. So – sorry just to – may I just take an instruction?

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: And the memorandum of the 25th of October do you

want to highlight anything in that memorandum or you've captured everything that you wanted to convey?

MR SINCEDILE EBENEZER SHWENI: Memorandum from who to who?

ADV THANDI NORMAN SC: The submission that you made at 57.

MR SINCEDILE EBENEZER SHWENI: 57, yes I've highlighted but subsequently changed.

ADV THANDI NORMAN SC: You've highlighted, yes thank you, sorry.

CHAIRPERSON: Sorry 57 of what bundle?

ADV THANDI NORMAN SC: It's Annexure Mr Chairman, Annexure SS57, it should be
10 Exhibit U7.

CHAIRPERSON: Annexure SS what?

ADV THANDI NORMAN SC: 598 Mr Chairman, at page 598. Is this the submission
that you'll find?

MR SINCEDILE EBENEZER SHWENI: Yes ...(intervention)

ADV THANDI NORMAN SC: Sorry Mr Chair you haven't found it yet?

CHAIRPERSON: You said 598?

MR SINCEDILE EBENEZER SHWENI: Yes that's correct.

ADV THANDI NORMAN SC: 599 would be the start of the submission, 598 it's from
Mr Shweni to Mr Caleb Cassiem that he has mentioned that he sent it to him.

20 **CHAIRPERSON:** Okay I've found it.

MR SINCEDILE EBENEZER SHWENI: The only thing that could be a bit misleading
in terms of 599 is the fact that we forgot to change the date that it was going to the
Board of October not 15th August, we forgot to update at the time when I sent to Mr
Cassiem.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: But I've printed it as I sent it to him with this error on it.

ADV THANDI NORMAN SC: Yes and what was your recommendation there?

MR SINCEDILE EBENEZER SHWENI: The recommendation is that given all the concerns and risks raised by the organisation, (indistinct) to allow Eskom to address all concerns in the financing agreement and the governance due process to be followed.

ADV THANDI NORMAN SC: And that ...(intervention)

CHAIRPERSON: I'm sorry, that submission is it has the date of 15 August 2017, and you say that's the original date, but when you sent it to the Board it was much later than
10 that.

MR SINCEDILE EBENEZER SHWENI: That is the original date of the submission I was requested to update so when I was doing the update I forgot to change that date, so I sent it to Mr Caleb Cassiem with this error, but we were supposed to change the date to reflect the new date of the meeting, but I've printed it the way I submitted it to him.

CHAIRPERSON: As it was yes, but it was sent in October to the Board?

MR SINCEDILE EBENEZER SHWENI: The meeting was going to be on the 25th or 26th of October.

CHAIRPERSON: Ja, you might not recall when you sent it but it was for a meeting that was later in October.

20 **MR SINCEDILE EBENEZER SHWENI:** Well the page, page 598 because from page 599 this is an attachment of the email I sent which I say "Hi Caleb as requested, Regards".

CHAIRPERSON: Yes.

MR SINCEDILE EBENEZER SHWENI: So I sent it on the 25th of October, if I'm correct the meeting was going to be on the 26th of October.

CHAIRPERSON: Okay, no thank you.

ADV THANDI NORMAN SC: Thank you Mr Chair. And then in paragraph 17.7, we're going back Mr Chairman to Exhibit U6A the statement of Mr Shweni at page 26 paragraph 17.7, there you deal with the submission of the invoice by Huarong demanding payment from Eskom?

MR SINCEDILE EBENEZER SHWENI: Yes Chair I think after that payment, or signing of the fee letter my experience when I was in the Treasury, the General Manager of Treasury, Andre was not in the office and this invoice was hand delivered by the General Manager in the CFO's office, Ms Mayaban, and she was – she wanted
10 the invoice to be paid immediately, which is a bit extraordinary because instructions normally or requests coming from that office they are sent to Andre via email and cascaded to us, so she walked into the office herself, and had an engagement with the colleagues which were responsible for or whoever she could see putting pressure that this invoice needs to be paid.

