

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

13 JUNE 2019

DAY 112

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PROCEEDINGS ON 13 JUNE 2019

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV KATE HOFMEYR: Chair.

CHAIRPERSON: Are you ready?

ADV KATE HOFMEYR: We are indeed Chair.

CHAIRPERSON: Thank you.

MS CYNTHIA AGNES SORAYA STIMPEL: Chair we commence with the aviation evidence and its work stream today. This evidence will run from today until the end of June and Chair at the outset with your leave

10 I propose to give a broad outline of what will be covered over the next two and some weeks.

CHAIRPERSON: Yes you may do so.

ADV KATE HOFMEYR: I will also indicate Chair what is not going to be covered in the evidence because there are envisaged to be two evidence sessions for aviation.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And so it is important that we get clear what will be covered now and what will come in due course. Thirdly I propose to deal with certain procedural aspects and then finally to
20 address you Chair on certain of the themes that appear to have emerged in the preparation of the evidence so that they can be a reference point for the next two and a half weeks. So with your leave if I may commence with that outline?

CHAIRPERSON: Yes please do so.

ADV KATE HOFMEYR: Thank you Chair. Chair the aviation evidence

that you will hear over the next two and a bit weeks will cover four focus areas of the aviation investigation. Chair we talk about aviation broadly because the mandate of this commission is to look generally at state capture, corruption and fraud in amongst other things state owned entities and there are more than one state owned entity that falls under the umbrella of aviation. There is SAA itself. There is SA Express. There is ACSA and there are also certain subsidiary divisions of SAA which have fallen within the mandate of the investigation. For this evidence session and those four focus areas we will be concentrating
10 on aspects of the investigation in SAA and in SA Express.

We will not be dealing with ACSA and other related divisions that will come in due course. In respect of those four areas Chair just to outline them at the outset.

The first area relates to a R15 billion capital raising that SAA embarked upon in 2015 and 2016.

The second area involves a transaction between the North West Department of Transport and South African Express Airways.

The third area of investigation relates to jet fuel procurement that was engaged in by both SA Express and SAA with a particular
20 company called EML Energy. That investigation will take us to some extent beyond the aviation sector because there was also a funding component of that area of investigation that involved the IDC and so there will be some evidence in relation to that.

And Chair the fourth area will be a topic of governance generally. In that fourth topic we return to SAA and we look at aspects

of the manner in which governance was misapplied and procurement was intervened with over periods of the various memberships of the board of SAA and we track that over a period. So Chair if I may just delve into each of those which I have highlighted in summary?

CHAIRPERSON: Maybe I just want to note those just repeat them.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Firstly the focus areas?

ADV KATE HOFMEYR: So the first is the R15 billion debt consolidation of SAA.

10 **CHAIRPERSON**: Yes.

ADV KATE HOFMEYR: The second is the North West Department of Transport's agreement with SA Express. That related to the Pilanesberg and Mafikeng airports.

CHAIRPERSON: Hm. Yes.

ADV KATE HOFMEYR: The third area relates to jet fuel procurement by SAA and SA Express with EML Energy.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And as I highlighted there is a related link there to the IDC and funding.

20 **CHAIRPERSON**: Yes.

ADV KATE HOFMEYR: And then the final topic Chair is governance.

CHAIRPERSON: Yes. Thank you.

ADV KATE HOFMEYR: So just to give a little bit of background into each of them and what the evidence that will be presented to you will cover over the next matter of weeks.

Chair the R15 billion debt consolidation that SAA embarked upon in 2015 and then continued with in 2016 has been the subject matter of much media attention previously as well as at least two reports which I will come to in due course. The investigation has uncovered that there were various stages of this debt consolidation exercise and you will see through our witness today that it spans a good period of a year and there is some complexity in the nature of the various transactions at points. But the upshot of the evidence is that but for the actions of the witness you will hear from today who was a
10 whistle blower South African Airways would have either paid 325 million for funding in circumstances that it could have got that funding for in the region of 85 million or R50 million would have been paid to an entity for no value whatsoever.

So but for the actions of Ms Cynthia Stimpel who will be our first witness today those funds would have left SAA and arrived in the hands of parties who will in due course come and give evidence and account for the possession. Chair this aspect of the investigation will also take us to the Free State because there is an element of this funding arrangement that involved the Free State Development
20 Corporation who presented itself as a potential funder to SAA in circumstances where that was clearly beyond its mandate legislatively prescribed.

It also takes us to the Free State because there is a particular entity called Grissag AG who is the consistent funder over this period from 2015 to 2016 albeit that it keeps returning through the guise of

different entities who are the interface between SAA and the sourcer of funds and there will be evidence indeed also from the director of Grissag in due course about its involvement in this debt consolidation. Chair that is a broad overview of that first area of evidence we will cover it today, tomorrow and for at least the duration of Tuesday because Monday is a public holiday as the schedule currently stands. Chair the second area involves the North West and its Department of Transport and an arrangement it entered into with South African Express Airways in order for South African Express Airways to fly
10 routes to Pilanesberg and Mafikeng airports.

This too has been an aspect that has received public attention most notably in an article in the Financial Mail in May of 2018 last year by Karen Moran. It is an article that really formed the basis for much of the commission's investigation in this area. There has also been litigation in relation to this aspect but the upshot of the evidence that you will hear in the course of next week is that the agreement that was concluded between the North West Government and South African Express Airways was envisaged to move R400 million out of the North West government into SA Express and a third party that SA Express
20 nominated to do certain ground handling services at those two airports. What the investigation has shown and what the evidence will cover is that a total of 97 million of that total amount of the order of 400 million was paid out of the North West government and then syphoned off through a detailed scheme of money laundering.

Where precisely the cash ended up in that scheme is not

entirely clear but the evidence will indicate at least three possible destinations for the monies.

The evidence will include a tape recorded conversation between the previous South African Express Commercial Manager and one of the witnesses who will be testifying before you in which he says that he used the cash to pay off two ministers, a premier, an MEC, an HOD and a CFO in the North West.

The second possible destination will come from testimony from the then security manager of South African Express who will also be a
10 witness in these proceedings who was offered a R3 million bribe to drop his investigation into the matter and who was told that the money was being used to fund the ANC's political campaigning.

And the third possible destination will arise from testimony from persons whose companies were used to quote 'clean the money' and they will give us insight as to where that money ultimately ended up. Chair this aspect of the investigation has highlighted one concerning feature and that has been the slow pace at which criminal prosecutions have progressed in relation to these events because Chair the evidence will show that as early as 2016 charges were laid in
20 relation to this conduct and there has been an investigation.

Last week in fact the commission engaged with the head, the national head of the Directorate of Priority Crime Investigation Lieutenant General Lebeya and he has provided a report to the commission which details what has happened in this investigation.

Of concern and we will raise with you in due course in the

evidence Chair is what appears from that report to be the case is that it has taken approximately two years to get bank statements from one bank in relation to one entity and during that period there has been very little progress in these cases. We raise that as an aspect of concern and we thought it appropriate to get an update from the Directorate as to where the case is. Chair the third aspect which is the jet fuel arrangements between SA Express, SAA and EML Energy will involve evidence that relates to a contract that EML Energy procured first with South African Express Airways.

10 Now that contract appointed EML who was a company stationed at the Denel precinct next to OR Tambo airport to supply 18 times more fuel at Pilanesberg airport than the airport could use. It was also a contract to supply OR Tambo airport with 25 million litres of jet fuel when EML Energy had in fact not been formerly appointed to provide those litres at all it is only formal appointment related to fuelling and defueling two aircraft in hangers at OR Tambo airport. So the upshot of that evidence will be that EML Energy obtained a grossly inflated contract for jet fuel from South African Express which it then presented to the IDC as a basis to secure funding from IDC.

20 IDC granted a total of R12.5 million worth of funding. Chair in the context of the numbers that are generally flown around this commission 12.5 million is paltry but our approach in the investigation has been to uncover any monies that have been corruptly or fraudulently taken from the public purse and in pursuit of that aspect of this part of the investigation it – evidence will be presented that

indicates that the IDC official who first brought this funding application to the IDC ended up as a beneficiary of the IDC money.

The second aspect that will be traversed with the IDC through its evidence is that on the basis of the documents presented to the commission relating to that funding decision it ought never to have been approved. And it ought never to have been approved for a number of reasons.

The first is that EML Energy did not originally qualify for the preferential pricing it obtained.

10 Secondly the finance team which assessed the application and determined whether EML would be able to service the loan that it was to receive from the IDC erroneously added a R6 million to the cash position of EML that simply did not exist. And furthermore the IDC's entire due diligence of the arrangement for funding was premised on a contract that EML was supposed to be awarded by SAA which had ended up not being awarded but then when it presented this alternative inflated South African Express contract to the IDC no further due diligence was done at that point.

20 The IDC's chief risk manager will give evidence and those points will be put to him in the course of his evidence for comment. Chair the final aspect is governance and the evidence that you will hear in relation to this topic will deal firstly with the extensive interference both from shareholder level sitting in the ministry of Public Enterprises as well as at board level in the management functions within SAA. Chair you have already heard some evidence on that from Ms Carolus.

She gave evidence towards the end of last year.

You will recall that much of her evidence related to meetings that were taking place with Minister Gigaba, his advisors which she in fact did not attend. Those were attended by the then CEO of SAA and we will have evidence from her directly about those events and others. Chair you will also hear evidence in relation to the culture of intimidation and threats that pervaded South African Airways for some period of time under Ms Myeni's leadership.

You will hear evidence how members of the board instructed
10 management to conclude certain contracts without processes having been followed and you will also hear evidence of board members cancelling contracts after due procurement processes had been complied with. Only then to put South African Airways in a position as a defendant in legal proceedings when the originally successful tenderer sues because of the unlawful revocation of its award.

Chair you will also hear evidence from the former head of procurement at SAA who was threatened with violence if he did not comply with the demands made of him. And who was suspended the day after he met Mr Des Van Rooyen on the 2 December 2015. Chair at
20 that meeting on the 2 December 2015 Mr Van Rooyen on the account of this witness demanded that two contracts be awarded to companies with whom he had connections and displayed a level of knowledge of the internal decision making of SAA at the time which was not public knowledge. The day after that interaction the former head of procurement was summarily suspended and he left the country. Most

notably because he was concerned for his safety.

Chair the evidence will also focus on the human toll of some of these acts and conduct. The procurement manager whom I have referred to who fled to Zimbabwe has not found employment since then and that was in 2015. Each of the managers who stood up to the attempts to interfere with processes were generally suspended at a point and engaged in lengthy periods to fight those suspensions but by and large gave up at a point because it became simply too long and too arduous. The consequence of which was that they often lost out on
10 benefits to which they would have been entitled if they had had it in them to continue fighting.

Chair that provides a brief overview of the course of the evidence. The witnesses will follow in that order. We will deal first with the R15 billion then the North West engagement, the jet fuel deal and we would conclude with your leave on the governance aspects. Chair it is then important for me just to highlight what will not be presented in this evidence session.

I have indicated previously there is this session of about two and a half weeks and then the intention is to have a second session at
20 some later point in the course of the year. As I have indicated already there are particular other companies and divisions which will not yet be covered in this evidence but there are also important follow ons particularly from the theme you will hear in the last session on governance that need to be rounded up and will be concluded in the presentation in the second session.

Chair in terms of forensic reports the evidence before this commission previously has included often either evidence from those who prepared the forensic reports or submission of the reports to you Chair. The approach that has been taken in the aviation work stream was to use those reports where they exist to form a basis for the investigation and through the course of the investigation and the witnesses from whom you will hear those aspects that have been highlighted, have been probed, verified, interrogated so you will not be hearing evidence from the investigator you will instead Chair be
10 hearing evidence either from those who participated in this conduct or those who stood up to it at portions of their engagements at SAA and SA Express.

Chair in terms of the reports just for your records in relation to the first theme there were two reports I say reports I must say that broadly because there is a forensic investigation report dated 24 October 2017 that is an MJS Report. As I said it has been the basis for investigation and you will hear first-hand evidence from those who were involved in the 15 billion capital raising enterprise.

The second report I am using that broadly is actually a set of
20 disciplinary findings by Advocate Nazeer Cassim SC who sat as the chairperson in the disciplinary enquiries that were brought against the former CEO and CFO of SAA. Those findings have been included in fact in the evidence pack you will be working with today Chair.

In relation to North West ground handling there is a preliminary report of the security manager at South African Express

Airways which also formed a basis for our investigations he himself will be giving evidence so that report will be an annexure to his statement.

And then there was a report done by Matlala Von Metzinger Attorneys for South African Express that was finalised on the 10 May 2018 but again you will hear evidence from the very people involved in those engagements.

And then finally on the ELM jet fuel deal there was a report done for South African Express on the 4 December 2018 by the attorney firm Hogan Lovells and that again was the basis for investigation.

10 Interestingly that report itself referenced the IDC leg of the funding arrangement but could not go further. We have endeavoured in the investigation to do just that and understand precisely how that funding did – was secured from the IDC.

Chair then just in relation to process aspects. Chair in advance of this hearing today numerous Rule 3.3 Notices have been sent to implicated persons. The tally as I have it at the moment is that there are a total of 69 notices that have been prepared. 61 of those have been processed. 8 of them are as we speak still in the process of being issued because we still have two weeks in the course of the
20 investigation – evidence.

Chair the successful delivery of those Rule 3.3 Notices has in general been good. There have been occasions where issues with annexures not arriving at implicated persons have been raised. There have been steps taken to remedy that. And should it become pertinent at any point I will delve into those details for your benefit Chair.

Arising from those Rule 3.3 Notices there – we have only at this point received two applications for cross-examination. Chair those have come from the former CEO and CFO of SAA and they relate to the evidence of the witness today Ms Cynthia Stimpel.

Chair with your leave it is our proposal that in the course of Ms Stimpel's evidence she will be asked about the contrary versions that have been put up by those two applicants for cross-examination so that her answer to them can be provided. Thereafter one of the two applicants for cross-examination is herself giving evidence the former
10 CFO. So we will endeavour with your leave to probe with her those aspects that emerge from Ms Stimpel's evidence and it is our suggestion at the conclusion of that process that Chair you then consider the applications.

Our sense is that it may be that some of the points of contention are resolved through putting those questions in the course of evidence because we now have the benefit of the implicated person's version given that they have produced a statement in both cases to the commission.

And it may even be appropriate at that point to enquire from
20 them whether they persist with the applications and then those can be dealt with in due course.

That is our proposal in relation to that aspect.

Chair finally on process matters. All of the witnesses so – well
15 of the witnesses there are 16 in total. The 16th witness has not been summonsed because he is resident in Zimbabwe but arrangements

have been made for him to come to South Africa for his evidence.

The remaining 15 witnesses have all been issued summonses in terms of the effective service of those summonses I can report that we have received confirmation of effective service in 11 of the 15 cases and in the 4 that remain outstanding efforts are being made as we speak to secure successful service in relation to those summonses.

Chair just a moment on the witnesses and the summons process and the type of evidence that will be received in the next two weeks. Chair the witnesses come with different levels of eagerness to
10 this commission. There are those witnesses who come voluntarily. There are other witnesses who come with caution. There are witnesses who also come with some level of fear and that has been relayed to the commission and the security procedures have been engaged for that purpose for assessment and wherever necessary – necessary protection.

They also however Chair come reluctantly in some respects to the commission and it is in that context that we thought it appropriate at the outset simply to highlight the Provisions of Regulation 8 of the Commission's Regulations Chair. You will recall that is the provision of
20 the regulations that speaks to the requirements of witnesses to answer the questions that are put to them. The only caveat to that is where the answer will divulge or fall within the ambit of legal professional privilege. But even self-incriminating answers in the context of this commission must be given because there is a use immunity provided in Regulation 8.2.

Regulation 8.2 says that any self-incriminating answer will not be admissible in evidence in criminal proceedings against that person except on a charge of perjury.

Chair you will well know with respect that the constitutionality of those provisions has already been engaged by the constitutional court. In its 1996 Ferreira versus Levine decision it looked at the equivalent type of provision in the insolvency context and it determined that while there was a limitation to the fair trial rights of the witness who may subsequently become an accused in criminal proceedings it was nonetheless a reasonable and justifiable limitation of their right. And the reason why is because there is a hefty public interest. In that context in insolvency in unearthing what happened with inside a company where people are only third parties to the company and may have claims against it the constitutional court ultimately concluded that the balance there meant that the public interest in the pursuit of truth provided the compelled answer was coupled with a use immunity was sufficient to survive constitutional scrutiny. And we would submit a similar legal position obtains in Regulation 8.1 and 8.2 in these proceedings because they are replicas of those provisions with the constitutional court found to be constitutionally consistent in Ferreira and Levine.

Chair finally just in terms of the themes of the evidence that you will hear over the next two weeks Chair the evidence appears to indicate five themes about not only what happened in the last many years in this country but what the enablers were for state capture, corruption and

fraud in the public sector. That topic is squarely within the mandate of the Commission and one of the things we have searched for in the course of this investigation what are the key enablers of that type of conduct taking root and permeating our public institutions.

Chair you will of course in due course make the final determination as to what the evidence shows in relation to those but at the outset we thought it appropriate to highlight five potential enablers what we call the facilitators of malfeasance in the – in our systems. Chair the first of those is when priority crime investigations stall for
10 unthinkable long periods and are not brought to resolution.

CHAIRPERSON: Is – is that the Hawks?

ADV KATE HOFMEYR: That is the Hawks indeed.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: In this case you will have a report from the Hawks that shows that for two years they were getting bank statements from a single bank in relation to a single company. That just does not stack up as the – the product of diligent investigative and prosecutorial work.

That is an enabler because it results in a situation where
20 perpetrators are not brought to justice in any reasonable stretch of time. The second – Chair – is companies who allow their businesses to be used to hide the proceeds of unlawful activities. When they do so they facilitate theft of the public purse and so they are a second enabler of this type of conduct.

Chair the fourth is funding institutions who are not rigorous

enough in their funding decisions and as a consequence of which end up handing out money to those who should not receive them and ultimately in this case to a beneficiary who was within the IDC at the point in time. Chair the fourth enabler is Ministers.

Ministers who sit in the Department of Public Enterprises and retain Members of Boards in their positions despite sustained evidence that they are not complying with their fiduciary duties and who do not act swiftly enough to ensure proper governance within those state owned enterprises and Chair the fifty and the one that brings us focally
10 to the evidence of today is when Ministries who receive whistleblowing reports from people who are trying to stand up to the assault within SOEs do not act on those whistle-blower reports.

The consequence of that and you will hear it in the evidence today is that civil society organisations have to step in but they have limited funds. They are not available to everyone at all times and there is a concerning respect in which the attention to and the response to whistleblowing action in the course of the evidence - you will hear - seems to be somewhat wanting.

Chair those in our submission are five of the enabler themes
20 that you will hear over the course of the two weeks of this evidence and Chair with that background in place if I could just deal with the files and how they are arranged for the purposes of the evidence. Chair, we now in what I am told on good authority is EXHIBIT DD in the sequence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Now yesterday I am also told became EE but that is because of an unusual arrangement in the scheme.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: All of the aviation evidence will be EXHIBIT DD ...

CHAIRPERSON: Huh-uh.

ADV KATE HOFMEYR: And then each of the witnesses will follow in the sequence from one to 16.

CHAIRPERSON: Hm.

10 **ADV KATE HOFMEYR:** Chair today you have three files of evidence for Ms Stimpel's testimony. They are arranged A, B and C and I will indicate at any point which of the files we are in.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Chair you also have a copy of the cross-examination application that have been received by the former CEO and CFO ...

CHAIRPERSON: Huh-uh.

ADV KATE HOFMEYR: But I have already indicated our proposal for how that aspect is managed in the course of the evidence.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: Chair that brings me to the end of the initial background opening remarks. We have Ms Stimpel here and she is ready to give evidence if that is suitable.