ADV THANDI NORMAN SC: Yes and at the time the CFO Mr?

MR SINCEDILE EBENEZER SHWENI: Caleb Cassiem.

ADV THANDI NORMAN SC: Caleb Cassiem, thank you., And you deal then with matters that happened now, around January 2018 was this at the point when there was an new board at Eskom?

20 **MR SINCEDILE EBENEZER SHWENI:** That's correct Chair.

ADV THANDI NORMAN SC: Yes, what happened that you want to highlight in paragraph 19 of page 27?

MR SINCEDILE EBENEZER SHWENI: The thing what triggered us going to present to Board, that's what I think was the letter sent to the new Chairman from Huarong and which I put as Annexure 61 so in response to that we had to give a status and also what

our current recommendation, so I put together a presentation Andre could not make the meetings and I went to the Board to present, and the Board agreed that we just – we need to exit, we need not proceed with this transaction.

ADV THANDI NORMAN SC: Yes. And you also made the point that one of the Board members commented about authority, the issue of authority.

MR SINCEDILE EBENEZER SHWENI: Yes, during the deliberations one of the members said in the first year since the delegation of authority does not permit the sub-committees of the Board to approve but they had to recommend and the Board takes that approval decision, and no one in the meeting when that comment was made sort of
10 contested.

ADV THANDI NORMAN SC: Yes and you then, paragraph 20 page 27 you deal with sub now, suspending its conditional approval?

MR SINCEDILE EBENEZER SHWENI: That's correct, they didn't hear anything from us and one of the conditions that they put in the approval was the fact that we need to have inflows before we can payout to Huarong or Idiva and since the lapse of time that never happened so they are suspending their previous approval.

ADV THANDI NORMAN SC: Yes, and Mr Singh, Mr Pillay, I beg your pardon, yesterday I made the same mistake, Mr Pillay had made had written to National Treasury by word of the letters that he had written to Mr Dondo Magogani who was the
20 director general of National Treasury and also to Mr Seleki the Director General of Public Enterprises

MR SINCEDILE EBENEZER SHWENI: I am aware of that.

ADV THANDI NORMAN SC: You are aware of those?

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: And that then National Treasury responded to those

letters.

MR SINCEDILE EBENEZER SHWENI: National Treasury responded yes.

ADV THANDI NORMAN SC: And what did they say?

MR SINCEDILE EBENEZER SHWENI: Well they were not in support of the request, I think the request was for them to consider the merits of the proposal and they were not in support of it in essence.

ADV THANDI NORMAN SC: And also to provide guarantees, am I right? There was a request to go ...(intervention)

MR SINCEDILE EBENEZER SHWENI: Well the matter I think there was reference
10 made in the letter to the short term facility so guarantees would have been made or reference to the guarantees would have been made in that regard, not unless there was an error, but Adfa the long-term it's clear that it did not have any requirements for the guarantees, but it was for the short-term.

ADV THANDI NORMAN SC: Yes, that's the letter that we canvassed with Mr Andre Pillay, when he testified because it's under his hand and we highlighted those paragraphs to him, he did also say that the heading of the letter was misleading in the sense that it ought to have simply referred to short-term facility and not to the long-term facility.

MR SINCEDILE EBENEZER SHWENI: That's correct.

20 **ADV THANDI NORMAN SC:** Yes, thank you.

MR SINCEDILE EBENEZER SHWENI: But at the time that letter my recollection Chair is that it was not requesting the provision of guarantees, but I think it was saying they would come back, for formal applications, but I think it was just requesting the consideration of the merits of the proposal.

ADV THANDI NORMAN SC: Yes. Yes and then in the last paragraph can you just

read what your concluding remarks are?

MR SINCEDILE EBENEZER SHWENI: I say I believe that Huarong concept, just the concept with all its balance sheet cash flows and implementation benefits in terms of the volume amount that came with would have been beneficial on different terms and conditions.