CHAIRPERSON: Thank you. Does Mr Zwane wish to place himself on record?

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Or does he wish to just be present? Mr Zwane come forward and tell me whether you want to place yourself on record or whether you just want to be present.

MR NDUMISO ZWANE: Thank you Chair. Indeed with your leave I would like to place myself on record on behalf of Ms Stimpel.

CHAIRPERSON: Yes, please do so.

MR NDUMISO ZWANE: I am a practicing attorney from the law firm Zwane Incorporated Attorneys. We are based in Sandton.

10 **CHAIRPERSON:** Yes and once again you represent who?

MR NDUMISO ZWANE: Ms Cynthia Stimpel the first witness this morning.

CHAIRPERSON: No thank you very much.

MR NDUMISO ZWANE: Thank you Mr Chair.

CHAIRPERSON: Thank you. Okay. Ms Hofmeyr the lever arch file which contains the evidence – the statement – of Ms Cynthia Soraya Stimpel will be marked EXHIBIT DD1A (off record) marked EXHIBIT DD1B and the third one DD1C and (off record) – oh, was I not on record?

20 The first one will be marked EXHIBIT DD1A that is the one that contains Ms Stimpel's statement. The two other lever arch files will respectively be marked EXHIBIT DD1B and DD1C and the (off record) – we do not – we do not need to these marked the small ones here?

ADV KATE HOFMEYR: No Chair that will not be necessary.

CHAIRPERSON: Okay, thank you and thank you for that opening statement. Yes please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MS CYNTHIA AGNES SORAYA STIMPEL: My name is Cynthia Agnes Soraya Stimpel.

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

MS CYNTHIA AGNES SORAYA STIMPEL: No, I do not.

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

MS CYNTHIA AGNES SORAYA STIMPEL: Yes, I do.

REGISTRAR: Do you solemnly swear that all 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 me God.

MS CYNTHIA AGNES SORAYA STIMPEL: So help me God.

MS CYNTHIA AGNES SORAYA STIMPEL: (duly sworn, states)

REGISTRAR: Thank you.

CHAIRPERSON: Thank you. Yes you may proceed Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. Ms Stimpel you would have
20 heard my indication to the Chair about the files that appear in front of you.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: Just so that you can orientate yourself there are three files which compromise your evidence. The one open in front of you is File A and then you will see B and C are also available to you.

When relevant I will ask you to move between those files. Ms Stimpel there are a few corrections in relation to your affidavit that you have brought to our attention.

My proposal is to deal with them as and when they arise in the course of your evidence. I have made a note of them and so I will direct you to them at the relevant page when we are there in your – in your affidavit. My proposal for the course of the evidence Chair is to move pretty much in line with the development of the affidavit.

CHAIRPERSON: That is fine.

- 10 **ADV KATE HOFMEYR:** Ms Stimpel the first correction however appears on page 1 and it is in fact in the spelling of your name.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Could you please correct that for us for the record?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes. It should be S-T-I-M-P-E-L.

ADV KATE HOFMEYR: Not L-E as it appears on page 1 of your affidavit. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

- 20 **CHAIRPERSON:** I am sorry. Just repeat that spelling.

MS CYNTHIA AGNES SORAYA STIMPEL: S-T-I-M-P-E-L.

CHAIRPERSON: Oh, okay thank you.

ADV KATE HOFMEYR: Chair you will see in due course many of the Rule 3.3 Notices even went out with that error because ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We working on the – on the name as it appeared here ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But we do apologise for that error Ms Stimpel.

CHAIRPERSON: Yes. No that is fine and maybe a new copy can be ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Of page 1 can be arranged ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: And then the – what is written on the spine – oh this
10 one is written correctly.

ADV KATE HOFMEYR: I think we caught it in time ...

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: For the spine labels.

CHAIRPERSON: Okay, okay alright. Thank you.

ADV KATE HOFMEYR: Thank you Chair. Ms Stimpel I would like to begin if we may with just some background ...

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: To your employment and – and credentials in relation to you studies. Would you give the Chair some background as
20 to that?

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you. I have an MBA from a – *ja* from - the highest qualification is an MBA and I have also got Certified Director which I studied recently. From an experience perspective I started working in the bank and then – in 1975 and I have over 35 years banking experience having worked in various retail and

merchant banking with City Bank at the time and then corporate banking and then worked at DBSA which is development funding and my last 10 years of my career was spent at SAA as the Head of Financial Risk Manager and the last year and a bit was as partly Acting Group Treasurer and then as Group Treasurer, thank you.

ADV KATE HOFMEYR: Thank you. If you turn over to page 2 of your affidavit Ms Stimpel you have a heading there entitled the Boards and under that section of your affidavit you deal with your experience of different Boards while you served at SAA from 2006 to 2016 as I have
10 it. Could you please tell the Chair about your experience of those different governance and management styles as a result of the Boards different composition over time?

MS CYNTHIA AGNES SORAYA STIMPEL: With the earlier Boards under Ms Cheryl Carolus and Mr Richard Laubscher and others there was a – a focus on them making – wanting the company to work. Ensuring that we work on a strategic direction for the organisation and that the entire team of SAA worked together towards this vision and I recall that time being quite positive for SAA even though SAA had come out of doldrums.

20 They have always been in some problems but there was energy in the organisation and the focus was willing to make it work. Ms Susan Simela had come in then also as the CEO and she worked with each different department also trying to understand where the issues were and how we can get SAA working at a coordinated organisation and make sure that we do achieve the strategy and the

vision of the organisation.

Subsequent to Ms Carolus leaving and part of the Board leaving at the time there was constituted a new Board and obviously we got a few Acting CEOs over the time and what I noted then is that there were interference from our Board who directly wanted to know about certain contracts. The way we operated is that each division was responsible for their specific activity or business role which then you had to go from a corporate governance perspective to the Board for – for approvals and this somehow the change was that the Board was
10 directing how the procurement should be going and where it should be going, thank you Chair.

ADV KATE HOFMEYR: Ms Stimpel you – you then at page 3 take up the topic of debt consolidation which is really the subject matter and the focus of the evidence in this first part of the session. Could you please explain to us what the debt position was and – and really the financial precariousness of SAA around the time February 2015 which is where you begin at – at paragraph 12 on that page.

MS CYNTHIA AGNES SORAYA STIMPEL: So at that time SAA was – we had government guarantees of up to about 14 billion at the time and
20 we had borrowed roughly about 11 billion. However our borrowing was always short term. Meaning that when they came up for maturity they had to be rolled over and it was not a simple process for us in Treasury to do that.

One had to as the loans were coming to maturity we had to write a submission to Board to ask permission to state that these loans

are now maturing and that we are going to roll it over. Board would give us the – the approval and then we would roll the debt over. Obviously at that time of continuous rolling over debt being short term you pay a higher – higher interest rate.

You also then in a continuous cycle of having to repay debt you have got three months, you have got six months, you have got one year and before you know it the months have passed. You have to roll over the new debt and you have to roll over the new debt. So we were always in the cycle constantly busy doing these submissions to get the
10 debt going.

ADV KATE HOFMEYR: Thank you. You say in paragraph 12 that in February 2015 you were appointed as the Acting Group Treasurer after the resignation of Mr Phetolo Ramosebudi who went to work for Transnet. Can you tell us about your occupying of that position and with particular reference - if I may Chair this is the first point at which one of the allegations against Ms Stimpel is relevant from the cross-examination application of Ms Nhantsi who will come next week to give evidence.

She criticises you and your lack of experience as a
20 consequence of only being appointed as Acting Group Treasurer in February 2015. What is your comment in response to that?

MS CYNTHIA AGNES SORAYA STIMPEL: Okay. So I started at SAA December 2006 and in March 2007 was when we first borrowed 1.3 billion from Nedbank as SAA and SAA received the guarantee – a government guarantee – from National Treasury at that time.

Subsequent years that followed SAA kept borrowing. So we needed to get new Government guarantees and then borrow funds from that.

My role of Head of Financial Risk was always being involved a, with the funding and b, I deputised for whoever the Group Treasurer was. So when I started there Ricky Thirion was the Group Treasurer. He resigned in the middle of 2007 and I deputised for six – roughly six - months at that time.

A new Group Treasurer was appointed and whenever he was away I deputised for him and when he resigned I deputised for him.
10 Subsequently a new Group Treasurer came in by the name of Lourens Van Der Merwe. I also deputised for him. In fact I - I presented at Board. I presented at Exco. At Audit and Risk Committees on – on his behalf at times especially from a hedging perspective and on the financial side.

Subsequent to Lourens resigning we then brought in Phetolo and even then I deputised for Phetolo. After Phetolo resigned is when I was acting and because at that time SAA had also gone through a reduction of staff earlier – about a year or two earlier – and had to go on a process of finding staff that are skilled within the organisation and
20 employ them and that is how I got employed as Group Treasurer of SAA.

I went through a full process of – of interviewing panels' etcetera and I was then chosen. You mentioned something else.

ADV KATE HOFMEYR: Yes. Just the lack of experience is really where the nub of the criticism lies. What is your response to a lack of

experience in the role of Group Treasurer as a consequence of only taking up the position of Acting Group Treasurer in February 2016?

MS CYNTHIA AGNES SORAYA STIMPEL: So I feel that I have had the experience having been 10 years at SAA. Secondly is that I have worked in banking my entire career and I have worked in a Treasury environment. So I know how the Treasury environment works. I know how we need to source funding I know now we manage the risks around the hedging processes and I also managed the risks there for the 10 years at SAA.

- 10 **ADV KATE HOFMEYR:** Thank you. At paragraph 13 you talk about a clash between the DPE and the Board and you also then go on to deal with the movement of your reporting lines between the Department of Public Enterprises and National Treasury. Can you tell us about that? What – what was happening at that time?

MS CYNTHIA AGNES SORAYA STIMPEL: So in previous years SAA or may – all State Owned Enterprises report to a Ministry and SAA reported to the department – Department of Public Enterprises at that time over the many years and then during this period there was Mr Gigaba and there was Ms Lynn Brown who we had reported to and

20 suddenly there was a change.

We were told that we will no longer be reporting to DPE but rather to – directly to National Treasury and our process and our working relationship with Department of Public Enterprises at that time was to have monthly meetings of reporting on certain activities and quarterly meetings on the whole organisation reporting where we were

financially, where we were with strategy etcetera and with National Treasury having come in SAA was in a crisis situation at the time and they directed us to say we will meet on a weekly basis in that we try and solve the problems that is creating the – the crisis for SAA which was a, the financial side.

The b, was on the air (indistinct) and then there were various other air routes and so we met with them on a weekly basis and on a monthly basis as well and then there was the full quarterly which responded to the full turnaround strategy and the vision of the
10 organisation.

ADV KATE HOFMEYR: Thank you Ms Stimpel. I have been asked to request that you bring the mic slightly closer to you so that we can get an accurate record for the transcription. Ms Stimpel if you then move to page 4 of your affidavit and paragraph 15. You then talk about your first task been to write a borrowing plan. Can you explain to us what that involved?

MS CYNTHIA AGNES SORAYA STIMPEL: Than you. I was given the task to draw a borrowing plan because SAA in the past have gone to National Treasurer and via DPE at the time – Department of Public
20 Enterprises – to get Government guarantees and on the back of the Government guarantees we went to the bank to borrow funds.

However we never had a formal borrowing plan like Transnet had or Eskom had and National Treasury directed us to – to draw up this borrowing plan a and see how we can manage our funds and also look at – they wanted three to five years. They said we would keep

coming – which was true. We were coming there on a regular basis every year wanting to borrow but we had no future planning it.

So that was my task to find out what we needed for SAA. What I did was I did some research through Transnet's borrowing plan. I also did it through various others – state owned companies. I looked at DBSAs and then see what would be a best for – for SAA. I drew that up. I shared the knowledge with – in our team we have a financial risk subcommittee that we look at all the financial risks within the organisation and the borrowing plan would form part of that.

10 So it went to them for review and therefore we sent it – I sent it to my boss at the time who was Mr Wolf Meyer and he also gave some constructive criticism of it then we sent it to National Treasury to give a review and add any changes that they would like to. They subsequently did do that. They sent it via email via track changes and once we did that we then put it through to our Exco Committee and our corporate governance levels which would have been Exco Audit and Risk Committee and Board. Board subsequently approved that in April 2015, thank you.

ADV KATE HOFMEYR: Thank you. Could we just focus on paragraph
20 17 on that page because you summarise there what your analysis showed during the course of your devising of the borrowing plan. Can you explain to us with particular reference to the saving that you reference there?

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you. So if we looked at our total maturity profile we had various debts maturing at different

periods and different rates and short term and we looked at if we borrowed longer term for instance taking a five to 10 year tenure and – and take that full debt of 15 billion or – which was our guarantees.

It was the time roughly 14-odd million but we rounded the number up to 15 billion and we did a calculation that if we did that 15 billion over a longer term 10 years at a fixed rate and we worked on the JIBAR rate at the time because that is the rates that our banks quoted us we would have saved approximately roughly 400 million and that was our calculation on it.

- 10 **ADV KATE HOFMEYR:** And you mentioned at the end of your previous answer that the borrowing plan was submitted to the Board and that it was approved by the Board as I have it at paragraph 18 there on 22 April. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct, yes.

ADV KATE HOFMEYR: Now at paragraph 19 you – you give us a bit of background as to the nature of funding decisions within SAA as contrasted with procurement that is governed by the Supply Chain Management Policy. Could you explain to the Chair what the distinction is that you draw between those two areas of decision making?

- 20 **MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you. With SAA and through our borrowing process we followed the Financial Risk Management Policy and there is a section in there which covered the funding and in the history of SAA having borrowed funds since 2007 we have borrowed funds directly through the banks. Yes we did follow an RFP but it only went to the five major banks at the time.

The amounts were huge. Our first amount in 2007 was roughly 1.3 billion and subsequent to that there were similar amounts. The reason why we chose the banks because they were our relationship supplier for funding and they could supply funding. We knew that. The SCM Policy which is the Supply Chain Management Policy of SAA always focused on the supply chain.

So any vendors or any other activities that SAA was involved in those – that is where the policy complied with. As S – as SAA Treasury we did not go through the SCM Policy for funding and so when
10 it came to this transaction this is the first time that the BNP transaction had gone through the SCM Policy but historically SAA followed the Financial Risk Management Policy and even when one went through our process we went through the financial risk subcommittee.

From there it went Exco Committee. From Exco it went to Audit and Risk and Board whereas the SMP Policy went through firstly a CFST which is a Cross Function Sourcing Team. Then it would go to the Bid Adjudication Committee and then only it would go to Audit and Risk and Board. In fact there was another Committee called FIPCO which went into that and it did not follow the – the route that the
20 Financial Risk Committee went, thank you.

ADV KATE HOFMEYR: Ms Stimpel how if you were not using the Supply Chain Management Policy for these funding pursuits of SAA how would you ensure competitiveness in your approaches for funding?

MS CYNTHIA AGNES SORAYA STIMPEL: Because we only used the banks. We used the five major banks. There were – we did not even

attempt to try Capitec which was a new bank that came on. We knew the history of the other banks. They were solid and they could borrow huge amounts - at least lend huge amounts to – to corporates and to State Owned Companies and if one looked at the – the entities like Transnet, DBSA, Eskom the banks were involved with those.

Transnet in its – in its own could go into the money market and issue its own bonds. SAA was not at that level yet to issue its bonds. So for the best method for SAA at that time was to go to banks and seek recourse and funds from them.

10 **ADV KATE HOFMEYR:** Did you chase competitive rates from the banks?

MS CYNTHIA AGNES SORAYA STIMPEL: Oh yes we did, and that's why we went, if we – we went to all five and we would do a full analysis on each of the banks, what they offered before we made our final decision, correct.

ADV KATE HOFMEYR: Thank you, if we then go over the page to page five of your affidavit, I'd like to pick up the point at paragraph 24 because as I understand your evidence until now you devised a borrowing plan, you took it through the various levels for approval both
20 to Mr Meyer, the then CFO, you got National Treasury's input, it was then placed before the Board and the Board approved it on the 22nd of April 2015, but what you start to deal with at paragraph 24 on page five is concerns being expressed by the Board of SAA at the time about the process that you are embarked upon. Can you tell us about what those concerns related to?

MS CYNTHIA AGNES SORAYA STIMPEL: So what had happened is that, after the borrowing plan having been approved and in our discussion with our, then CFO we were having maturities come up again of our loan book and we needed to go out and borrow again or roll-over the debt which is the other alternative and we then used that opportunity to go out and see if we can do the debt consolidation. See what prices the market could offer us, what the banks had, if they had the appetite for 15billion because most banks wouldn't just go out and put the entire risk on one entity and they would try and manage that risk. So we went out on a RFP for 15billion at the time, our Board then was very – because what happens is we've got to put the information back to Board and they were uncomfortable, they said why are we going out on debt consolidation, they are unaware of the debt consolidation, they – it's never been approved and can we write a paper on debt consolidation.

ADV KATE HOFMEYR: Let's go if we may to the actual email that you reference at paragraph 24 because that's an email that comes from, then member of the Board, Ms Yakhe Kwinana and you will find it at page 170 of the file in front of you, that is Annexure Three Chair, it should be under that tab and its page 170 it commences.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Have you got page 170, Ms Stimpel?

MS CYNTHIA AGNES SORAYA STIMPEL: I'll find it thank you, yes.

ADV KATE HOFMEYR: Can you tell us what that email is and what it deals with?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes so this is when we had gone out and put out the debt consolidation process for the first time and then Ms Kwinana had come back to the, then CFO saying that we should follow proper processes and that we should cancel the tender. So we had gone out already on that trying to illicit information and to sense the appetite of the of the potential funders which were only banks at the time and the – she writes there that we didn't follow the processes and that it needed to be cancelled.

ADV KATE HOFMEYR: And in the second sentence there as I read it,
10 she's querying with Mr Meyer how he determined which funders to approach and if you close it to selected funders she queries how are other new entrants expected to participate in South African Airways. Did you understand that to be part of the concern at the time, that your pool of recipients for the RFP was too limited?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes we always felt that we should be going to banks because the banks would have the capacity to lend such huge amounts, even the banks borrow from Sanlam and an Old Mutual, we wouldn't go directly to those institutions to borrow funds and we didn't add any others because we felt that they wouldn't have
20 the capacity to be able to fund SAA, but yes that was the concern.

ADV KATE HOFMEYR: You responded to that email of Ms Kwinana's and that is over the page in the next Annexure at 178 of the file, I'd like to pick up a few points to emphasise in relation to your response. You deal in the third paragraph with the background to the RFP and you say there, and I quote,

“The reason the RFP was sent out at that time was because the Chairperson had instructed the CFO to send the RFP out and he in turn instructed the treasury team to send it out. We sent the RFP on the Friday the 26th of June 2015”.

Is that your recollection of the events, that there was in fact, approval for this RFP to go out?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes we got our instruction from the CFO to go ahead and send it.

ADV KATE HOFMEYR: And you go down at the 7th paragraph which is
10 just below the middle of the page to talk about the utility of sending out the RFP and as I read this in general terms Ms Stimpel, and you’ll correct me if I’m wrong it reads as though a response to the Board in which you’re trying to motivate for the sense behind the process that you’ve adopted and to try and dissuade them from cancelling the RFP, is that a fair summary?

MS CYNTHIA AGNES SORAYA STIMPEL: That would be a fair
summary. I felt that the company’s reputation would be at risk, so if
you go out and put a RFP then you withdraw it and you come back later
and produce another and you withdraw it, the banks will look at you and
20 say, can’t you manage your finances, so I was looking at it, yes it was out of concern for the organisation and its reputation.