ADV THANDI NORMAN SC: Thank you Mr Chairman, could you just move then to your supplementary statement which you will find in Exhibit U7 at pages 645, this statement is really sort of a post-mortem of what had happened in the transaction, you're looking at the transaction now.

10 **MR SINCEDILE EBENEZER SHWENI:** Yes.

ADV THANDI NORMAN SC: With the benefit of hindsight and you're pinpointing things that you believe were done wrong or incorrectly?

MR SINCEDILE EBENEZER SHWENI: Yes, yes.

ADV THANDI NORMAN SC: Yes and could you just highlight those matters to the Chairperson please?

MR SINCEDILE EBENEZER SHWENI: Well the first point that I am highlighting ... (intervention)

ADV THANDI NORMAN SC: Sorry, just a minute please, it's 645 Mr Chairman, thank you.

20 **CHAIRPERSON:** Yes I've got it.

ADV THANDI NORMAN SC: Yes, you may proceed thank you.

MR SINCEDILE EBENEZER SHWENI: Paragraph 1 really deals with the fact that the multi-disciplinary team should have been put together because of the complexities so that the risk analysis is front-loaded this would have saved us a lot of headaches with respect to this, and I say here this is what I did not recommend because I was exposed

in other areas of the business, where this is done and we're talking Legal, Corporate Finance, Engineering, Specialist in Procurement where if we put this together, this multi-disciplinary team from the very word go or perhaps just before the signing of the indicative term sheet there are a lot of things that could have been, that would have happened correctly.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: The second one is specific to Treasury.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: I've highlighted the fact that it – the practice
10 note requires us to go (indistinct) and that did not happen, that's 2.1 and 2.2 and the other thing that in 2.3 I'm highlighting the fact that because we did not have internal legal upfront we would have assisted us in checking the implications of signing that binding term sheets that was not done, but obviously I mean acted White & Case's advice in that regard, and the hastiness in concluding the term sheet and submissions to Board it's something that I also highlight, but I do highlight the fact that the you know instructions that are coming from a notch had to be done expeditiously and in that manner in which he wishes and that we experienced from some of the people that were in his office, if you do a submission not in the manner that is suitable to him, even if it's a full stop or a comma it would come back, but stuff that came, so that was one of the
20 issues that I am highlighting to say things had to be done which are coming from the CFO quite expeditiously. 2.5 I have spoken about, 2.6 for me it was clear that the fact that we did not proceed with the discussions around quantum of the fees and everything else clearly the horse was bolted, all we did was to discuss just the structuring of those fees. 2.7 deals with the signing, I've touched on that but the only new thing on the signing was the fact that we had to put together a memo for the

Interim Chief Executive at the time, because he was going to attend, Mr Matjile Koko he was going to attend the signing just to appraise him of the transaction. I can't I looked for those signed memo's, none of those so I don't know whether they reached them, the read them, so I am highlighting the fact that part of the issues with regards to the processes that we put together certainly most – and there is no proof that these memo's have been (indistinct) or signed.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: I've spoken about 2.8 in terms of the signing of the term sheet, I've spoken about 2.9 about the Board and the fact that the approval
10 had to happen not at sub-committee level but at Board level.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: 2.10 I'm speaking about the RFI and the RFP process, and the fact that we had conversations with them irrespective of the fact that we were still during the RFP process.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: The last point is that in the term sheet there was made mention that before he engaged in Alfa discussions we had to provide a mandate letter, that did not happen, so all these points are pointing to the processes that were flaunted so to speak.

20 **ADV THANDI NORMAN SC:** Yes. Then in paragraph 3 page 619 you deal with matters that happened post the signing, could you just read that paragraph because I'm going to ask you a question that relates to that.

MR SINCEDILE EBENEZER SHWENI: Post signing of the term sheet Andre and myself put best efforts to get to the desired outcome from the negotiations and form a conclusion of relevant agreements.

ADV THANDI NORMAN SC: Yes. So at this point am I correct that what you are conveying here you from the Treasury side you wanted this deal to go through and you are putting, negotiating, making sure that everything happens.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes. What would you say if I would, at this point you are still, you are supporting this transaction?

MR SINCEDILE EBENEZER SHWENI: Indeed ja, it was in the early stages of the transaction.

ADV THANDI NORMAN SC: And you were supportive of it as Treasury?

10 **MR SINCEDILE EBENEZER SHWENI:** I was supportive yes.

ADV THANDI NORMAN SC: And Mr Pillay on Friday said you know he never supported this transaction, what would you say to that?

MR SINCEDILE EBENEZER SHWENI: No I think the reason why we I mean from the benefits that I have highlighted below this paragraph which we saw in terms of the value, the amounts and everything else, the fact that it would save us. At the stage 14th of March or after 14th of March we continued to engage because we believed that we could negotiate better structuring of the fee, otherwise we would not have wasted time and effort and fights with the likes of Mr Rajeev Thomas if we did not think that they would come a better outcome. Personally I think we still hoped that something would
20 come out of this transaction, in spite of what I term in the previous page that for some of the things the horse had bolted.

ADV THANDI NORMAN SC: Yes and then in then in paragraph just below paragraph 3 items that you list from 3.1 to 3.11 which you regard as benefits.

MR SINCEDILE EBENEZER SHWENI: Yes, we regarded these as benefits or as an opportunity that we could exploit.

ADV THANDI NORMAN SC: Yes, could you just run through them, what were they?

MR SINCEDILE EBENEZER SHWENI: The first one relates to the contradiction of the binding and non-binding term sheet and I've highlighted the points there, so this provided us a window of opportunity for us to still negotiate irrespective or despite the fact that the timesheet was signed, and the volume of financing which is 2.2billion to 3.3 was quite significant for us. The diversification of funding sources was an important Treasury mandate so because we normally source all funding from the West, which is from Europe and the States but I must stress this would not have been the first agreement that we would have because we had an already existing agreement with

10 China Development Bank, so but that diversification was quite important for us. The utilisation of Government Guarantees which encumbers also Government because if they approve a guarantee it goes into their balance sheet as a contingent liability, so if you get a sizeable facility like this one which you don't utilise government guarantees then it is there as a plus for us. When we have to convey it Rands to Dollars, get facilities banks usually give us some facilities or credit lines, this would save us those credit lines because the financing would have been arranged by Huarong for the SPV's.

What we also find in some of the transactions is that we had to repay before commissioning construction is completed so now you would have an overlap in terms of your cash flows where you are still receiving, you are withdrawing from your facility but

20 you're still repaying, ideally those constructs were structured such that the payment starts immediately after the construction is completed, but due to the delays the lenders were not flexible not to receive their payments and this would have – and (indistinct) was a typical example of that. This would have allowed us that the outflows would happen once the equipment or plant is commissioned.

I used the word in 3.8 loosely and "tight" because this really depends on how

the contract would be structured but during the lease payment there's still some links between Eskom and the project implementer so that when there are latent defects we could approach them.

3.9 is moot because it's a – it's moot point because it affects all the agreements, and 10 there's a likelihood, it is not guaranteed that the cost will be kept but theoretically under the turnkey structure the older overruns are for the contractor. What we normally have in a bond set up where we raise funding and that funding is not utilised directly or immediately because of the delays as Treasury we suffer carry costs, this would avoid those carry costs. So those are the benefits that would have been brought by this.

ADV THANDI NORMAN SC: Yes and you also identify the concerns in what you regard as bad agreements that Eskom entered into during this period.

MR SINCEDILE EBENEZER SHWENI: Yes I have most of them in the previous statement.

ADV THANDI NORMAN SC: Statement yes.

MR SINCEDILE EBENEZER SHWENI: Covered them, because they talk about the cancellation fee, the upfront fee ...(intervention)

ADV THANDI NORMAN SC: Due diligence and all of that.