ADV KATE HOFMEYR: Towards the bottom of that page you deal with this question of new entrants, its your penultimate paragraph there. Can you tell us what your comments were in relation to Ms Kwinana’s query that it shouldn’t be confined and that it needed to be expanded to

“new entrants” on the funding spectrum?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes so we primarily only went to the banks mainly because they kept everything confidential and we didn't open the RFP to any non-banking institutions even though we knew about Sanlam or the Old Mutuals and with the email that we received from Ms Kwinana stating that, had we considered any new entrants, in my response then to Board on this was that, if we go with new entrants we don't know how confidential they'll be regarding the information and the sensitivity of our information and so that was my
10 concern which I put out there.

ADV KATE HOFMEYR: Over the page, however, at 179 you do record some of your experience around that time which related to receiving unsolicited approaches from non-banking institutions despite the RFP being confined to the five banks, can you tell us about that, what was happening at the time?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct, so we did – we were getting calls – actually they were firstly going directly to Mr Meyer who then called myself and Michael Klein in who was the head of cash management and we set up meetings with them. People came in many,
20 from different organisations, all different business cards all wanting – saying that SAA is seeking funding, we can help you and when we told them the quantum of the amount being 15billion, some of them said, we can do it and others said oh that's too much but those that could do it was – they – some people couldn't even – we said to them then send us a term sheet, we're going to put a RFP out, respond to the RFP and

send us your term sheet, they asked us what is a term sheet. So that was the level, when I realised they don't even understand how to manage funding, how to put forward a proposal of how you're going to express the amount, the duration, the term, the tenure, the interest rate etcetera on the term sheet and we had many of these discussions over time, which we felt at the time was a waste of our time, we were trying to get the funding going and now we're being held back by having to speak to individuals.

ADV KATE HOFMEYR: You raise a concern in the second paragraph
10 on that page about how these entities even got knowledge of the RFP letter, what did you make of that at the time?

MS CYNTHIA AGNES SORAYA STIMPEL: Ja I was surprised because I asked Wolf, they were calling his number mostly and I asked him, how do they know because we are responsible for it in treasury and we sent it out only via email, so how would they know and he said it could come from the Board, those were his words and I would suspect they were the other ones that knew or it was the CFO or any in our EXEC team but the EXEC team have been there at the time, long enough who have never then disclosed information on our borrowing
20 because we've been borrowing since 2007. So the summation that I made and at the time based on what Wolf Meyer told me that he suspects that it's from the Board.

ADV KATE HOFMEYR: And where does this culminate you – Ms Kwinana comes in and says to Mr Meyer that she's dissatisfied with the process that's been followed, you are told that there's an issue that

they want to broaden the ambit of those that have been formerly provided with the request for proposal, what then happens and you may make reference to paragraph 26 on that page because it seems from that paragraph that Ms Myeni and the Board then took matters further.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes they – we then had to cancel the RFP which we did and we then put – because the funds needed to roll-over we put in another submission through to the normal process of RFRC, Audit Risk and Board and this time we only put in an amount of the amounts that were due to be rolled-over which is roughly
10 over 6billion so we put a round number of 7billion which we're going to roll-over and once it got to our Board, our Board changed the Board resolution and changed it to go out and do 15billion debt consolidation.

ADV KATE HOFMEYR: Mr Stimpel we'll go through that if we may in some detail because I'd like to look at the documents relevant there but if we could just go to this email communication between Ms Myeni and Mr Meyer, you'll find it at page 181 under tab five which is the relevant Annexure number.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: You'll see there, the bottom of the page is
20 what I understand to be the first email from Ms Myeni to Mr Meyer and then his response at the top. Could you just indicate to us what Ms Myeni is saying in the second half of that page in her email on the 16th of July 2015?

MS CYNTHIA AGNES SORAYA STIMPEL: She has written to Mr Wolf Meyer, the then CFO stating that the Board has decided that they shall

withdraw the RFP for long-term funding and that they will need to get formal paper on the debt consolidation if this RFP is aimed at addressing the same.

ADV KATE HOFMEYR: Ms Stimpel can I just stop you there, had the Board not received anything from you at this point about your planned debt consolidation?

MS CYNTHIA AGNES SORAYA STIMPEL: They had received the borrowing plan and I did write a document on debt consolidation and explained the – did the comparisons that if we stayed rolling-over debt
10 we incurred this interest continuously and if we consolidated our debt we would be saving and we would have less stress in the organisation always running for every maturity and trying to find out how we're going to roll-over the next maturity.

ADV KATE HOFMEYR: So what do make of her request now for a formal paper on that which, as I understand your evidence, you'd already provided?

MS CYNTHIA AGNES SORAYA STIMPEL: I don't think they read it otherwise I'm not sure why it was brought in again.

ADV KATE HOFMEYR: And if we go to Mr Meyer's response at the
20 top, you see he there says,

“Dear Chair, following the decision of the Board to withdraw the RFP, we have formally in writing advised all the recipients of the RFP that has been withdrawn. We shall work on and provide the Board with a formal paper on debt consolidation as a matter of urgency”,

Did you follow through with that?

MS CYNTHIA AGNES SORAYA STIMPEL: We did yes.

ADV KATE HOFMEYR: So that would have been your second paper so to speak, on debt consolidation.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: Thank you. I'd then like to move to that process which you summarised for us a moment ago, lets go first of all to the Audit and Risk Committees recommendation to the Board, that is Annexure 7 and you will find it at page 3 – sorry 203, can you talk us
10 through this decision record of the Audit and Risk Committee which is dated 24 August 2015.

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you, this – we, as treasury, we would do submissions through the various corporate governance levels and this particular one had gone to Audit and Risk Committee and that is when our loans were maturing and we had the 7billion amount which we were going to roll-over and we stated there the funding requirement for August of 1.5, funding requirement for November maturing 2.5 and then because we had the general short-term banking facilities which was our overdraft we had with various
20 banks at 1.3 and then Nedbank so the total was roughly about 7billion. This is the submission that went through the FRFC which is the Financial Risk sub-committee and then it went to the Audit and Risk Committee. At the Audit and Risk Committee was when the Board changed the Board resolution because this decision record is a Board resolution at least the Audit and Risk resolution whereby they state

and change the amount, if you turn over the page Chair on 204 you see that it was changed to 15billion and in that, the Board members who sit at the Audit and Risk Committee and the same Board members also sit at the full Board, stated that we should put out a RFP for 15billion and that the Board as a whole and the acting CEO should be included in the process of issuing a RFP.

ADV KATE HOFMEYR: Could I just pause there was that customary?

MS CYNTHIA AGNES SORAYA STIMPEL: No that was the first time I've seen that because you get a directive, Boards role is oversight that they will, obviously have the best interest of the organisation at heart and direct management of what to do and how best to do it but they don't go to the level that they want to be involved in a RFP process. They could have directed and say include external parties or broaden your RFP but they wanted to be involved and they wanted to add on additional parties. So once we did the RFP we had to send it to Board and they then added on interested parties which we had to then send the RFP to.

ADV KATE HOFMEYR: Well let's...(intervention).

CHAIRPERSON: What – I'm sorry what did you understand this request or directive or instruction to mean that the Board wanted to be involved in the RFP, did that mean they wanted to be involved in the actual formulation of the RFP, what exactly did it mean as you understood it?

MS CYNTHIA AGNES SORAYA STIMPEL: How I understood it, because I did seek clarification from our company's secretary's office

asking them how do they want me to proceed and they wanted me to write the RFP, once I've written it I had to send it to Board, Board needed to review it, I also had to list the clients that we were going to send it to, the service providers for funding and send that to them and they also instructed that we use previous suppliers that we had on our list from February already from earlier times so it wasn't only the banks, it was all those other funders – potential funders who had come to SAA unsolicited seeking through financing SAA and so my understanding was that nowhere before did a RFP document go to a
10 Board first for approval, not anywhere not even the Supply Chain Management process. So we had to send that to Board, Board then approved it with the list and we subsequently, through Dr Tambi received a couple of other clients which we needed to add on to the list and only then could we send out the RFP to the suppliers, thanks.

ADV KATE HOFMEYR: Chair if I may ask Ms Stimpel to go to two of the documents which will actually show you that list and the draft RFP that was sent, lets start at page 207 because 207 as I have it is the CFO's document that goes to the Board seeking the Board's approval and you'll see under item one there it says, well preceding that,

20 "The purpose of the submission is to 1) request the Board to approve the RFP for financing of 15billion, Annexure A",
and if you go over to 210 which is under the next tab, I take that to be the Annexure A which they were asked to approve is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then if you go back to 207 you'll see that the second thing that the Board is asked to confirm the list of counterparties to be included in the RFP and then if I can ask you to flick over to 212, is that the Annexure B referred to?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Okay so let's go down on the page at 207 just to understand what the Board was resolving here. You've made the point earlier that there was already a change at the Audit and Risk Committee of the 7billion that you had proposed was required to source
10 to a 15billion and you see that reflected, again in the Board's request under A, under three sort of below the midway of the page. The issuing of the RFP for the long-term funding to banking and non-banking financial institutions as per Annexure B for the financing of a total amount of 15billiion in order to consolidate the current debt portfolio of the company, is that what the Board then approved to do?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then you'll see under D this point is picked up again about who is going to determine who the recipients are of the RFP, D records,

20 "ensure that the RFP is limited to the counterparties that responded to SAA in the February 2015 RFP",

Now can we just pause there, that's the RFP that you were told to withdraw?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Right so now they want this RFP that they

have approved to go to those very same institutions as well as other institutions that can be recommended by the Board members and attendees, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: So let's go to the list and let's look at who we have there if we may, that was at page 212. So tell us about the compilation of this list, you indicated that it would include those who had responded to the February 2015 RFP and then others, where did the other suggested entities come from?

- 10 **MS CYNTHIA AGNES SORAYA STIMPEL:** Okay so the first five are the banks we normally deal with the Deutsche bank and the others – well I won't say the first five there's various but not everyone responds, so there's the banks that come in, we opened it to broader banks which we don't normally do like your Goldman Sachs or HSBC or JP Morgan because they normally wouldn't lend and directly to SAA they would perhaps fund like aircraft and other initiatives within SAA or other needs but they were our clients as well so we opened it to them. The latter parts, the ones – the non-banking institutions for instance, the (indistinct) Holdings, these were all new clients to us we had – we met
- 20 them all over the time the first coming for unsolicited or at the time of the RFP sending in information or just giving the names to either Mr Meyer or via Mr – Dr Tambi and those are how we managed to put all these together.

ADV KATE HOFMEYR: And then what happened did you act in accordance with the Board's decision?

MS CYNTHIA AGNES SORAYA STIMPEL: We then did, we sent out the RFP, we sent it only to those on this particular list that were there and we gave a timeline for them to respond to our – the date we gave them, ja closing date was the 2nd of October to respond to the RFP and that gave us time then to analyse all the term sheets once we received them then put a formal – we normally put it in a spreadsheet format where you list each of your clients and you list the amounts and the duration and the interest rates that they're prepared to fund SAA and that them made into a summary and then we wrote our submission of
10 who we should choose. We normally look at who is the best client that offers you the best interest rate and would then offer some interest relief for SAA.

ADV KATE HOFMEYR: Thank you before we get to the details of that evaluation, I'd like to deal with page six of your affidavit starting from paragraph 33 because there you record what Mr Meyer, at the time, recounted to you about a meeting with a potential funder. Chair Mr Meyer is not scheduled to give evidence in this (indistinct) session but is more likely than not going to give evidence in the second session so to the extent that there is any aspect of hearsay evidence here we
20 would ask him to assist us on that. If it becomes such that oral evidence is not required he can of course also provide an affidavit but what is important is, what Ms Stimpel does in these paragraphs as a habit is recounts what you were told by Mr Meyer about his meeting with the potential funder is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And tell us about that, what did Mr Meyer tell you?

MS CYNTHIA AGNES SORAYA STIMPEL: So we were called in, we were direct reports obviously so from a treasure perspective he would call myself and Michael in and – or Lindsay or whoever else. We were called in as a team of managers at the time, he raised his concern about the funding, he said that he's been called to a meeting by one of the potential funders on this list and he went to the meeting, obviously he thought they were going to discuss how much – how big – the
10 maximum amount they could offer or anything like that or they were struggling with how to complete the term sheet, he went there and he said, he was told that they must ensure that SAA gives this client the deal because number one wants this deal to happen. I frowned and asked him, what do you mean and he did explain saying that he was in this room and he understood that number one meant to be the President at the time, Mr Jacob Zuma. The client then was Mr Jahinrin? Naidoo who worked for – I think the company was either First Self? because they were the financial institution at the time and they are on the list, I think if you look at the list here First Self Financial
20 Services.

ADV KATE HOFMEYR: As I, just to be clear, as I record – as I read what you have said here at paragraph 33 you indicate that Mr Naidoo was present at the meeting but you go on and say, he, Mr Meyer was called outside by one of the men present, it's not clear to me that, that's necessarily Mr Naidoo, is that correct.

MS CYNTHIA AGNES SORAYA STIMPEL: Ja.

ADV KATE HOFMEYR: Thank you and then ...(intervention).

CHAIRPERSON: I'm sorry does that mean you didn't ask him who the other person – who the person was that called him?

MS CYNTHIA AGNES SORAYA STIMPEL: No I didn't.

CHAIRPERSON: You didn't and he didn't offer the information?

MS CYNTHIA AGNES SORAYA STIMPEL: No.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: At paragraph 34 you indicate what Mr Meyer
10 said in response or at least what he relayed to you he said in response,
what was that?

MS CYNTHIA AGNES SORAYA STIMPEL: That he wasn't part of the contract, I mean – he doesn't – he's not part of the decision making because it's done outside the CFO and that it's done in a team and obviously full analysis is done and so he couldn't play a role in it.

ADV KATE HOFMEYR: And then at paragraph 35 you talk about the fact that he relayed to you that he'd recorded the conversation, tell us about that, if you will?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes he said he had his
20 own personal reservations when he went into the meeting and he had got himself a pen which he could record with and he had it in his pocket when he went into the meeting so he said he had recorded the full meeting. He only told us, who were in his office at the time who he had called to this meeting on that morning and I still said, well done, you know on it and then we left because we had work to do.

ADV KATE HOFMEYR: And when about in time was this, can you recall, when did he give you this feedback about the meeting?

MS CYNTHIA AGNES SORAYA STIMPEL: I think it was around October.

ADV KATE HOFMEYR: 2015?

MS CYNTHIA AGNES SORAYA STIMPEL: Ja 2015 correct, before he resigned, he resigned in November.

ADV KATE HOFMEYR: Right and then I'd like to pick it up over the page at paragraph 36 because that recording pen has some later
10 significance, what do you recount at paragraph 36 there about the circumstances preceding Mr Meyer's departure from SAA?

MS CYNTHIA AGNES SORAYA STIMPEL: There was a Board meeting held and they – sometimes it was separate where only the Board members attended and they excluded Mr Meyer and at the time I think Nico Bezuidenhout was acting CEO and after that sort of in meeting – Board meeting, they then called Mr Meyer. When they called him, he was then searched by the security, his pen was taken from him and he had to hand in his laptop – I think he had to hand in his laptop but they had taken his pen at the time from him by the security guard
20 as he entered the meeting.

ADV KATE HOFMEYR: Can I just ask you about that process, was that usual that people would have to part with their laptops and pens and other devices when they went to attend Board meetings?

MS CYNTHIA AGNES SORAYA STIMPEL: It was most unusual, that's the first time I heard about it, when he told us and we even made a joke

later saying, go into meetings with a pencil and not a pen, you know, and – but subsequent to that there were – there was a meeting that Ms Myeni called to all attendees at National Treasury in February 2016 when we attended there and also when we came in she – there was someone waiting at the door and she said, hand your computer and your cell phone to this person and then only we could come into the Boardroom and sit down, so that was the first time I've seen that. Even at National Treasury, I've been there for many meetings, I've never had to hand in – obviously you go through a scanning process but I never
10 had to part with my laptop or my cell phone.

ADV KATE HOFMEYR: What did you make of that instruction at the time?

MS CYNTHIA AGNES SORAYA STIMPEL: I found it very unusual and I found it – ja for me there was the suspicion, how did they know that Mr Wolf had a pen which could record and then took it and who would take a ball pen from your pocket, so that was a suspicion. Secondly is, I felt that when you – there was obviously something not right going on that you start meddling with people's cell phones or their – and you don't want people to record your conversation or use your laptop for
20 whatever reason while you're in a meeting, thanks.

ADV KATE HOFMEYR: The persons as to whom you had to hand over these devices, do you recall who they were or what status they had?

MS CYNTHIA AGNES SORAYA STIMPEL: They were security, I don't know them because they're not familiar to our normal standard security that we see at SAA you get to them over the years and you get to know

them by name, fortunately I normally don't go in with my cell phone or my laptop so I didn't have to – they just asked me, do you have anything, I said no and I walked through.

ADV KATE HOFMEYR: So just to be clear were they not SAA regular security personnel?

MS CYNTHIA AGNES SORAYA STIMPEL: Not that I recognised them no.

ADV KATE HOFMEYR: And you can't assist us any further as to where they may have come from?

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** No sorry.

ADV KATE HOFMEYR: Thank you, you then go to paragraph 37 where you record that Mr Meyer left in mid November 2015, what were his circumstances when he left?

MS CYNTHIA AGNES SORAYA STIMPEL: Prior to that there was some article in the newspaper regarding Mr Meyer, we had some trapped funds, we called it trapped funds within Nigeria, Angola and in Africa in that – because of the oil crisis, remember the price of fuel had gone down to 50 dollars at the time and Nigeria and Angola were suffering from it because they also – besides using their own domestic currency
20 they were also using the Dollar as their legal tender within the country which impacted them on their entire operations. The impact for SAA and many other airlines was that we couldn't get funds out of the country either and so there these trapped funds and he was accused that he wasn't managing these trapped funds efficiently within Africa but it was written in the negative light and he then had also called a

subsequent meeting to that saying that he had gone to see his lawyer about it, whether he should challenge this because it was just out there in the paper which was deformation to his career and his character and his lawyer had advised him to walk away and resign and so he had told us, and I only heard that on the day he told us he was resigning, telling us that because of what had happened we'd gone to – I'd gone to my lawyer he advised me to resign and I find it safer and so I'm going to resign and I have already found a subsequent employment.

ADV KATE HOFMEYR: And then at paragraph 38 you record who Mr
10 Meyer's replacement was but that is one point at which I have a note that there's a correction that you want to make, the sentence as it reads currently is that,

“Ms Phumeza Nhantsi replaced Mr Meyer as the interim CFO at the beginning of December 2015”

What is the correction you'd like to make there?

MS CYNTHIA AGNES SORAYA STIMPEL: She – I've confirmed after this so my apologies that it's December but it was the 27th of November when she started 2015.

CHAIRPERSON: I'm sorry what was the date?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** The 27th of November 2015 when Ms Phumeza Nhantsi started at SAA as interim CFO. I put the beginning of December because that's when we met her.

ADV KATE HOFMEYR: So we'll change beginning of December just to correctly reflect 27 November 2015, is that right?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Chair we're about to move to a new topic and I see we're just in advance of the tea time, happy to take the adjournment now if that suits you or shall we continue?

CHAIRPERSON: On mine we have five minutes more, I don't know if it's correct, is yours...(intervention).

ADV KATE HOFMEYR: Mine is five but I was moving to a new topic so I thought we may want to break otherwise we can proceed until...(intervention).

CHAIRPERSON: But our watches are they on the
10 same...(intervention).

ADV KATE HOFMEYR: They are on the same I am also at ten past eleven.

CHAIRPERSON: Oh okay, no let's use the five minutes.

ADV KATE HOFMEYR: Excellent.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: We then start in your affidavit with a topic headed, responses to the RFP, so just to orientate ourselves because we had a bit of an interlude with Mr Meyer's call to the particular funder, at this point in time in your evidence, you've had approval of
20 the RFP, that had to go before the Board to source 15billion rands worth of funding, they've approved the list and you've gone out, you've issued that RFP to that list that we saw, Annexure B at page – let me just get it again, page 212, is that correct.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And now you enter a part of your evidence in

which you talk about the responses to the RFP, can you take us through paragraph 39 on page 7 from whom SAA received responses to the RFP.