MR SINCEDILE EBENEZER SHWENI: Due diligence, so in the main that is what we are covering there.

ADV THANDI NORMAN SC: Yes and in all of those, I understand that you would have wanted now the transaction to be brought , to be concluded, because you are seeing these benefits, at the same time you are having all these doubts about it. My understanding correct me if I'm wrong, is that the whole basis of running with the transaction initially was that look Huarong Energy Africa was going to get funding from

China Huarong management. In your dealings, I may not mention the title correctly, but in your dealings with Huarong Energy Africa did you ever get any confirmation whatsoever from their parent company that the alleged was going, because this one that had assets up to two trillion, if I'm correct, did you ever get correspondence from that parent company to say yes we will back this up?

MR SINCEDILE EBENEZER SHWENI: As far as I remember and those assurances were brought to our attention during the Adfa discussions to say the link between Huarong Energy Africa and the parent company which they purport to be their parent company were very weak, so letters of confirmation would be required for us to get
10 assurance that there is support from the parent company which is in China and that did not come to the fore, as far as I remember.

ADV THANDI NORMAN SC: Yes and all your benefits which you highlighted would have happened only if that dream was realised where the management companies, all the money and all the financial muscle would have backed up the transaction?

MR SINCEDILE EBENEZER SHWENI: Part of it yes that would give us assurance that there is someone behind Huarong because the other company is above it, then there's nothing much to show and also the fact that they're (indistinct) when they put together their RFP and RFI proposal they append or attach to their proposal the financial statements of that company so it would have given us some assurance.
20 However and that's why I'm saying partly, because that would not have resolved, that would resolved some issues but a lot of things that would need to have been addressed, because not all the financing would have come from that company according to my understanding, wrong words, that's why they had letters of expression of interest from the likes of CDB because they were going to solicit a better part of the funding from the Chinese financial market not necessarily from the parent company.

I think this was also tested, sorry to dwell upon the point, this was also tested when we – when there was an engagement, I was in that meeting about the short-term facility, because of the trillions that they mentioned being the impression from all of us was that there is a big pocket of money from the parent company which could easily be channelled through to HEA and I remember one first proposal that Andre made was that can these guys just buy our bonds because it is much simpler. And they are in that market and that did not prove to be the case.

ADV THANDI NORMAN SC: Yes. So at what point then did you realise that you know this thing is not going to be good for Eskom?

10 **MR SINCEDILE EBENEZER SHWENI:** Chair might have been late in terms of putting that memorandum that I referred to on the 25 October I penned here.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: But that is one of the points that I have raised and that memorandum is taken from the memorandum of June because I could see that things are not working out the way – regardless of these benefits but we were dealing with very onerous terms. We were dealing with the companies that we could not verify and the people that were putting pressure. So in all honesty if it occurred to me when I was putting together the SARB that would have been an opportunity to clamp down in a [indistinct].

20 **ADV THANDI NORMAN SC:** Yes.

MR SINCEDILE EBENEZER SHWENI: So around 25th personally for me process just had to be followed such that I do not trigger that cancellation clause so that – and the intention was at all the way I think around from June/July because we see this – these guys are not backing down. I do not think the intention was to proceed but the intention was to – was to back off.

ADV THANDI NORMAN SC: Yes now I am sorry Ms [indistinct] just – would like you to just refer you to page 451 of Exhibit U7 which is where the structure that you are talking about the structure of the company is.

MR SINCEDILE EBENEZER SHWENI: 451.

ADV THANDI NORMAN SC: Ja U – Exhibit U7 at page 451. You have already spoken about the China Huarong Asset Management Company.

MR SINCEDILE EBENEZER SHWENI: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Did you say 481?

10 **ADV THANDI NORMAN SC:** 451 Mr Chairman.

CHAIRPERSON: Okay.

MR SINCEDILE EBENEZER SHWENI: Yes Chair I think it was part of the SARB application that we alluded to much earlier.

ADV THANDI NORMAN SC: Yes.Yes.

MR SINCEDILE EBENEZER SHWENI: And was the intention of this was to bring to the attention of SARB as I said how complex this is. But the ultimate holding of Huarong to the top company.

ADV THANDI NORMAN SC: Yes.

20 **MR SINCEDILE EBENEZER SHWENI:** I think works out to about 8% so by no stretch of imagination this is a subsidiary of China Huarong.

ADV THANDI NORMAN SC: Yes.

MR SINCEDILE EBENEZER SHWENI: And perhaps that explains why there could have been nothing forthcoming with respect to that letter of guarantee or letter of support.

ADV THANDI NORMAN SC: Yes. And this transaction from 2015, 2016, 2017 up until

January 2018 when people started realising that yoh this is not going to work do not touch it. You know I just want to understand what was pushing it because I mean I know I have asked this question but for me I have not received an answer either from you or Mr Pillay really. I would like to know what is it that was driving this whole thing when everyone could see that it was not going to be beneficial to Eskom?

MR SINCEDILE EBENEZER SHWENI: Well besides the benefits that I have highlighted the risk really outweigh as you correctly put it – the risk that we went – we were finding as we proceed with the transaction well you stretching it back to 2015 I have stated my engagement in 2016 but I take your point. It is quite a lot of time you
 10 know for us not to – not to have made the decision much more earlier. Personally I have made comments on the term sheet as early as in December to the – leading up to the March signing expressing the discomfort. The email that I sent on the 25 June and October could have come at a later stage but I think the board – we should have alerted the board much earlier on. We got discomfort – uncomfortable around June or so because they are the ones who – as we have done in the new board of the 25 – 24 January 2018. And I think the landscape at that point in time was very different to the regime of the past. We knew the agenda. We knew why they were brought there. Hence in my presentation to them I think we were comfortable to say – to recommend that we do not proceed. It could have been that the regime before that board you know
 20 we had to play it safe. We did not know what – what was – who is behind you so whoever proposed to the board IFC of the 3 February – August but I was involved in the September I mean the October one. We perhaps in especially in the August one we should have pushed very hard not necessarily submit something which says we recommend proceeding but to say there there are problems.

ADV THANDI NORMAN SC: Yes. And treasury being treasury by its very nature

anyone who says treasury is in support of this would believe that treasury would have cleared everything that it has to clear and one would say let us support it because treasury supports it. So your department was critically connected to the decisions that would have followed because treasury displayed that we were in support of this and we did take Mr Pillay through some of the memos that he had penned during that period, or am I wrong? Maybe treasury is not as key as I think it is.

MR SINCEDILE EBENEZER SHWENI: It is key but obviously it is incumbent upon the board members. I mean I had the privilege of reading one of the detailed minutes which we do not normally get hence some of the board members are teasing the
10 presentations and the statements that are being made. But it is considered in high in very high regard within the organisation. So if we say we in support I think it changes the view of the members even in their interrogation.

ADV THANDI NORMAN SC: Yes. Thank you. Thank you Mr Chairman. Thank you. Thank you Mr Chairman.

CHAIRPERSON: Was that your last question?

ADV THANDI NORMAN SC: That was my last question.

CHAIRPERSON: Okay.

MR SINCEDILE EBENEZER SHWENI: Thank you.

CHAIRPERSON: Okay. Thank you very much Mr Shweni if a need arises for you to be
20 asked to come back you will be asked but now you are excused. Thank you very much.

ADV THANDI NORMAN SC: Thank you Chair that is the last – the only witness for the day. Yes thank you.

CHAIRPERSON: Okay alright and then tomorrow who – how many witnesses have we got, do you know?

ADV THANDI NORMAN SC: I know of one witness tomorrow Mr Chairperson.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: And yes.

CHAIRPERSON: Okay no that is alright.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: We will adjourn and then until tomorrow at ten o'clock. We adjourn.

INQUIRY ADJOURNS TO 5 MARCH 2019