MS CYNTHIA AGNES SORAYA STIMPEL: So not everyone responded to the RFP and we received it from a few banks and the main client that was able to supply the full 15billion was SeaCrest, the other client was Confedi?, Inovex?, Hamaghla?, Standard Chartered, Absa and Nedbank and those were the ones that – the others didn't fit in that we got but these were the main respondees that we got from the RFP.

10 **CHAIRPERSON:** One second, sometimes your voice seems to be low sometimes it seems to be fine I want to check if everybody can hear.

MS CYNTHIA AGNES SORAYA STIMPEL: It's probably my voice I've got a bit of a cold, I do apologise I'll bring this closer.

CHAIRPERSON: No it looks like they do hear you it's okay thank you.

MS CYNTHIA AGNES SORAYA STIMPEL: Okay, and I think it's when I turn my head to you.

ADV KATE HOFMEYR: It might be useful, just in relation to the responses to take you to what comes later actually as an Annexure but it's a sort of summary page as I have it of the analysis that was done of
20 the responses, you'll find that at page 256 which is under tab 13 if we could just look at this page, could you talk us through what is reflected there in relation to the entities as well as what is being evaluated.

MS CYNTHIA AGNES SORAYA STIMPEL: So as we look at this summary, the first two pages prior to that which is Annexure A, B and then into C, C summarises everything that we have. So we had to look

at the critical criteria at the tie and then the tenure and the funding instrument and the currency, so on the left-hand side is the detail of the loan. Moving to your right, from left to right is a list of each of the clients that responded, so there was SeaCrest Investments that came up with the top, they came with the interest rate of 5.8% and they offered a full amount of 15billion. The calculated interest we did then, based on the loan, because their loan was fixed at 740million cost for SAA, the next was Confedi, Inovex, Humagla, Stand Chart, Absa and Nedbank. If you look at Confedi, they offered a big amount of 2.1billion
 10 but their base rate was 6.5% meaning that the interest would be 1.7billion, it wasn't at the best interest of SAA to go in for higher paying interest loan, Inovex offered only 1.62billionn at a rate of 2.5%, whereas Humagla also went in 15billion at a 6.5% and they had other terms like arrangement fees, upfront fees of 5.25% so that was a fee we had to pay for them for advisory so that would have also been expensive and then Stand Chart offered the 1.5 and Absa offered 1.3 there the 6.5 is the Jiba rate at the time which is the Johannesburg Interbank offered rate, accepted rate through all the banks and then they put on a margin of 2.35, Absa put 2.5, Nedbank offered 1.5 at 6.5
 20 same Jiba rate and theirs was shorter term.

ADV KATE HOFMEYR: We'll get to this point in due course and possible Chair with your leave, after the break.

CHAIRPERSON: Yes we'll take the tea adjournment we'll resume at half past eleven we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. Ms Stimpel before the break we were looking at the analysis table at page 256 where you were taking us through the analysis that was done of the various entities which had responded to the RFP. The point I was wanted to pick up on just before the break was you have got three banks reflected there in the last three columns, Standard, Charter, ABSA and Nedbank and the point you were making was that the amounts that they were willing to
10 fund came in under the 15 billion. They were 1.5, 1,5 and 1.3 which if my maths will do me justice is 4.3 billion in total, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: Now that was less – Mr Stimpel if you would not mind just turning on your microphone so that we – sorry your answer to that – the 4.3 was the total amount that the banks were willing to fund, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: We will come to that in a moment but that was less than the total that the RFP had indicated SAA was looking for, is
20 that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct. Our summation of it that if we cannot get the full 15 billion we will then work with what we have because we can always go out for another RFP or for the amounts we have not covered.

ADV KATE HOFMEYR: Okay so let us come to that analysis and the

position that you then recommended should be adopted in relation to this RFP because you are highlighting both that Seacrest Investments which is in the first column there was indicating a willingness to fund for the full 15 billion and as I look across there had the best rate on that 15 billion as compared with the other responders, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then you spoke about an alternative in relation to the banks who together were willing to fund 4.3 billion, is that correct?

10 **MS CYNTHIA AGNES SORAYA STIMPEL**: Correct.

ADV KATE HOFMEYR: So what was your recommendation after having assessed these various responses? What did you go to board with as a recommendation in relation to your assessment?

MS CYNTHIA AGNES SORAYA STIMPEL: So our final recommendation after assessing all the – the respondee's term sheets that we received we recommended that Seacrest be chosen for 15 billion because they looked at the full consolidated amount and their interest rate was the better rate. However while we were still doing our analysis we did our own internal research on Seacrest and we were uncomfortable that we
20 could not get enough information and so we asked our legal department to do a full due diligence on the client which they did. The client...

ADV KATE HOFMEYR: Ms Stimpel sorry I may just...

MS CYNTHIA AGNES SORAYA STIMPEL: I am sorry.

ADV KATE HOFMEYR: If I may just stop you there I would like to take you to precisely where that is recorded in your recommendation. So let

us go to page 226 if we may that is under Tab 12.

MS CYNTHIA AGNES SORAYA STIMPEL: Got it.

ADV KATE HOFMEYR: This is a document from the Group Treasurer that is you, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And it is to the Finance Risk Sub Committee or FRSC for short, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct. This was the first one.

10 **ADV KATE HOFMEYR**: Correct. So this is your first recommendation and that is to the Finance Risk Sub Committee. You made a point in your evidence a moment ago about wanting a due diligence?

MS CYNTHIA AGNES SORAYA STIMPEL: Hm.

ADV KATE HOFMEYR: To be done. I would like to take you to page 234 to find that recorded. If you look at page 234 you will see it begins with a heading E Conclusion.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And what you are setting out there is at paragraph 25:

20 “The secured facility offered by Seacrest emerged as the preferred option for SAA as it provides SAA with the following benefits”

And then you list a number of those benefits but at 26 you record there:

“Before any bid is awarded the necessary due diligence will be done on the preferred bidder.”

Is that what you were referring to?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Right and then if you go over the page to 235 you will see your ultimate recommendations being recorded there which I take to be consistent with what you have indicated already in your testimony. At paragraph 33 the recommendation reads that:

10 “FRSC should mandate the acting Chief Financial
 Officer as chairperson of the FRSC to recommend to
 the SA EXCO for approval of the secured term loan
 financing of 15 billion for a period of ten years
 offered to SAA by Seacrest Investments.”

And then moving up the levels of at least authority to the SAA audit committee and then to the board of directors. So that is I take it was your first choice, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then tell us about 34? What does 34 cater for? Sorry paragraph 34 on that page. We were looking at the recommendations page 235.

20 **MS CYNTHIA AGNES SORAYA STIMPEL**: 235 sorry I just went one
 page ahead.

ADV KATE HOFMEYR: So as I have it paragraph 33 ...

CHAIRPERSON: I am sorry is that 335?

ADV KATE HOFMEYR: 235 Chair the page.

CHAIRPERSON: Oh. Yes.

ADV KATE HOFMEYR: And then we were first looking at paragraph 33.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Which captured your first choice so to speak in terms of the analysis of the funders. But then at 34 you catered for an alternative position and I was asking you to explain that?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct. So because we knew that we still needed to do the due diligence at the time and that end we put a contingency in that should Seacrest for whatever reason not be approved by board we would then recommend – make a second recommendation and we then recommended the combined of the other
10 bankers and their total offer of [indistinct] it was 4.3 billion in what they had on offer in their term sheets at the time. So we made a second recommendation but as a contingency. So it is – ja.

ADV KATE HOFMEYR: And then you made reference to the due diligence that needed to be conducted. I would like to take you to that if we may? That you will find at page 274 under Tab 14. What is this document?

MS CYNTHIA AGNES SORAYA STIMPEL: So we had asked our legal department to compile a due diligence report on Seacrest because when we received Seacrest term sheet we found that they were not
20 going to be the providers of the funding directly. They were using two other funders. One was called Mars Capital but on a very small percentage and the massive part of this was the – primarily the big amount 15 billion from Grissag and so we then asked for them to complete and compile a due diligence report and based on that we could then recommend them further.

ADV KATE HOFMEYR: I would like to pick up a few points of that report. If you look at page 274 under the heading “Background” item 2 background. In the second paragraph under that heading there is just a recount initially about how they were requested to do this due diligence and then from the third sentence it reads:

10 “It appears from the report that Seacrest and its investors are reluctant to release the required information and documentation pending the outcome of the tender evaluation and announcement of the successful bidder. The requested information and documentation is critical in this type of transaction for SAA to make an informed decision on the contracting parties. Of more concern to SAA is the origin and availability of the funds.”

And then if you go over the page to 275 there is what I take to be the legal review committee’s recommendation in relation to that aspect. They recorded the first sentence there:

20 “The due diligence process may be finalised post the award of the tender and during the contracting process and crafting of conditions precedent in the agreement.”

What do you understand that to mean?

MS CYNTHIA AGNES SORAYA STIMPEL: That we would first look at any conditions that they need to comply with before we even enter into a contract. Should they fail passing that conditions precedent then

there would no agreement and no transaction.

ADV KATE HOFMEYR: And it goes on I think correctly to reflect your understanding because what I take the review committee to have done is to prepare a draft agreement for the proposed transaction with Seacrest and with a copy of that attached. Now oddly we have to go backwards in the papers to find that attached agreement because it was in fact inserted after your previous analysis document. If you would go backward to 258 in the papers? That is under Tab 13.

MS CYNTHIA AGNES SORAYA STIMPEL: I have it.

10 **ADV KATE HOFMEYR:** So you will see that is a page marked Seacrest Investments Loan Agreement and it appears to be a draft of an agreement that would be entered into between Seacrest Investments and South African Airways SOC Limited. I would like to take you to page 263 because that is where the very conditions precedent that we were looking at in the summary of the legal review appeared to have been incorporated in the draft of the agreement. Do you see Clause 7 there is headed “Conditions Precedent”? So we are at page 263.

MS CYNTHIA AGNES SORAYA STIMPEL: 263 okay. Hm.

20 **ADV KATE HOFMEYR:** If you look at Clause 7 on that page it is headed Conditions Precedent and then you see further down from 7.1 and 7.2 what appeared to be a whole host of track changed additional conditions precedent that have been added to the draft agreement. Let us just look at those because recall as we looked at the legal review what they were concerned about as we have it from their report is that they could not get more information about the sourcer funds, what was

in a sense standing behind Seacrest as the funder and so their proposal was during the negotiation process you could secure SAA's position by adding as conditions precedent to the agreement these very aspects. As a legal matter if they were not fulfilled the agreement would not come to operate. So let us go through some of them. They wanted at 7.2.2 a certified copy of the resolution of the board of directors of the lender. So they wanted some satisfaction it appears as to the board of directors approving the terms on which the transaction was to be fulfilled. At 7.4 over the page – no 7.4 deals with the
10 borrower. Let us rather go to 7.5 they wanted original copies of a report from an insurance advisor certifying that all required insurances would be in place. At 7.6 they wanted copies of all cover notes and statements issued in respect of insurances required to be in place. They wanted at 7.7 evidence that the bank account had been opened with the bank and that all applicable mandates were in place. They wanted at 7.9 oddly numbered because it comes of order the approval of the credit committees and boards of directors of each funder of the grant of the facilities to the borrower. The next 7.8 they wanted such
20 document and other evidence as is reasonably requested by the facility agent to carry out and be satisfied that it complied with all necessary know your customer and similar identification procedures under applicable laws and regulations under the FIC Act. What would that have to do with? Why would know your customer and similar identification be relevant?

MS CYNTHIA AGNES SORAYA STIMPEL: Because you needed to know

who you were dealing with. We did raise the concern that if we were getting 15 billion from a non-financial institution and it was a client we could not trace any further information just by googling the general rudimentary type of research we needed to know that this money was kosher money and above board that it was not money that could be money laundering or coming through drug money or things like that.

ADV KATE HOFMEYR: So that is as I understand it what you regard 7.8 as being directed towards.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

10 **ADV KATE HOFMEYR:** Then at 7.9 there is even a condition related to the Reserve Bank. A certified copy of approvals from the financial surveillance department of the South African Reserve Bank on terms acceptable to the borrower. Why would the Reserve Bank be relevant at all in this funding?

MS CYNTHIA AGNES SORAYA STIMPEL: From a financial institution perspective our Reserve Bank keeps a close I would say control and oversight on the banks and so therefore they are a stable company to get information from regarding your finders and so because this client we did not know we recommended that we get something from the
20 Reserve Bank. They should have been listed if they going to be lending any amounts – huge amounts to borrowers.

ADV KATE HOFMEYR: Would the Reserve Bank also have been relevant if the funds were coming from outside South Africa?

MS CYNTHIA AGNES SORAYA STIMPEL: That would be dollars then you apply because there is the FICA Act which complies internationally

as well.

ADV KATE HOFMEYR: Hm.

MS CYNTHIA AGNES SORAYA STIMPEL: And the Reserve Bank does play a role.

ADV KATE HOFMEYR: Thank you.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then at 7.10 they wanted certified copies of the latest audited consolidated financial statements of the investors and the latest audited consolidated financial statements of the funders.

10 What I read behind that is that is what they were not able to get out of Seacrest at the time that they were required to do the review. Is that a fair summary?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes Chair that is – yes we were – there was a list of issues that they were unable to comply with and hence we were uncomfortable with the final due diligence.

ADV KATE HOFMEYR: So as I have your evidence the recommendation initially that we looked at was to go for Seacrest first the fall-back position was the consolidation of the three banks proposals.

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** Hm.

ADV KATE HOFMEYR: But that was coupled in the case of Seacrest with the need to do a due diligence, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: We then have the legal review report which similarly as we read it raised concerns about the level of information

they were able to obtain but does record that the recommendation is that the due diligence process can be finalised post the award of the tender and during the contracting process by building in protections as conditions precedent, is that as you understood it?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: And what then did you do in relation to the next round of approvals that you needed?

MS CYNTHIA AGNES SORAYA STIMPEL: So after the next round was through the EXCO committee which is our executive committee and we
10 put our normal submissions through listing again the Seacrest and our second choice being the banks combined and we also had a copy of the due diligence report by then which we had tabled at the EXCO and stated that we were not comfortable with the result of the due diligence at the time. At the EXCO meeting it was decided to still put forward the recommendation through to board because we are covered in the due diligence that we will set the conditions precedent and that we would still minimise the risk for SAA should Seacrest not fulfil the final due diligence and then that would be completely out and we would then focus on the – the second recommendation with the combined banks.

20 **ADV KATE HOFMEYR:** Ms Stimpel.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes Chair.

ADV KATE HOFMEYR: As I read paragraph 43 of your statement which is at page 8 you record there that you queried at that EXCO whether you should not exclude Seacrest completely or still keep them in the recommendation and attach the due diligence report. Give us a sense

of your misgivings at the time and why in the end despite those misgivings you went with the broad EXCO decision to recommend Seacrest?

MS CYNTHIA AGNES SORAYA STIMPEL: Okay. Based on – thank you Chair. Based on – firstly me being old school is that we have always worked we had a history of working with banks and we knew how the banks funded. There was always right up front we knew – their legal team, our legal team and we worked closely with National Treasury’s legal team when it came to working the agreements. They understood the funding process and with Seacrest coming up it was great that they could fund SAA with the full 15 billion however my personal uncomfortableness arose from the fact that one was the due diligence was not really complete and I still was not sure who Grissag was and how could they be funding and where they were sourcing their funds from? And then thirdly why I put it to EXCO the time was can we then just go with the banks and put a recommendation was that they had said we had been tasked by board to bring in third parties so let us go ahead with that. We still protecting SAA at some degree because once we have got the conditions precedent in we have limited the risks that SAA would face. So but my personal view was if I had to make the decision alone yes I would have not gone with Seacrest. Thank you.

ADV KATE HOFMEYR: You then record at paragraph 44 that that same recommendation that you made initially to the financial risk committee is then placed before the board Just to give you that reference if you turn to page 244 which is under Tab 13 you will have your as I have it

submission to the board of directors. Can you confirm if that is correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Okay. I have it. Yes it is.

ADV KATE HOFMEYR: And as you say at paragraph 44 in essence this is the same recommendation, go with Seacrest first if Seacrest fails then go to the consolidation of the banks. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And you will find that just for the record at 251. And I see that reflected under paragraph 32, is that correct?

10 **MS CYNTHIA AGNES SORAYA STIMPEL**: Correct.

ADV KATE HOFMEYR: So you now at Ms Stimpel the 27 November 2015 that is the date that appears on the first page of that submission that you did for the board of directors. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And you have been through something of a process by this stage. You tried one RFP in February 2015 it had to be withdrawn. You then are instructed to do a further RFP you go through that process. You get response. You analyse them and this culminates in this submission to the board on the 27 November 2015, right. We
20 now are going to move to what then happens and what decision the board took after this really year long process by this stage. And for that purpose we should turn to paragraph 45 on page 8 of your statement. If you go back to the statement – oh the affidavit at least. Well let us start with your expectations for this board meeting. What did you assume you would hear the following week after you sent this

detailed submission to the board?

MS CYNTHIA AGNES SORAYA STIMPEL: After the board meeting my expectations would have been that the board would have either have approved the Seacrest or turn Seacrest down and approved the consolidated banks and if they did not want that either they would have then instructed us to go out on another RFP and see what else is out there. Because that is what I would have expected.

ADV KATE HOFMEYR: Right that is now what occurred is it?

MS CYNTHIA AGNES SORAYA STIMPEL: No.

10 **ADV KATE HOFMEYR:** So you detail in paragraph 45 what did occur and can you tell the Chair what then eventuated? Ms Stimpel if I may just ask you to come closer to the microphone or bring it closer to you just so that we get you adequately on record. Thank you.

MS CYNTHIA AGNES SORAYA STIMPEL: Okay. What happened is that the board meeting did take place on the 3 December Chair and subsequent to that I had followed up which is a normal thing we do. We follow up with companies' secretaries' office to get the board resolutions. Once we get the board resolutions we then implement whatever the resolution is. And on the Monday when I came into the
20 office I followed up on whether we have a board resolution yet on the funding and I was told no not yet.

CHAIRPERSON: And the Monday would have been what date if you remember? The board meeting was on the 3 December?

MS CYNTHIA AGNES SORAYA STIMPEL: I think it was the 7 December.

CHAIRPERSON: Okay more or less.

ADV KATE HOFMEYR: I will check that Chair.

MS CYNTHIA AGNES SORAYA STIMPEL: We can check it.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Please continue and I will give you that in a moment.

MS CYNTHIA AGNES SORAYA STIMPEL: Thanks. Thanks. And we – when we did get the board resolution it was really unusual for me to see this in that the board resolution was stated that our first
10 recommendation to Seacrest was declined. The second recommendation for the consolidated banks was also declined and then the third part it makes a recommendation for us to go with funding for a company called FDC which was Free State Development Corporation and authority is given or the mandate is given to the acting CEO and the interim CFO to go ahead and sign the deals and make sure that this loan happens. And then it mentions because of a letter which was circulated at board and that immediately I questioned because I said, how can a letter that did not go through the formal process of the RFP process and now come to board and a decision is made on that letter.

20 **ADV KATE HOFMEYR**: Ms Stimpel if we may?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: .Could we go to the letter just while you are at it.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: In your testimony. Let us go to page 287 that

is under Tab 15.

MS CYNTHIA AGNES SORAYA STIMPEL: I have it.

ADV KATE HOFMEYR: Ms Stimpel it is often necessary with witnesses so I will be doing this a lot in the next few weeks to clarify what you had knowledge of at the time and what you have subsequently gained knowledge of. At the time of this board decision on the 3 December had you seen this letter?

MS CYNTHIA AGNES SORAYA STIMPEL: No. The first time I saw this letter was through the Zondo investigators when I was called in to give
10 my testimony and then with them and myself working together to put through evidence they showed me this letter. So that was the first time I got to know about this letter.

ADV KATE HOFMEYR: Okay let us...

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair.

ADV KATE HOFMEYR: Let us focus on it if we may for a moment? This is a letter dated the 2 December 2015 from the Free State Development Corporation to South African Airways authored by Mr Moyo and it records that the Free State Development Corporation is a schedule 3D company in terms of the PFMA. The corporation offers
20 financial and non-financial support in terms of the FDC Act and subsequent – it goes on subsequent to our discussion this is addressed you will see your reference at the top right hand corner records P Nhantsi as the reference. That is a reference to the interim CFO at the time Ms Nhantsi who will be giving evidence before the commission next week. It says:

“Subsequent to our discussion regarding funding that we provide we are in the process of exploring a joint venture between FDC and a foreign investor through its newly formed subsidiary in the Free State.”

And it records that the investor has indicated that:

“There is an appetite for government owned entities such as SAA who require funding. This is a first of its kind within FDC but we would like to explore this opportunity and provide such funding to yourselves.

10 This is subject to investor agreements reached and also PFMA approvals sought. I will keep you informed if this materialises and we will negotiate terms at that point in time. The funder has indicated that it is low cost funding but this matter is under discussion. I envisage this to be between 3% and 6%. Please note that as we discussed this letter is not a commitment but one of the solutions we may explore in future together. I look forward to engaging you further as we progress on this matter.”

20 Ms Stimpel your comments on that letter would this have been enough if you were sitting on the board to motivate you to decline the recommendations that had come through a process and give a decision to sign an agreement with FDC?

MS CYNTHIA AGNES SORAYA STIMPEL: No I would not have because I think Boards should be clued up enough to know what the mandate of

Free State is firstly and – and then if one looked at the rate. It was three – to 6 percent. They were only – this was an exploratory letter the way I see it and not a firm commitment and they even state this is not a commitment.

So for Board to have made that decision and put it into a Board Resolution showed immediately that they had – they obviously wanted FDC in without going through the proper governance process. So no I would not have done it, thanks.

ADV KATE HOFMEYR: We will look at that Board Resolution ...

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** Yes.

ADV KATE HOFMEYR: In a moment, but you made a point about the Board knowing the mandate of the FDC and I would like to pick that up because that mandate is clearly indicated Chair in the governing statute that creates the FDC. We have included it in C – Bundle C – of Ms Stimpel’s evidence and you will find it there at page 904. It is under the tab A2.

CHAIRPERSON: Yes, I got it.

ADV KATE HOFMEYR: And Ms Stimpel if you go over the page to 905 you will see Section 3 of that Act talks about the main objects of the
20 corporation. I am going to come back to Section 3. I would like to start over the page at Section 4 because Section 4 defines the capacity and powers of the corporation and what is relevant is that it defines that capacity and powers with reference to the main object stated in Section 3. You will see there that Section 4 reads:

“The corporation shall have the capacity determined

by the main objects.”

So when we want to work out what legal capacity the FDC has to engage in activities whether funding or otherwise we must look to its main objects under Section 3 and if we go to Section 3 you will see that its objects and we will go through them do not appear to include ...

CHAIRPERSON: Ms Hofmeyr.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: It is quite strange that Section 4 says:

“...the capacity is determined by the main objects.”

10 **ADV KATE HOFMEYR**: Hm.

CHAIRPERSON: Because objects and capacity are different things.

ADV KATE HOFMEYR: Indeed, indeed.

CHAIRPERSON: You must have capacity in order to ...

ADV KATE HOFMEYR: To pursue.

CHAIRPERSON: Do something to achieve the objects.

ADV KATE HOFMEYR: Indeed, indeed.

CHAIRPERSON: So how do you look at the objects to determine capacity?

20 **ADV KATE HOFMEYR**: Chair as I read it what – what Section 4 is seeking to signal is that that capacity which the corporation has is within the limits of the objects it is required to pursue within Section 3. So in other words no capacity beyond what those objects identify as that which the corporation must engage in. It – it seems to me the only way sensibly to read the two but I agree it is unusual to define capacity with reference to object.

CHAIRPERSON: *Ja*, if – I mean particularly if one is thinking of legal capacity ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Then ...

ADV KATE HOFMEYR: It does seem to signify legal capacity whereas objects are usually aims and ...

CHAIRPERSON: *Ja*, I mean ...

ADV KATE HOFMEYR: Objectives of an – of an entity.

CHAIRPERSON: *Ja*.

10 **ADV KATE HOFMEYR:** Certainly the approach that was subsequently taken by National Treasury and others ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Was that the objects of the corporation did not extend to the type of funding that ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: FDC was to engage in.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And – and Chair the reason for that is if we look at 3A to F you will see a keen emphasis on activities within the
20 Free State. This is of course the Free State Development Corporation and it also has an emphasis on development of small, medium and micro enterprises neither of which are SAA.

A is - under Section 3A promotion and development of SMEs.
B is to assist the Free State based small, medium and micro enterprises with funding. C is to assist Free State based small,

medium and micro enterprises in financial distress. D is to initiate economic empowerment projects that would benefit the Free State.

E refers to promoting investment and trade in the province and F talks about undertaking at the request of the responsible Minister activities which in summary will contributing to strengthening of the provincial economy. So those objects ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Give a clear reference point to activities within the province small and micro enterprises there and in a sense acting
10 with funding and financial assistance within the province.

CHAIRPERSON: Effectively it maybe that in order to give meaning to Section 4 one must read Section 3 as powers rather than objects.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Powers of the – of the corporation - what it may or may not do.

ADV KATE HOFMEYR: Chair it seems to me to be the only sensible way ...

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: To read them together. In essence when it
20 says the objects of the corporation it could as easily have said the capacity or the powers or the corporation.

CHAIRPERSON: Or the functions or the powers, *ja*.

ADV KATE HOFMEYR: Indeed, could be.

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Chair that and that is – we will hear in Ms Stimpel’s testimony in due course what appears to have been the attitude taken by National Treasury on the question but Ms Stimpel for now you – you raise the concern well who is the FDC and what is their mandate and as I understand your testimony had you been sitting on the Board that would have been one of the questions that you ask. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

10 **ADV KATE HOFMEYR:** Well let us look at the Board decision itself because I would like to take you through some aspects of it. It is relevant in – will be relevant in due course Chair also to the evidence of Ms Nhantsi because she deals with this also in some detail. You will find that resolution – well at least an excerpt from the draft minutes which record the decision of the Board in the A file which we were working with previously under Tab 16 at page 289.

Chair just for the purposes of the record we have confirmed that that Monday that Ms Stimpel referred to was 7 December.

CHAIRPERSON: Oh, thank you.

20 **ADV KATE HOFMEYR:** So if we can look at that excerpt is this something that you saw at the time? Were you provided with this?

MS CYNTHIA AGNES SORAYA STIMPEL: The Board Resolution?

ADV KATE HOFMEYR: Yes.

MS CYNTHIA AGNES SORAYA STIMPEL: I had to ask for it.

ADV KATE HOFMEYR: But you did see it back in December 2015?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes, I did.

ADV KATE HOFMEYR: Unlike the letter which I understand your testimony to be you were showed in the course of your engagements with the Commission's investigators. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct Chair. I only saw the Board Resolution. I did not get to see the FDC letter.

ADV KATE HOFMEYR: Did you ask for the FDC letter at the time?

MS CYNTHIA AGNES SORAYA STIMPEL: I did. I did ask because I wanted to see what was stated in it and I was told that it was part of
10 Board and I did not need to see it.

ADV KATE HOFMEYR: Okay. So let us look at the resolution because there are three parts to it. It starts with the Board's reason for declining the Seacrest offer which is the one that your – you and your team had recommended first and as I read it there they say under A:

“The Board of Directors resolve to decline the secured term loan facility of 15 billion for a period of 10 years offered to SAA by Seacrest Investment for the consolidation of the current debt portfolio of the company ...”

20 And now comes the reason.

“...due to the lack of information in the Due Diligence Report and the reluctance by Seacrest to provide proof as to the source and availability of funds.”

What is your take on that decision Ms Stimpel? Would you support it?

Would you disagree with it?

MS CYNTHIA AGNES SORAYA STIMPEL: I would have supported it with the information of the Due Diligence Report, yes indeed and also reluctance of Seacrest to give us proof of where the funds were coming from. So yes I would have supported that.

ADV KATE HOFMEYR: Would the conditions precedent in the agreement not have been enough to satisfy you that SAA was protected or would you still have been cautious?

MS CYNTHIA AGNES SORAYA STIMPEL: I would have still been
10 cautious and with Board giving the final directive on this then tells me okay but I would have been far more cautious especially since they a non-banker.

ADV KATE HOFMEYR: Okay and then let us go to B because B deals with your alternative, right and what - I think - you described earlier as the old school approach to this analysis of your responses. What did they decide at B?

MS CYNTHIA AGNES SORAYA STIMPEL: So in B we made a
20 recommendation for the consolidated of the banks Chair but this was also declined based on that the funds offered would be not sufficient to consolidate the debt. So the total debt would have been like 4.3 that the consolidated banks would have been able to provide and it meant us going out again for another RFP. I did not have an issue with that.

I felt that this one could have been recommended because we knew the banks. We knew how they work. They had an efficient legal team and we knew that the funds once that agreement is signed today

tomorrow the funds are in our account. We do not have to wait lengthy day's etcetera and so it was crucial for SAAs cash management that we needed to have those funds at the time as well.

So the fact that they declined it that it was not sufficient for me was not – I was not – I was very uncomfortable because I felt that we could have gone in another RFB. We take what we can get now and then we just put out for the balance that we do not have, thank you.

ADV KATE HOFMEYR: Did you attend that meeting on 3 December?

MS CYNTHIA AGNES SORAYA STIMPEL: No. Normally I do attend the
10 Board Meetings. I – especially when it comes to either the funding or
hedge proposals if we are doing any hedging and – and then
Mr Wolf Meyer was there or with the previous CFO Kaushik Patel or
whoever I attended and presented at Board Meetings.

This particular Board Meeting was one of the first that
Ms Nhantsi was attending and she gave me a directive not to attend
this meeting. She said be at your desk and be on standby. If I need
you I will call you and that is what I did. I stayed at my desk waiting
for a call. I did not attend that meeting because I was not called to
that meeting.

20 **ADV KATE HOFMEYR:** Were you called on at any point to attend?

MS CYNTHIA AGNES SORAYA STIMPEL: No Chair. I was not called at
all to attend the meeting that day or any subsequent days.

ADV KATE HOFMEYR: And this explanation that you have given now
about in a sense banking the 4.3 billion because it would alleviate the
immediate pressing difficulties of SAA and then going out on another

RFP. Do you have any knowledge as to whether that was put to the Board in the course of its discussions?

MS CYNTHIA AGNES SORAYA STIMPEL: I was not present and also I do not have access to the minutes of the Board Meeting at that time Chair. So I would not know if that was discussed at all.

ADV KATE HOFMEYR: I intend to go to the Board Minutes in due course because we have managed to source them Chair but for present purposes we can certainly state that the minutes do not reflect any of that sort of discussion. Chair that does not mean it did not take place.

10 The minutes are sometimes an abridged version of course but had you been there – let us put it that way Ms Stimpel – had you been there when you learnt that the Board was intending to decline your second alternative would you have made these points to the Board?

MS CYNTHIA AGNES SORAYA STIMPEL: Chair I would have. I am – I am quite forthright in – in stating certain things and especially if it is at the best interest of the organisation. So I would have stated that, yes.

ADV KATE HOFMEYR: And then let us move to C because C captures the Board's decision in relation to the FDC proposal. It is fairly important in my view to – to look at this language particularly because
20 there is some debate as to what the Board actually decided at this meeting but let us look at it. C records that:

“The Board approved that the interim CFO and Acting CEO urgently take the necessary steps to negotiate, conclude, execute and sign and/or dispatch all documents and notices related to the

14 billion loan offer received from a potential funder
Free State Development Corporation SOC Limited
(FDC) as per the letter circulated at the Board
Meeting.”

So let us stop there. What do you understand that to be saying?

MS CYNTHIA AGNES SORAYA STIMPEL: How I understood it from day
1 having read this Board Resolution that Board is giving approval to the
Acting CFO and the – and CEO and CFO at the time to go ahead with a
14 billion loan with a client where – that did not come through the
10 normal RFP process and based on a letter that was circulated at Board.

For me that and hence the reason I asked to see the letter. I
thought it was term sheet that was put forward and therefore Board
could do comparisons because in our document they would have
already - attached in our annexures was the final outcome that analysis
we went through earlier was attached in the annexures.

So they could have done comparisons and maybe that is the
reason they made the decision but I was not privy to see that letter and
hence my conclusion was that this is not done according to our due
process – our corporate governance process and I was extremely
20 uncomfortable with it.

ADV KATE HOFMEYR: Ms Stimpel let us look at the reason given
which is the last sentence of that paragraph C for the Board selecting
Free State Development Corporation because I would like to have your
comment on the reason that was given from the Board. Of course had
you been at the meeting you might have been able to give it then but

that was not to be. Let us look at paragraph C the last sentence:

“The Board recognised that as a State Owned Entity the FDC carried less risk for the airline and in the unlikely event of default by SAA another SOC would treat SAA differently than a private lender.”

Ms Stimpel as I read that there - there are two statements being conveyed there. I would like to focus on the first. The first as I read it is that the Board recognised that the FDC carried less risk for the airline. What would be your comment on that? Would you have agreed
10 with that determination by the Board?

MS CYNTHIA AGNES SORAYA STIMPEL: Chair no, I would not have agreed with that because one is looking at also a similar basket of risks. So you have got FDC who is part of Government. You have got SAA which is a state owned company. For – for them to be lending SAA we concentrating the risk within Government. So I do not see it as a lesser risk at all.

ADV KATE HOFMEYR: And then they went on as I read this to give their second reason which is their sense that in the unlikely event of default by SAA another SOC would treat SAA differently than a private
20 lender. What would be your comment on that rationale?

MS CYNTHIA AGNES SORAYA STIMPEL: I think when one goes into funding or any – *ja* – you build a relationship Chair and so with – I cannot see that FDC would have treated SAA any differently. What I do see is that the impact – the knock on effect of the whole funding say SAA does default it will immediately maybe cripple FDC – who knows

what would happen. So what is the impact on the overall funding of Government or the overall impact of all the loans that SA – that South Africa has? So I disagree with that completely that comment.

CHAIRPERSON: And they say in paragraph C that:

“They approve that the Acting CEO and Interim CFO
urgently take the necessary steps to negotiate,
conclude, execute and sign and/or dispatch all
documents and (indistinct) related to the R14 billion
loan offer received from the Free State
10 Development Corporation.”

Was there another document other than the one we have looked at which had come from the Free State Corporation? We – we looked at the one I think at 278 – 278 which said among other things this is not a commitment. Was there another document that had come from that corporation other than that one?

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair. At the time there was none besides this letter. There could have been other communication between Mr Moyo and Ms Nhantsi that I am not aware of but no other sort of commitment about the transaction of 14 billion that
20 I know of. What we did is that I took this document back to our Financial Risk Subcommittee, circulated it to them and we – I listed my reservations on it and said – and made recommendations saying that we need to send the RFP out to FDC.

They need to complete it like every other resposdee has done. Once they have completed it we will do a full comparison and

once the comparison is done we are able to do that. Based on that our FRAC Agreed and that is how we sent the RFP out. I recall even having an argument with my deputy at the time who felt that we should just follow this Board Resolution to the letter and I said no this is not – this is inaccurate.

I am not prepared to follow it the way it is and hence we will rather let the FRE – the RFP go out to FDC. So we did. On that agreement we sent it out to them sometime in December and they responded by 24 December and yes we do have a full term sheet from
10 FDC, thanks Chair.

CHAIRPERSON: So when in paragraph C at page 289 the minutes say that:

“Refer to a loan – a R14 billion loan offer received as per a letter that was circulated at the Board Meeting.”

Is that a reference to the letter at page 287 which says?

“This is not a commitment.”

MS CYNTHIA AGNES SORAYA STIMPEL: Yes sir, thank you Chair.

CHAIRPERSON: That is – it is a reference to that letter?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** Correct Chair.

CHAIRPERSON: But is that not strange because I do not see any reference to R14 billion in that letter? Do you see it?

MS CYNTHIA AGNES SORAYA STIMPEL: There is no amount stated.

CHAIRPERSON: Yes.

MS CYNTHIA AGNES SORAYA STIMPEL: There is no tenure stated.

CHAIRPERSON: Yes.

MS CYNTHIA AGNES SORAYA STIMPEL: There is a range of three to 6 percent only and just the openers that they were willing to fund.

CHAIRPERSON: Do you know where the amount or where the Board was taking the amount of R14 billion from to which they referred in their minutes?

MS CYNTHIA AGNES SORAYA STIMPEL: We had put through - the initial amount we had put through Chair was 15 billion. For Board to write the 14 billion I felt it was probably a typing error because – *ja*.
10 They just put 14 billion. When we went out to and sent the RFP out to FDC we sent it out on a 15 billion.

CHAIRPERSON: But the – but the Free State Development Corporation had never in – as far as you know – in writing offered a R14 billion amount loan?

MS CYNTHIA AGNES SORAYA STIMPEL: Not that I am aware of Chair.

CHAIRPERSON: Yes.

MS CYNTHIA AGNES SORAYA STIMPEL: No.

CHAIRPERSON: But also the minutes talk about there having been an offer. So this letter being an offer - is it an offer? Was it an offer from
20 the Free State Corporation as you understand it?

MS CYNTHIA AGNES SORAYA STIMPEL: Chair that is not as I understand it. It is definitely not an offer. It was not a firm commitment and they did not come and say we can offer you this amount for this rate fixed at this cost. Even they have a line there saying it is not a firm commitment.

CHAIRPERSON: But how is it possible that a whole Board could make a resolution that talks about the R14 billion offer on the basis of a letter. One that does not refer to such an amount. Two that clearly says this is not a commitment? Is that something you are able to explain or you are also not able to understand?

MS CYNTHIA AGNES SORAYA STIMPEL: Sir I can only ...

CHAIRPERSON: Or maybe you have insight as to how they could have ...

MS CYNTHIA AGNES SORAYA STIMPEL: Yes Chair I can ...

10 **CHAIRPERSON**: Talked like that?

MS CYNTHIA AGNES SORAYA STIMPEL: Perhaps look at the constitution of the Board at the time ...

CHAIRPERSON: Hm.

MS CYNTHIA AGNES SORAYA STIMPEL: And that would give you an indication of how decisions were made.

CHAIRPERSON: Hm.

MS CYNTHIA AGNES SORAYA STIMPEL: So the constitution consisted of Chairperson being Ms Dudu Myeni. Ms Kwinana – Yakhe Kwinana and Ms – Dr Tambi and then Ms Nhantsi and Mr Zwane.

20 **CHAIRPERSON**: Hm.

ADV KATE HOFMEYR: Chair ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: Yes and – and I see they already say the Interim CFO and the Acting CEO must go ahead and do everything and sign and

execute.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

CHAIRPERSON: Without seeing any further information that they would have needed to see to have a commitment of – of this nature with any entity.

MS CYNTHIA AGNES SORAYA STIMPEL: Exactly Chair and that is what concerned me ...

CHAIRPERSON: Hm.

MS CYNTHIA AGNES SORAYA STIMPEL: Because there was no letter
10 forthcoming. I asked for a term sheet. There was no term sheet
forthcoming. There was – I was even asked to ratify this Board
Resolution ...

CHAIRPERSON: Hm.

MS CYNTHIA AGNES SORAYA STIMPEL: And I said no I am not doing
anything until I get the full – well not the Board Resolution. To ratify
the decision of FDC and once I received the Board Resolution and saw
that it was – the decision was made via a letter which I was not able to
see I was very uncomfortable and I stated that and hence with the
FRAC we said we will follow due process rather. We will rather send
20 out another RFP because our recommendation was scrap everything
and start again.

CHAIRPERSON: Hm.

MS CYNTHIA AGNES SORAYA STIMPEL: Or send out an RFP to FDC
then do your comparisons and they said to save time let us just send
the RFP out which we did and only based on that once we received the

RFP back from FDC will we able to then assess where they could fit in with the comparisons of the other respondees.

CHAIRPERSON: Thank you.

MS CYNTHIA AGNES SORAYA STIMPEL: Thanks Chair.

ADV KATE HOFMEYR: Thank you. Ms Stimpel you – you recorded that and your reservations about it in an email on 9 December. You made reference to it a moment ago. It is at page 291. That appears to be we now know the Wednesday of the week because 7 December was the Monday and as I read that email you are recording some of the very
10 reservations that you recount to us now about how this could possibly work in a way that would follow process. Is - is that a fair summary of your concern?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes Chair.

ADV KATE HOFMEYR: And if we go back to your affidavit at page 9 paragraph 49 that is where you recount what you have just indicated in your testimony about the instruction from Ms Nhantsi that you ratify that the FDC be appointed and you record there that you refused and you told her that you were not willing to take any instruction without the receiving the Board Resolution. I assume that is because that
20 conversation happened prior to your actually seeing the Board Resolution. Is that right?

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct Chair.

ADV KATE HOFMEYR: And then as I have it just in time you got the Board Resolution and then you write this email because now you have got the Board Resolution. It is telling you to go and appoint on the

basis of a letter and your email sets out your concerns about how you could possibly do this in a regular process. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct. I even state there that we need to reopen the RFP tender and then add FDC and send it out to them.

ADV KATE HOFMEYR: Well what did happen in terms of procedure? What – what did you do after receiving the Board Resolution?

MS CYNTHIA AGNES SORAYA STIMPEL: So once we received the Board Resolution Chair we then did send the RFP out. In fact it took us
10 a couple of days to get the contact details of Mr Moyo because none of us were – of my team were in contact with Mr Moyo from FDC and we had written emails and called Ms Nhantsi who eventually gave us the email address and my colleague – Michael Klein – then sent the RFP to Mr Moyo and gave him two weeks to respond and he did respond by 24 December and thereafter we did our analysis.

ADV KATE HOFMEYR: Thanks. Ms Stimpel if you go to page 10 of your affidavit you will see at paragraph 53 you say there:

20 “There was a concern that we were already acting outside proper procurement governance processes because of the Board involvement and the fact that the deadline ...”

I assume that is a reference to the deadline on the RFP.

“...had long passed.”

You say:

“I asked Ms Nhantsi if I could see the FDC

document. She told me that I could not as it was circulated at Board Meeting and there was no need for me to see it. I therefore had no idea what was contained in the process. I had no name, no contact number, no email. I had no evidence that FDC had even made representations.”

I would just like to ask you to pause at that first sentence and Chair this is another aspect that comes up in the contrary versions in the cross-examination application. So I would like to put it to
10 Ms Stimpel for her – her response. Ms Stimpel you are criticised for on the one hand earlier on in your affidavit making the point that funding was an aspect governed by the Funding Policy of SAA at the time and not Supply Chain Management Policies but then later in your affidavit and I would suggest that this is an example saying that you were concerned about procurement process being followed. What is your response to that criticism?

MS CYNTHIA AGNES SORAYA STIMPEL: So from a funding perspective, historically SAA’s always gone through the treasury department for funding and our own set of governance approvals and
20 committees. My concern here was one that Board has actually dictated that they wanted to be involved in the RFP that it needed to be approved, then they dictated that they wanted to add some entities to it and then the third thing was for them now to actually add a new client when we’ve already completed RFP process and bring a client right at the end and say, go ahead with this client. So those were my concerns

that we weren't following the proper governance process.

ADV KATE HOFMEYR: Thank you, at paragraph 54 you talk about the financial position of SAA as you approach the end of 2015 and that does become relevant later in terms of questions of urgency in procuring this funding, can you tell us what that financial position was in December 2015?

MS CYNTHIA AGNES SORAYA STIMPEL: So at that time we had government guarantees with National Treasury of roughly about 14billion Chair and SAA had borrowed roughly about 11billion so we
10 still had 3billion unutilised guarantees. So it meant we could still use it, SAA were going through a process where they were to meet all their obligations they were going into a tight cash crunch and therefore needed to ensure that we could borrow money. The current and existing loans that they had at the time, towards the end of 2015 were all coming up for maturity, as we read in the previous – there was one for November, then – and earlier and later – early in the new year so those were coming up for maturity but once you borrowed the funds and you're only rolling-over debt it's not new money coming in to your bank account and so the 3billion is what we still had which we could borrow
20 and use and hence if one looked at the new proposals put by their consolidated debt part would be rolled-over and the other part would have been new debt to add to it, so we would have had new money coming in to SAA's bank account. With the Board holding back and for us to go out again on the RFP and with the FTC meant we delayed the process of borrowing and we now had to go through the process again

but with SAA being in the crisis situation of needing cash to meet it's obligations we made the recommendation and this also had to go to Board so the same process we put to Board and we explained we need the money now so now we would like a bridging finance, while on the side the long-term finance is happening. We will go short-term finance, a bridging finance for three months and we went the first – in December for 1billion and in, I think the end of January we borrowed another billion and end of March we borrowed another billion so that's how we used the 3billion during that time.

10 **ADV KATE HOFMEYR:** And from whom were those funds borrowed?

MS CYNTHIA AGNES SORAYA STIMPEL: The banks –sorry they were from the banks so it was Standard Chartered, gave the fist 2billion and Citi Bank gave the last.

ADV KATE HOFMEYR: I've just noticed it now Ms Stimpel but I assume at 54, Citi Bank there is spelt incorrectly it should be with an i is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: It's not a new banking entity of which we were not previously aware, we'll make that change at page 10. Ms Stimpel
20 you then go on at the bottom of page 10 to talk about the process. You've already indicated in your testimony that your colleague, Mr Michael Kline sent out an invitation, now once you've been able to secure the FDC details, as I have it, he sends out a proposal – well a request for a response to the proposal to FDC is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then at 56 you talk about a concern that was raised from the legal department of SAA can you tell us about that?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes because we have a cross-functional sourcing team, especially with the funding, we have our legal person, was Ephraim Lusenga and everything we've done regarding funding he's copied on and very closely involved and he raised the question when the FDC issue came up whether a legal due diligence was done and can it be conducted on it. He had written in the email which we had also collated and Mr Nhantsi had said that it will
10 be conducted, he confirmed that.

ADV KATE HOFMEYR: Ms Stimpel isn't that the wrong way round thought, it seems to me odd, and I'd like your comment on this, that the Board decides to approve a funding offer but we don't seem to have evidence of the offer in the letter, which is the only letter we're aware of having been circulated to the Board, decides that they must empower people to conclude that transaction but then a week or so later the due diligence is going to be done, is that unusual?

MS CYNTHIA AGNES SORAYA STIMPEL: That is very unusual because everything that goes to Board, you should have done all the
20 groundwork so you would have had your due diligence done because you're making a recommendation, a final recommendation and that should have been done already and then presented to Board, so that they can make an informed decision.

CHAIRPERSON: That – those minutes of that Board meeting, I didn't understand them to even be to the effect that the interim CFO when the

acting CFO should conclude an agreement if certain agreements are met, like if due diligence, you know, revealed that everything was okay, is that your understanding as well that, that authority given to the interim CFO and to the acting CEO was not subject to any requirement or conditions being met?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes Chair, I agree, there was nothing written in the Board resolution of that, it was just giving them complete authority to go ahead and transact the deal.

CHAIRPERSON: And that must have been quite risky and dangerous
10 for the Board to authorise something like that in circumstances where it was not saying the homework must be done first to satisfy SAA that everything would be in order if it had a commitment with the Free State Corporation.

MS CYNTHIA AGNES SORAYA STIMPEL: Your summation is correct
Chair, exactly.

ADV KATE HOFMEYR: Ms Stimpel you referenced the fact that when
Mr Lusenga raised this concern, and just for record purposes you'll find
his email at page 303, that is under tab 20, you'll see at the middle of
that page there's an email from Mr Lusenga to Mr Kline, Ms Nhantsi
20 and you are amongst the copied recipients in which he says,

“Dear Michael, are we going to conduct a legal and financial
due diligence on FDC”,

And then the response from Ms Nhantsi is above that she says,
“Good day, yes we will perform the legal due diligence and I'd
like to suggest we give that mandate to Ursula at legal

department, she says, we had an EXCO meeting and they suggested that we extend the scope of this and not only send the RFP to FDC but also send it to IDC and PIC as well so that we can see whether we can get better rates. I saw that you have already sent the RFP to FDC and thank you for – thank you and could you please send it to PIC and IDC as well”,

Again back to the Chair’s earlier point, this all seems fairly curious because you’ve got a Board decision on the 3rd of December that is saying, do the necessary to conclude this, then you have people
10 like yourself raising concerns about process, Mr Lusenga, it appears as though some of that was taken on-board because there’s now going to be (indistinct) process but what was your response to the suggestion that the IDC and the PIC be included as well in this further net of potential funders?

MS CYNTHIA AGNES SORAYA STIMPEL: We had already sent – they were one of the ones we included in the early ones and they didn’t respond right from the start when I first started at SAA we also tried to see if DBSA would fund SAA, this was in the early years, probably 2008 but we knew that their mandate was not to fund State owned companies
20 and so therefore we never considered them in the later years because we knew they couldn’t. So when this suggestion was made to go to the PIC or to the IDC we didn’t even act on it because again it is in an email there’s no Board resolution for that and so we didn’t act on that.

ADV KATE HOFMEYR: And then over the page in your affidavit at page 11, you record the response that was received from FDC, that was

received on the 24th of December 2015 and if you go to page 313 which is under tab 21 you'll find the FDC proposal that was submitted in response to Mr Klein's email earlier in the month and if I could take you to page 316 of that Annexure, what is that document?

MS CYNTHIA AGNES SORAYA STIMPEL: So the 316 referral is the term sheet we received from FDC after we had sent our RFP out and if one looked at the RFP this was – we sat as a team going through this and there you can see who's the borrower which is SAA the lender being – and here they state a joint venture between Free State
10 Development and Grissag and immediately I realised that we've already come across Grissag as a joint venture partner with SeaCrest in the previous and the Board had already turned that down so why would Board now agree to something that they've previously turned down because we couldn't meet – they couldn't meet the due diligence with Grissag, do you need me to go further?

ADV KATE HOFMEYR: I'd just like to look at, first of all the interest rate that is charge there on this funding you'll find that at 318, what is that rate?

MS CYNTHIA AGNES SORAYA STIMPEL: The interest rate quoted
20 by FDC to SAA at the time was 4% it was a fixed interest rate.

ADV KATE HOFMEYR: Ms Stimpel there's an aspect in relation to these rates that I need to traverse with you because it's again an aspect that will come up in the evidence of Ms Nhantsi and is an aspect of the application to cross-examine you. As I understand Ms Nhantsi's point on this, and she'll certainly correct me in due course if I'm wrong,

she criticises you for having supported the SeaCrest initial funding proposal because, you'll recall that their rate was 5.8% right and she says, well they were also to be funded by – well they were the intermediary for funding that was going to come from Grissag and Grissag's rate was 4%. So she says when you approved the SeaCrest or recommended the SeaCrest proposal be accepted, you were satisfied that SeaCrest, as the middle-man so to speak would earn the difference between 5.8% and 4% which would be a 1.8% fee effectively to SeaCrest as the middle person. Chair all of this is going to become very relevant
10 later because precisely what percentage the middle-man, for want of a better description gets, becomes pertinent when this funding develops in due course but the point being made by Ms Nhantsi as I understand it is, you took issue later with 1.5% being the fee for the middle-man in circumstances where you were recommending SeaCrest who was going to earn a 1.8% as the middle-man, what is your response to that?

MS CYNTHIA AGNES SORAYA STIMPEL: Chair we work with the term sheets as we receive it, so SeaCrest had sent a similar term sheet like this and the interest rate they quoted was 5.8% and it was a fixed rate there was no additional margin, there was no lead arranger fee,
20 there was no other type of – there may have been default fees all the smaller type but nothing – so when we did our first analysis is what we received based on the term sheet which is 5.5%. Had Grissag and what I'm hearing is that Grissag had also offered 4% to SeaCrest we were totally unaware of it so I wouldn't have been aware of it neither would any of my team or the rest of the cross-functioning sourcing team been

aware of it because it's not stated in the term sheet and that's what we work on, thank you.

ADV KATE HOFMEYR: And if I may just remind you, we don't have to go back there but in that analysis table that you did originally of the rates from SeaCrest amongst other, if you look across at the rate, as I see that page, 5.8% is the best rate...(intervention).

MS CYNTHIA AGNES SORAYA STIMPEL: It's the better rate out of each of the other banks that responded or entities which responded.

ADV KATE HOFMEYR: Right but now you do see a term sheet
10 provided by the FDC on the 24th of December identifying Grissag as its JV partner in which the interest rate is – fixed interest rate at 4% is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Is that the first time at which you knew of the Grissag rate being 4%?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes Chair that was the first time.

ADV KATE HOFMEYR: Thank you. We then move at page 11 of your affidavit to what National Treasury was making of all of this at the time,
20 can you tell us what the nature of your engagements were with them and what attitude they had taken to this FDC being a potential funder to SAA?

MS CYNTHIA AGNES SORAYA STIMPEL: Well throughout the 15billion process National Treasury was part – they wanted to be kept part of the process and when the FDC resolution came up, I had

notified National Treasury about it and we advised them that we would be sending out an RFP and we'll do our final analysis on it. Once we received the FDC we had a meeting and we also called in two representatives from National Treasury who then sat with us because they said they're only observers they're not part of the decision making process, it was with us. We went through it obviously and, again, we looked at what benefit would it be from a interest rate cost saving perspective for SAA and if one looked at a 4% it was indeed far better than 5.8% which SeaCrest was offering. Our concern was that we're
10 using the same party, there was Grissag, we struggled getting a due diligence and now we've got Grissag again, we had debated that in our meeting and we then gave over to National Treasury to speak, their focus was straight away, and said FDC is not mandated to fund State owned enterprises, they are mandated to fund projects and other organisations – development organisations specifically within the Free State only, thank you Chair.

ADV KATE HOFMEYR: And as I have it over the page at 12 of your affidavit that occurred at a meeting on the 6th of January 2016, is that correct?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** Correct Chair.

ADV KATE HOFMEYR: And what did you then do with that information from National Treasury in relation to feeding it back to the then CFO?

MS CYNTHIA AGNES SORAYA STIMPEL: We then set up a meeting with the interim CFO and gave her the feedback of our analysis, we had to show her that, yes FDC does come out tops because they're now

showing 4% but we have received – we had National Treasury at the meeting who advised that FDC does not have the mandate to fund us. We took that and presented it to the interim CFO, Ms Nhantsi and she told both Michael and I to leave the meeting – pardon leave the matter with her and she will be meeting with Mr Moyo that – and she will get back to us.

ADV KATE HOFMEYR: Did she get back to you, subsequently about FDC?

MS CYNTHIA AGNES SORAYA STIMPEL: Not until the 20th of April, 10 we kept asking what's happening with the matter because we had not closed the RFP, normally when you close the RFP is when you go back to all your respondees and tell them you've now chosen this as your service provider or your final bidder and you send out letters of decline to the others, we had not done that, we had asked Ms Nhantsi must we do that and she said, hold on until we can find resolution with FDC who she was meeting on her own and then we will finalise it. So we hadn't close the matter with any of our respondees and secondly is that we kept asking because we needed to close this matter and only when I insisted on a meeting on the 20th of April did she say then that the FDC 20 matter was off the table.

ADV KATE HOFMEYR: Thank you Ms Stimpel, we'll come to that meeting in due course but between January and April there quite a number of developments around the appointment of a transaction advisor that I'd like to take you through. If we can go there at page 12 of your affidavit, at paragraph 64 on that page, you begin with what Ms

Nhantsi said at the end of that meeting on the 6th of January as I have your testimony, you met with her after your meeting with treasury, you conveyed to her that National Treasury's view was that the FDC did not have the mandate to fund SAA and then what did she tell you at the end of that meeting?

MS CYNTHIA AGNES SORAYA STIMPEL: At the end of the meeting as Michael and I were about to leave the meeting, Mr Kline sorry, Michael Kline, she – Ms Nhantsi told us that the Board has given approval that we should get a transaction advisor and I questioned that and asked,
10 why do we need a transaction advisor and what would they be doing and she said we need them to look at our debt portfolio and to look at restructuring the balance sheet etcetera and I still stated to her, but that's what we've done, we do that in treasury, the restructuring of the balance sheet is done through our finance department, that is all done, recommendations are made constantly.

ADV KATE HOFMEYR: Mr Stimpel you may not be aware of this but there has been quite extensive evidence already before this Commission about the role of transaction advisors, Chair it's a point that in the evidence you've continued to raise, with respect, people
20 within SOE's who are drawing salaries who are doing this work and then circumstances where people from outside are asked to come and do that very same work, was that your principle concern?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes that was because we've already presented it and in every report all our concerns all the debt portfolio, the maturity profile, the high interest rates are reflected

in those reports already.

ADV KATE HOFMEYR: Ms Stimpel if I may, and I'd like your comment on this, as I see it, it was more than that you'd reported on it those reports had actually been adopted by the Board in the previous year, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That's correct Chair.

ADV KATE HOFMEYR: Ms Stimpel, Ms Nhantsi takes issue with this point that there was no need for the transaction advisor and in her statement she deals with three reasons that were given by the Board, 10 I'd like to take you through those. The first of those is the – as she has it, first reason given by the Board for this transaction advisor being required and that is that there was no skill or expertise at treasury because your predecessor had left in 2015 and you had only been in the position for eight months, what is your response to that?

MS CYNTHIA AGNES SORAYA STIMPEL: I think that is incorrect because I've had the experience I'd been there for ten years and secondly I've always deputised and I've been at – presenting at Board meetings regarding key focus areas regarding treasury, SAA's finance, SAA's hedging portfolio, the policies, that same financial risk policy 20 was one of my key objectives that I had to achieve every year, review it, do a benchmark across the country and internationally and so all those facets of funding is in that policy so I think that's an incorrect statement.

ADV KATE HOFMEYR: The second reason that she recounts having been given by the Board for this decision that a transaction advisor

should be appointed was that the amount, I take that to be a reference to the 15billion that was being secured as funding for SAA, was within the Board's delegation of authority and they needed assurance from an external independent source, what would be your comment on that reason?

MS CYNTHIA AGNES SORAYA STIMPEL: At the time I was also again very uncomfortable I just felt we were in such dire straits to save every cent and here we were going to waste money continuously on getting different opinions from others and so for this particular one that
 10 they're saying it's within the Board's approval DOA for me I felt that every submission we made to Board, it means they're either not interrogating it properly, reading it and seeing that we are raising the red flags around it, so yes, the statement was also – was inaccurate.

ADV KATE HOFMEYR: And then the third reason that was given was that Ms Nhantsi was new and so she didn't have the requisite institutional knowledge, do you think that should have justified the procuring of a transaction advisor?

MS CYNTHIA AGNES SORAYA STIMPEL: No I think Ms Nhantsi could have relied on her team, so she had us in treasury which she
 20 could have relied on for knowledge, she had the procurement department who she seemed to work solely with and excluded treasury department, she also had the finance department who were there long who knew the whole balance sheet of the organisation and she had the legal department so she could have – there would have been many people who've been there long enough to get the information she

required.

ADV KATE HOFMEYR: Your reference to the legal department reminded me of a question I meant to ask you a little while ago, you had the feedback from National Treasury in early January that this was beyond the mandate of the FDC. You also had, had Mr Lusenga raise the concern about a legal due diligence needing to be done on the FDC on the 11th of December of the previous year, are you aware whether the internal legal department at SAA was then tasked to come to a determination about the mandate of the FDC between January and

10 April?

MS CYNTHIA AGNES SORAYA STIMPEL: No Chair I was totally unaware because we kept following up what's happening with the matter. Once we gave the final analysis to Ms Nhantsi, she said, leave the matter with me and that's where it stayed, so we didn't get feedback. If she gave instructions to the legal department to do the due diligence we were not aware, I was not copied on anything and I was totally unaware, thank you.

ADV KATE HOFMEYR: Chair I see we are at 1 o'clock if our watches are aligned, if it's an appropriate time.

20 **CHAIRPERSON:** Yes let's take the lunch adjournment and we will resume at two, We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Ms Stimpel before the break we were at page 12 of your affidavit and we were beginning to deal with the appointment of a transaction advisor. You as I understand your testimony had indicated to Mr Nhantsi when she raised this issue with you on the 6 January that you did not understand the need for the transaction advisor. But despite that you go on at paragraph 65 to refer to a motivation that Ms Nhantsi put to the board of SAA for the appointment of a transaction advisor. I would like us to go there if we may. You will
10 find that under Tab 24 at page 330.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: So as I read that document – apologies Chair. So 329 is the covering email in which Ms Nhantsi refers to her submission to the board for the urgent board meeting and then if you go over the page to 330 you will see that submission which is entitled “Motivation for Appointment of a Transaction Advisor”. And the purpose reflected under paragraph 1 is to request the board to approve the appointment of a transaction advisor regarding the 15 billion consolidation debt restructuring exercise. And then what appears in
20 paragraph 2 is the motivation which I understand to be why the board should approve the appointment of a transaction advisor and I would like to go through each of those motivations with you because as I understand your evidence you did not regard the services of the transaction advisor as necessary because that work had already been done so I would like to go through these elements and you can tell us

whether in fact that holds good for each of the grounds on which the appointment was motivated. So if we start at paragraph 2.1 it is stated there that the transaction advisor will analyse all the loan agreements that are currently at SAA's disposal. What about that one, had that been done already?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes we have done it as a treasury team and we report on it regularly at every board meeting and interim meetings like EXCO or risk committees.

ADV KATE HOFMEYR: Then at 2.2 the statement is that the
10 transaction advisor will determine which of the total funding of 14 billion is inefficient either because it is expensive encumbers SAA's ability to raise further funding because of the attached government guarantee requirement or the tenure not being suitable for SAA's financial turnaround strategy. Was that work that your team had done?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes we have done that and we have also identified which out of that total funding which of the loans were not efficient.

ADV KATE HOFMEYR: And when was that, was that in your previous submission in 2015?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** They as – when we make recommendations regarding the loans we have already said for instance like we had the Nedbank subordinated loan for 1.3 billion we had already mentioned that we need to relook at this loan and do something about it. Whether we go on a one year, five year or – but put it down into a proper structure and not keep it as a subordinated loan. So

those were one of their loans we identified and they come out in each of the submissions as you see it.

ADV KATE HOFMEYR: And at 2.3 the idea was that the transaction advisor would advise SAA on how to restructure its balance sheet through the settlement of inefficient loans. It seems to be something of a repetition of 2.2 but what is your comment on that? Was that work that had been done?

MS CYNTHIA AGNES SORAYA STIMPEL: That is work that has been done and it is not only done internally because at year end when we do
10 our annual financial statements and we get our financial year end we have firstly our internal auditors looking at everything and then Chair we also get the external auditors looking at it. And on an annual basis SAA had to apply for a going concern letter and so they had to do this compare the balance sheet and see how we needed to restructure it. So that exercise was done and on an annual basis.

ADV KATE HOFMEYR: And 2.4 envisaged that the transaction advisor would advise SAA of the strategic loans that on the face of it appears to be inefficient however for strategic reasons it will be important for SAA to keep the loans in place. For example if these represent equity
20 funding that [indistinct] up SAA's balance sheet. I am not sure that I understand what was going to be done there, do you – can you assist me?

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair. I will explain. With SAA becoming its own state owned company it was – it first fell under Transnet and it was a subsidiary under Transnet. In

2006 it started that or at least the process started that they separate SAA from the Transnet and SA became its own schedule 2 company. When SA broke away from SAA's bigger balance sheet – pardon Transnet's bigger balance sheet SA's balance sheet was high debt to equity. In fact it had no equity at that time. And so it had this debt profile. No equity meaning it should have – it had cash at the time but it had no substantial equity that could strengthen the balance sheet. SA had no assets. Its aircraft was all leased. The buildings that SA owned at that time was minor – very small so it did not make an impact

10 on revaluation of its assets and liabilities that it would show that there was strong assets available for SA. So from an equity basis is that if the government owned the organisation they would put equity into it and like with Transnet the government has put in cash equity into Transnet. With SAA there was no cash equity and that is one of the reasons that with the earlier board that walked out they were trying to stabilize that balance sheet through saying, here you have a high debt to equity balance sheet how can you manage and run this company it is not going to work? We need to stabilize it and we need to bring in proper equity. And so what I am understanding here Chair is that they

20 saying to keep the loans in place and to represent where there is equity funding. SA had no equity and it meant we either needed to get another company to buy out percentage or whichever amount to put in cash equity then to stabilize the balance sheet or they had to try continue then with the loans which was the option we were taking at this point in time because we could not go for equity without National

Treasury permission. Thank you.

ADV KATE HOFMEYR: Thank you for that background. In terms of this work thought was this something that you were looking at? It sounds from your answer as though you were engaged with it and in fact the – the going to the market decision was based on the need to get cash into the entity. Would this have been something that would have been new for the transaction advisor to do?

MS CYNTHIA AGNES SORAYA STIMPEL: No. Just to go back to the equity funding etcetera. Yes we involved from a treasury basis but if
10 one is looking at the whole full balance sheet and the equity structure of it and its debt it is then done with external auditors and internal auditors and from a finance but yes I have been involved in that process especially when it comes to the going concern and personally no I do not think that SA would have needed a transaction advisor to tell them that, they knew already through the history of SA.

ADV KATE HOFMEYR: And then finally over the page at 2.5 there is a requirement that the transaction advisor would analyse the current SAA leases the majority of which expose SAA to hard currency exchange prejudices given that approximately 60% of SAA's revenue is US dollar
20 denominated and with the 5A330 that will come in shortly that will result in approximately 85% of SAA's expenses to be US denominated and recommend to SAA of options to restructure these leases to lessen their burden on SAA. What about that aspect? Was that something that a transaction advisor could be introduced to work on?

MS CYNTHIA AGNES SORAYA STIMPEL: Chair this was already

worked on prior because a decision has already been made through board. It went through a fleet committee who had sat and looked at what availability SA had with its aircraft? Which ones were old and needed to be downgraded and which ones they needed to purchase new and upgrade new aircraft. So this whole exercise was done by a fleet committee and this committee goes through board. So this was already approved at board level so there was no need for transaction advisor to come and give additional advice.

ADV KATE HOFMEYR: Thank you. So that recommendation goes to
10 the board and if we return to your affidavit at page 12 you reflect at paragraph 66 there that the board did approve the appointment of a transaction advisor. If we can go to that minute – those minutes of the board meeting you will find them at Tab 25 starting at page 333. You will see that that is minutes of the special meeting held on the 16 January 2016 and you will see if you flip through that to page 340 there is recorded the decision in the minutes in relation to the transaction advisor services. Can you read for us at page 340 under item 4.11 please?

MS CYNTHIA AGNES SORAYA STIMPEL: It states here:

20 “The appointment of the transactional advisors for funding options. It was resolved that the board hereby approves the request for appointment of a transactional advisor to advice regarding the 15 billion debt consolidation restructuring exercise.”

ADV KATE HOFMEYR: You make the point at paragraph 66 that this

was before any process had been followed that identified a need for those services to be procured. What was your concern?

MS CYNTHIA AGNES SORAYA STIMPEL: My concern was that the treasury team were already in the process of seeking funding and we started the process from 2015 already. At one point it was stopped. We re – put it out again and in December we were sitting with almost approved proposal that needed to go through then FDC was brought in which we then sent the RFP out to them so we were now into January and we had still not finalised the process of debt consolidation because
10 we did not get any feedback from the interim CFO at the time Ms Nhantsi. Thank you Chair.

ADV KATE HOFMEYR: Ms Stimpel you then go on at paragraph 67 to record that a request for information went out I do not believe it is relevant to look at that in too much detail but if we go onto paragraph 68 you talk about on the 3 March having received a BAC submission drafted by the commodity manager and that set out the proposed evaluation criteria for this transaction advisor services RFP. You will find that commencing at page 345 under Tab 27. The documents here have been arranged slightly out of order so I would like to take you into
20 that file divider to page 348 because that is I understand is actually the BAC submission that you were provided with. There is a lot of annotation on this page can you enlighten us as to whose annotations those are?

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair. These are mine. I received this document to approve so to get the BAC to support

the evaluation criteria for a transaction advisor. So since the date early January when Ms Nhantsi had said oh we will get a trans – we would like to get a transaction advisor we have heard nothing in treasury that there was – that we going to put the process in place. The process works that business drives it. You take it up from business level up to board. You do not just go directly to board for approvals. And there for the first time I received this for a – the evaluation criteria. I read through it and then I discovered that there will be the source of funding. Given that I have not yet seen the board minutes
10 that was decided on earlier that we have just gone through so I am totally unaware. The transaction advisor – we have not got feedback yet from the FDC and so we still have all our RFP's open for all the other respondees and then they bring in sourcing of funds. So I immediately try to meet with Ms Nhatsi on this and she was unable to see me. I tried to see Mr Matsaudza – Silas Matsaudza and he was also busy so I could not see him and then I just made these notes as I was writing it and then I subsequently sent an email to them to say please can we discuss.

ADV KATE HOFMEYR: Can I pause for a moment just to get clear
20 through your evidence Ms Stimpel the difference between a transaction advisor and a sourcer of funds? Because as I understand your testimony a moment ago one of the things you were concerned about in this submission was that there was in addition to transaction advisor services to be a sourcing of funds element. Can you please explain to us what that difference is?

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair I will do that. So transaction advisor will look at what you have tasked him to do firstly. So he has a mandate and in this case SAA had a clear mandate for the transaction advisor and he had to do certain things. One of them was to look at our debt portfolio, see if we could restructure our balance sheet, look at the aircraft leases etcetera. From a perspective of a person who is going to or a company who is going to be sourcing the funds for you this person is – will go out and seek funds from the various entities while willing to provide the funds.

10 And again from that perspective as SAA treasury it was SAA – it was treasury's responsibility to go and source those fundings from the banks and in this case they added in – board added in non-financial institutions. To now pay for someone to go and do the sourcing of funds is – is where I draw the distinction. Why would you go and increase your costs to the organisation when you already have people doing the job and have been doing it in the past? Thank you.

ADV KATE HOFMEYR: And over the page at 13 of your affidavit you summarise what the nub of your issues were with the draft evaluation criteria that you had been presented with and that is conveyed in an
20 email which you will find under Tab 28. But your summary at page 13 paragraph 69 is useful. Can you give us an indication of what your principle concerns were with those evaluation criteria and this process as it was unfolding?

MS CYNTHIA AGNES SORAYA STIMPEL: Going through this actual request for support for the evaluation criteria I found that there was

ambiguity in it in that they were asking for – to assist with reviewing and analyse the organisation’s loan book but at the same time seek source of funding. So what was their main mandate? Because it says to source funding and evaluate funding and you go to source is the one and evaluate the initial understanding was that we need to evaluate the existing funding. And then they bring in this source and so I challenged that to say what are we trying to achieve here we need to be more specific in what we want to do and why would we want to source funding when we already doing it and we already got a RFP that
10 is still open? There was another issue that was – we needed to ask the organisation to demonstrate how have they sourced funding before and we know that the banks do it all the time. So why we now going to seek another entity to try and replicate what we know already and has been done. Thank you.

ADV KATE HOFMEYR: As you refer to it under C in paragraph 69 that term that I was using earlier seems to come in about a middleman.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: You say there:

20 “In my capacity as head of treasury I did not believe that SAA needed a middleman to source funding. I had previously worked directly with South Africa’s major banks to source funding.”

Is that something that you conveyed to Ms Nhantsi and others?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes. We have said that many times in our various meetings whether it was the [indistinct]

meetings with Ms Nhantsi herself especially the day she called us in with the transaction advisor. Secondly I was really against it because I felt we did not need to get a middle person – another company to source those funds and we were on an extreme cost drive for SAA. So why do we need to do that? So yes I did explain it a couple of times and I think she understood that.

ADV KATE HOFMEYR: And what follows then if we go to 356 which is under Tab 28. Ms Stimpel your email as I have it is in the second half of the page that is where you write to Ms Nhantsi and you set out these
10 concerns which you have summarised for us and then her response is above that the following day on the 4 March. She writes there:

“Hi Cynthia you can come through and I will give you
background as the TA”

I take that to be an abbreviation for transaction advisor, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Agreed.

ADV KATE HOFMEYR:

“Needs to be approved by BAC today.”

So what happened when you met with Ms Nhantsi about that?

MS CYNTHIA AGNES SORAYA STIMPEL: Ms Nhantsi then told me that
20 she already had board approval for the transaction advisor and that she would email it to myself and to Silas Matsaudza.

ADV KATE HOFMEYR: And then if you go back to your affidavit what you indicate there you received was that motivation that we have looked at previously the 15 January 2016 motivation, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And what did that show you about what had or had not been approved by the board?

MS CYNTHIA AGNES SORAYA STIMPEL: That showed me there were elements of what a – the transaction advisor should be doing but there was no sourcing of funds in that document at all.

ADV KATE HOFMEYR: And so what then happened with your efforts to maintain this delineation between transaction advisor services as compared with sourcing of funds?

MS CYNTHIA AGNES SORAYA STIMPEL: I – Mr Matsaudza then he
10 also had a copy of this letter which Ms Nhantsi had sent us. He then updated the submission for the BAC which is the bid adjudication committee and on that basis I then signed the document after reviewing it.

ADV KATE HOFMEYR: Did it make the amendments that you required to keep it confined to transaction advisor services?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes Chair it did. It covered just the basics of each of those points that were listed in the original letter.

ADV KATE HOFMEYR: And if we just go to it at 359 which is under Tab
20 29 you will see precisely as you describe those five bullets that we went through 2.1 to 2.5 of Ms Nhantsi's motivation appear now to be the designed scope of the transaction advisor services at page 359, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct Chair.

ADV KATE HOFMEYR: You mention that there was a short period of

time that in which bidders could respond to a request for proposal in line with this evaluation criteria. What was your concern there?

MS CYNTHIA AGNES SORAYA STIMPEL: From the supply chain management policy the SCM policy they have a minimum of two weeks and for this particular one they put out I think it was one week – it was – I know it was less than the specified time period in the actual SCM policy.

ADV KATE HOFMEYR: Yes I think it was a week. At paragraph 73 you say that the request for proposal went out on the 11 March and then the
10 submission period closed on the 18 March. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes it is correct.

ADV KATE HOFMEYR: And then if we go over to page 14 of your affidavit you there deal with the responses that were now received in relation to this request for proposal. Can you take us through the entities which submitted proposals and you will find that at paragraph
74?

MS CYNTHIA AGNES SORAYA STIMPEL: Ja so we had a list which provided their bids Chair and it was from Deloitte and Touche, Regiments Capital, Basis Point Capital, Singer Holdings, Nasela
20 Capital, Nedbank Limited and BNP Capital.

ADV KATE HOFMEYR: Right I would then like to go to the BNP bid submission which is the next document in the bundle under flag 30. And the reason for that is I would like to highlight with you some of the requirements of that RFP because they are going to become significant later when we delve into the question whether the BNP bid in fact

satisfied the requirements of the RFP. So if we may you will find that commencing at page 370 and that was under flag 30 and you will see that that is a document headed Request for Proposal Appointment of a Transaction Advisor to be provide financial advice to SAA and then it references the bid number. What appears to have happened is all of the bidders took this RFP and then populated it as I understand to be customary with their relevant information so this is the one that was populated by BNP? Chair just to make a note this is not in fact the complete BNP bid submission. We have subsequently sourced that
10 from SAA and it will appear in one of the subsequent bundles. But for present purposes it is sufficient to work on this document because this will identify the key criteria that I would like to deal with with Ms Stimpel. Ms Stimpel if you will first go to page 384 of that RFP document which now comprises the BNP bid information. You will see at 384 under item 18.2.6 that the RFP is dealing with the BEE submissions that were required to be provided by bidders and it stipulates that bidders must submit their BBEE certificate. It goes on to record that consortiums are – or joint ventures must submit a consolidated BBEE certificate. Each member organisation must submit
20 the percentage income split as per the consortium or joint venture agreement. The work load split must also be clearly defined and indicated. Is that fairly standard for BEE submissions in relation to supply chain management?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes it is. It is in their policy it is a standard request.

ADV KATE HOFMEYR: So that is the first one I want us to take note of. The second one is at page 386 that is the requirement that the bidder have a financial services board licence. You will see that under critical criteria. That is something that you flagged in your comments, is it not?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: And explain to me your comments in relation to that licence?

MS CYNTHIA AGNES SORAYA STIMPEL: The reason for that is if you
10 looking for advisory services there are companies like your KPMG's, Deloitte that offer advisory services especially as – for transactions and they do not have FSB licences and so to get a client specifically for FSB Licences this became part of the criteria now for the transaction advisor. I obviously argued against that. It was one of I would not say argument but it was one of the issue I raised saying we excluding others if we just reduce it to FSB then we have a smaller group and then we limit our pool. And so that was one of my main reasons that I felt we could have broadened it.

ADV KATE HOFMEYR: But...

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair.

ADV KATE HOFMEYR: As I understand it you did not win that battle so to speak because it remained a requirement of the bid that there be a FSP licence, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes thank you Chair that is what I – and I accepted that if that is what we are going to have then

we need the FSP licence.

ADV KATE HOFMEYR: And then if I could take you over to 392 which is another aspect of the RFP. This one we looking at has been filled in by BNP Capital and submitted when it bid. But the point that I am interested in on that page is towards the bottom of 392 where it lists documents to be submitted and amongst those documents you will see the fourth bullet point there. Can you read for us what document was required to be submitted there?

MS CYNTHIA AGNES SORAYA STIMPEL: The signed joint venture
10 consortium agreement where applicable.

ADV KATE HOFMEYR: And in the context of this bid requirement read that to mean there was Chair an opportunity for bidders to bid in joint venture or consortium. When they did so they had to produce a consolidated BEE Certificate. We have looked at that. They also had to be clear about who was doing what work so that there could be a proper assessment about where the work was really lying ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And there seems to be a further requirement that there would need to be a signed JV or Consortium Agreement if
20 indeed that applied to the bidder ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And then we go over the page to 393 and you will see there this is BNPs bid submission and you will see that in the part beginning bold under the bullet points there is a section:

“Where in case of a consortium or joint venture will

details on the consortium or joint venture members
must be filled in if applicable.”

And there were have recorded In Line Trading 10 (Pty) Ltd. Do you see that?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes Chair.

ADV KATE HOFMEYR: Ms Stimpel we will come to it in due course because you were subsequently engaged in the process of recommendation for the appointment of the transaction advisor. What I am interested in knowing is whether you knew at the time that BNP had
10 bid in joint venture with this entity called In Line Trading 10 (Pty) Ltd?

MS CYNTHIA AGNES SORAYA STIMPEL: Chair I had no idea. I had no idea that In Line was their joint venture. The most I saw was the final list of names which came up in a document which I was also asked to sign. At that point I also wanted to see the files and they said there was no need because there are two bid community, - Bid Committees.

There is the Bid Evaluation Committee and then there is the Bid Adjudication Committee and they said they – they have reviewed everything. So once the Bid Evaluation Committee is done it they have done their – because there is a full checklist. Then they would have
20 made sure everything is correct. So I was – I did not know.

ADV KATE HOFMEYR: We will come back to the potential significance of that in due course. You – if we return to your affidavit at page 14 now. We have looked at the bid that was submitted. You have made it clear at the time you did not see this document ...

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then you explain at 76 that you were away for a period of time. Can you tell us about that?

MS CYNTHIA AGNES SORAYA STIMPEL: My mom-in-law took ill and subsequently passed away and so I left to go to Germany and I stayed there until we buried her and that happened around the Easter weekend.

ADV KATE HOFMEYR: And just to get the chronology right you indicate at paragraph 76 that you were away from 19 March to 29 March. So just – we recall the bids had to be in on 18 March. That
10 was the deadline and so for those first 10 day period of evaluation you were away and you make the point there that neither you nor Mr Kleyn were invited to take part in – in that analysis. Would you ordinarily have done so or not?

MS CYNTHIA AGNES SORAYA STIMPEL: The fact that it was a transaction advisor that would have been part of our work. So it would have been either someone from a Treasury or a Finance or probably from the Fleet Management. Yes, because the idea of a Cross Functional Sourcing Team is to get people from various – so when you are looking at a bid you have knowledge from the various sections that
20 can add value to it and so I would have because we - many times we have been called to sit in on bids.

I have been on IT bids. If it pertains to anything that is going to affect my area. I have been on the banking tender because it is – it is my area. I have even been on the fuel tender earlier years. So it depends where and they rotated. So there will be people who will be

called in to sit and review those bids.

ADV KATE HOFMEYR: But you did not take part in that process?

MS CYNTHIA AGNES SORAYA STIMPEL: No Chair.

ADV KATE HOFMEYR: I would then like to move to paragraph 77 which relates to a document at page 424 under Tab 31. Now as you reflect in paragraph 77 this is a letter that notified BNP that it had been awarded the tender to provide transactional advisory services. Ms Stimpel what is curious at least on its face about this letter is its date. You will see that it is dated 20 March 2016.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** Correct.

ADV KATE HOFMEYR: You make the point that – well first of all let us be clear. Were you aware of this letter at the time?

MS CYNTHIA AGNES SORAYA STIMPEL: No Chair I was not at all aware.

ADV KATE HOFMEYR: And it is dated 20 March which is two days after the bids closed. You will see from the later documents we look at the bid adjudication process had not even been finalised by that stage. Chair just to make a note it is not clear to us whether it was in fact sent to BNP on the date of 20 March.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: It is an aspect that we will traverse ...

CHAIRPERSON: Explore.

ADV KATE HOFMEYR: In the evidence next week ...

CHAIRPERSON: Okay. That is fine.

ADV KATE HOFMEYR: But we just note now that it is – it is

unthinkable ...

CHAIRPERSON: Dated the 20th ...

ADV KATE HOFMEYR: That the date could be the 20th.

CHAIRPERSON: The 20th, *ja*.

ADV KATE HOFMEYR: Indeed because none of the processes of evaluation have run by that stage.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: You will note over the page that the acceptance of this letter by BNP and the Director there Mr Mahlangu is only dated
10 25 April 2016.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Which tends to suggest it probably went out later than this ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And that may have been an error. We do not know. We will explore it.

CHAIRPERSON: *Ja*, okay.

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair.

ADV KATE HOFMEYR: But back to the next annexure which is
20 Annexure 32 because Ms Stimpel this is - as I understand it – the recommendation that was then put together by the Global Supply Management Team after they had completed the evaluation process and you will see at page 427 it is dated 15 April 2016.

I would like to spend a bit of time on some of the aspects of this recommendation but I – I first want to get one aspect out of the

way. You will see at page 436 that there is the page in which the various supporters and recommenders sign the document and this recommendation page bears a signature of Ms Nhantsi but no signature from you. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That is initially yes.

ADV KATE HOFMEYR: But there is a version of this which you did sign later as I have it ...

MS CYNTHIA AGNES SORAYA STIMPEL: Later, yes.

ADV KATE HOFMEYR: And we were able to source that Chair. You
10 will find that at – in Bundle C page 915.1. It comes after the Tab A2 –
sorry not A2 – after the Tab A3.

CHAIRPERSON: And the actual page is?

ADV KATE HOFMEYR: Is 915.1.

CHAIRPERSON: Okay, thank you. Yes.

ADV KATE HOFMEYR: So Ms Stimpel can you confirm that that is your
signature?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes it is my signature Chair.

ADV KATE HOFMEYR: And I am going to come back to it.

CHAIRPERSON: The first one from the top?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Spelt correctly. Ms Stimpel I am going to come
back to probe with you a bit why you saw fit to recommend this
appointment because we have heard evidence from you about your
great misgivings about a transaction advisor being appointed to do the

very work that had been done but before I get there I would just like to look at one or two aspects of this recommendation.

You – you mentioned earlier that you were not aware of this joint venture in which BNP Capital had bid and you said that because this recommendation did not reference that anywhere and I would just like to take you to the parts of the document that certainly confirm that. If you go back in Bundle A to page 434 you will see a table if the consolidated scores for the price and BBEE and you will see there as the entities are listed it is Nedbank, Regiments and Nisela Capital, BPS
10 and BNP. There is no reference to a JV or a consortium.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: You will find again support for that at page – if you go back a moment to page 249 because the names of the bidders who have responded again are reflected only BNP Capital. There is no reference to a JV submission despite what we thought previously in the actual bid documentation and then if we just return to page 434 you will also see there that item 11 and that table contains the consolidated scores for price and BEE and as I read this table this is really the outcome of the evaluation process because this was a 90/10
20 procurement scenario.

10 points were going to be applied for BBEE. 90 points for price and you have the consolidated analysis there of the various bids who had passed the initial disqualification phase. You will see there that Nedbank scores nine on triple BBEE and BNP is a little bit under that at eight.

Those are the first and the last columns and then you will see it is really price which in sense clenches it for BNP because they come in at a value of 90 on price and ends then with a total score of 98 out of 100. Is that a fair reflection of what we are looking at?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes understanding it as it is. This is what we are given at least I was given based on everything. They would go through all the files and this is what I would work on. So yes that is a fair summation that you have made, yes.

ADV KATE HOFMEYR: If you go to item 13 on that page there were
10 some risks that were identified in relation to BNP Capital. What is recorded there is that:

“The risks associated with contracting with BNP is allayed by the fact that the agreement is not a supply contract that requires a capital outlay. The capability to deliver is embedded in the proposed team and the bidder’s experience. Hence the 100 percent score on functionality.”

What I understand that to be a reference to is actually the document that you find at page 437 because that is a summary of the
20 financial assessment of the bidders and what I would like to do again is just contrast the financial assessment of Nedbank on the one hand as bidder 1 as compared with bidder 5 which was BNP Capital. You will see that Nedbank has recorded in the last sentence there as:

“Based on the above the risk for this bidder has been assessed as low.”

And then if you go to BNP Capital you will see the concluding statement is that:

“Based on the above the risk for this bidder has been assessed as high.”

That seems to have been what informed that risk comment which is that although there is a determined high risk in relation to BNP that was in the views of the team putting this together sufficiently allayed by those factors that they referenced. That there is not a supply contract and that the capability to deliver was embedded in the proposed team and the bidders experience. Did that cause you concern when you were reviewing this at all?

MS CYNTHIA AGNES SORAYA STIMPEL: It did raise concerns with me. In fact the whole process continued raising concerns with me. Reviewing the entire one – the entire document and then looking at the final outlay for SAA from a financial risk perspective with the cost of 2.6 and based on what they were going to do was just give advisory advice to SAA.

On that basis I decided let me sign it and let us see what they have to offer. Maybe there is something that I am not seeing that they can raise and on that basis I signed it.

ADV KATE HOFMEYR: I am going to go through some of the deficiencies in the BNP bid with you and I would like to have your comment on whether had those been known to you - you would have signed on to this recommendation but before we do that if we can just go to page 435.

There is a note at 435 from the financial controller at the bottom of the page. You will see under signatures there is a signature from the financial controller shared services right at the bottom of the page and then there is an annotation not budgeted for. What do you understand that to mean?

MS CYNTHIA AGNES SORAYA STIMPEL: We all – every division has its own budget and we ...

CHAIRPERSON: I am sorry. Is that at 435?

ADV KATE HOFMEYR: Yes. Right at the bottom Chair you will see
10 handwritten – not budgeted for – under ...

CHAIRPERSON: Oh, yes.

ADV KATE HOFMEYR: Item 2.

CHAIRPERSON: Yes, thank you.

ADV KATE HOFMEYR: And Ms Stimpel you were just explaining to us what – what that would mean in the context.

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair. Every
division – business division in SAA had its own budget and we were –
had to manage that strictly. So any new service you are going to take
on needed to be in that budget or if it is an existing service already you
20 must have had that budget because we have a process that every year
we set up our budget.

This – for this particular one there was no budget for it and that is why Mr Pier would have signed it because his role is to check every amount against the budget when he goes through it before he signs it to say yes there is a budget or no there is not and that is what

he is indicating here.

ADV KATE HOFMEYR: And then if you go over the page to 436 there seems to be a response to that note from Ms Nhantsi. Could you read for us what is written there next to her signature?

MS CYNTHIA AGNES SORAYA STIMPEL: Ms Nhantsi states:

“The budget will be catered for under the CFOs cost centre.”

ADV KATE HOFMEYR: Whose cost centre would that have been?

MS CYNTHIA AGNES SORAYA STIMPEL: So that would be the Chief
10 Financial Officer’s cost centre. They had a separate budget. I had no idea what the total balance is or what that budget is on an annual basis and *ja* ...

ADV KATE HOFMEYR: But ...

MS CYNTHIA AGNES SORAYA STIMPEL: I just hope she had availability.

ADV KATE HOFMEYR: That is her budget?

MS CYNTHIA AGNES SORAYA STIMPEL: That is her budget.

ADV KATE HOFMEYR: So to speak.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

20 **ADV KATE HOFMEYR:** Thank you. I would now like to just deal with you well put to you some of the perceived deficiencies with the BNP bid. So that we can have your comment on whether if these had been brought to your attention you would have recommended the appointment.

Ms Stimpel in your – in your testimony a moment ago you

made it clear that the financial exposure on this appointment was not particularly high. It was in the order of 2.6 million. Is that right?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Well some of the issues in relation to the bid and Chair this is an aspect that that will be traversed in evidence to come but it is appropriate to have Ms Stimpel's comment on it at the moment. I will not require us to go into the documents. When we are dealing with the relevant witness we will do so but just for your comment at this point Ms Stimpel if it - if it were to be shown that BNPs
10 bid or be it identifying that it as bidding in a JV with In Line Trading 10
(Pty) Ltd contained no information about that partner/bidder would that
have been a concern to you?

MS CYNTHIA AGNES SORAYA STIMPEL: That would have been a concern to me and it should have been raised in the document by the Bid Evaluation Committee because that is their role. They are supposed to identify all these issues.

ADV KATE HOFMEYR: If they had supplied no consolidated BBEE Certificate would that have been a concern?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes definitely it would have
20 been a concern.

ADV KATE HOFMEYR: And if you learnt that the price that they submitted with their bid was quoted and I am quoting from the bid submission along the following lines:

“Because of the envisaged methodology and complexity of the project we propose a fee of R1

excluding VAT plus a fee to SAA on the successful adoption for implementation of advice.”

What would you have made of that?

MS CYNTHIA AGNES SORAYA STIMPEL: Definitely not – definitely I would have said there is something wrong here. How can you go in and put in a bid for R1 and ...

ADV KATE HOFMEYR: Excluding VAT.

MS CYNTHIA AGNES SORAYA STIMPEL: And excluding VAT.

ADV KATE HOFMEYR: Yes.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** There is something very wrong with that.

ADV KATE HOFMEYR: Well that will be an aspect ...

CHAIRPERSON: Well forget about VAT.

ADV KATE HOFMEYR: It just makes it sound even less than R1. In the end R1.15 now. Those were the aspects. Ms Stimpel I take it if that had been none to you at the time you may not have recommended that (intervenes)?

MS CYNTHIA AGNES SORAYA STIMPEL: I would have not. *Ja*, it was just unfortunate the process we are running with the Bid Evaluation
20 Committee they get to see the documents. They go through it. It then comes as you can see the first lot signs and we get the final ones and even then I wanted to see the document and I was told but the – the Bid Evaluation Committee had done their work and they had done it thorough.

So – and on that basis I thought I have put enough resistance

and I am sure a second opinion would not do any harm and on that basis is why I recommended it but knowing everything else that you have just mentioned yes I would definitely not have recommended it, thank you Chair.

ADV KATE HOFMEYR: Just tell us that request to see the underlying document who was that made to?

MS CYNTHIA AGNES SORAYA STIMPEL: It was made to Coetzee – Amanda Coetzee to Silas Matsaudza.

ADV KATE HOFMEYR: And you remember that specifically?

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** Yes.

ADV KATE HOFMEYR: That request that you made.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: Thank you. Let us then if we may return to page 14 of your affidavit because you now move to a section which is headed “Sourcing of Funds” and one of the engagements we had earlier where you provided some background to us of the difference between transaction advisor services and sourcing of funds now becomes quite pertinent because as I have it in the story Ms Stimpel at this point what BNP Capital has been appointed to do is to provide transaction advisor
20 services. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct Chair.

ADV KATE HOFMEYR: And what then develops as the evidence and your affidavit progresses is that their scope was changed from transaction advisor services to sourcing of funds and you pick that up at paragraph 80 at the bottom of page 14. This is the day that you

referred to earlier.

You will recall you - you were in some limbo in the early part of 2016 to get clarity as to the position in relation to FDC and the previous RFP. Can you tell us about what happened on 20 April 2016?

MS CYNTHIA AGNES SORAYA STIMPEL: So leading up to that time we had no feedback what was happening with FDC. We had also not closed the RFP and we could not go back to any of the respondents and so we called the CFST meeting which is the Cross Functional Sourcing Team on 20 April with Ms Nhantsi for her to please give us feedback
10 and advise what is happening with the funding because we had key maturities happening on the loans and we needed to get back to the banks and to the respondees of the RFP.

In that meeting Ms Nhantsi actually wanted to know who called the meeting and why is it being called and I had said I needed clarity and that is why we called it because we are all part of this - the – the team and we need to know so we can take further action and then at that meeting she mentioned that the FDC is off the table.

Those were here words and in that same meeting she said now that we have FDC – pardon – we have BNP as a transaction
20 advisor we can use them to source the funds for SAA and that is when we all challenged it. The one member – Lindsay Olitzki brought up the fact that if you change the scope of the procurement transaction there is the amount involved and it should not be more than 15 percent.

This was way more than the 15 percent up front already. Secondly we all raised between ourselves, myself, Mr Lesenga (?),

Mr Makura (?) all raised that we need to rather go out and put a full RFP out there to – and rather get a complete new RFP and not get the current transaction advisor to source funding for SAA.

ADV KATE HOFMEYR: Ms Stimpel as I have understood your previous evidence you raise concern about utilising any third party to do sourcing of funds in circumstances were that had been done in internally traditionally. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: No. Yes that is correct.

ADV KATE HOFMEYR: But now you are at a point where you told that
10 the - FDC is off the table and there is going to now be an expansion of the scope of the transaction advisor to source the funds. Now as I have it if you pick it up at 81 over the page – page 15 of your affidavit you record there precisely what you have indicated that you said to Ms Nhantsi that she would need to follow a competitive bidding process for the sourcing of funds if that was to be the next step.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct and that was putting out the RFP process, getting this full competitive bidding out there and then doing a proper analysis, correct.

ADV KATE HOFMEYR: Now that was on 20 April. Further down in that
20 paragraph you talk about what happened the very next day on 21 April and that as I have it was the Board's decision to extend the scope of the transaction advisor. Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Let us go to that and you can now Ms Stimpel move to the B file because the annexures we will be working on for the

remainder will be in the B file and there we will go the first tab which is 33 and that is a decision of the Board of 21 April in which they:

“Approve the extension of scope of a transaction advisor to include sourcing of funding of 15 billion for South African Airways.”

Do you see that?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes I do see this and again the way it should work is that business drives it and business should have done it from the beginning driving it through to be approved at
10 Board. What has been done is that Ms Nhantsi had taken a letter directly to Board to get approval and they have approved the transaction advisor.

ADV KATE HOFMEYR: Ms Stimpel there is another aspect of this resolution that I find curious and I would like your comment on. The Board resolved as it is recorded here:

“To approve the extension of the scope of a transaction advisor to include sourcing of funding of 15 billion for South African Airways.”

Was there any other transaction advisor at the time besides BNP
20 Capital?

MS CYNTHIA AGNES SORAYA STIMPEL: Not that I am aware of Chair. As far as I knew it was the BNP who was chosen at the time.

ADV KATE HOFMEYR: But despite that there is then a whole process that seems to be followed and you will take us through it. Where there is a request for a confinement so that you do not have to go through a

competitive bid and then a proposal that BNP be appointed as the source of funds. That just seems to disconnect from this resolution that was taken on 21 April. Do you accept that that is an oddity?

MS CYNTHIA AGNES SORAYA STIMPEL: I do definitely.

ADV KATE HOFMEYR: But your evidence seems to suggest this was becoming a pattern.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: Is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes because what I have
10 been seen is – it is the same that first in – in January was the initial approval for – for transaction advisor and then only it comes through the Bid Adjudication Committee. Then change the scope of the transaction advisor. Then it comes through the Bid Adjudication Committee.

That is not how SAA should be functioning from a corporate governance perspective. Business drives it if there is any discussion from – between the CFO etcetera on what we are going to do. We make the recommendation first and then get the approval. Here it has been working back to front. We get the approval and now you drive it
20 through the governance process. That is incorrect, thank you.

ADV KATE HOFMEYR: Thank you Ms Stimpel. I – I have been asked to request again that you speak a little bit closer to the mic. Maybe draw it towards you if that would be helpful. You – you make that point in summary at paragraph 83 of your affidavit page 15 and then you move on to the date of 6 May 2016.

Can you tell us what happened on that day? So we have moved forward a few weeks. The Board Resolution is 21 April and now we move to 6 May and there is an interaction between you and Ms Nhantsi on that day.

MS CYNTHIA AGNES SORAYA STIMPEL: Come 6 May I get called in into Ms Nhantsi's office and she put a document down in front of me and she says you are challenging me and asking me questions so I would like to discuss this with you first before you get to sign it. So I said good and then she showed me the document.

10 She said the Board gave approval for the transaction advisor to change the scope and source funding for – for SAA. She has already spoken to the – the client – BNP Capital and they have already reviewed and they have come up with – they are prepared to do it. They can source 15 billion and their price.

So the first document that I saw was for 15 billion sourcing of funds. They were charging a fee of 3 percent. 3 percent on 15 billion is 300 million. Immediately I just said to her Phumeza I am not signing this. I pushed it back and I said I am tasked in my balance scorecard to save 300 million for this organisation by year end and the only way I
20 was going to do it is to reduce the interest rates on our borrowing.

Otherwise there is no other way and I said now you are going to wipe it out with one transaction that we are going to sign. Her words to me was oh I did not think of it that way but I will go back and renegotiate. Even then in the discussion I said to her I will go to the banks and – and see what they – what they would offer but I know – I

said I know the banks will give a better rate.

They never charged us such a high fee. They may add a margin in the interest rate but for arranging sourcing of funds they do not charge us that amount and then she said well the President is coming to SAAs offices on that day and she said well I have got to go meet the President. Can we meet on Monday and I said I am not here.

I did put in my leave. I will be going away on a pilgrimage from the – the Monday for the week and then she asked who will deputise for you and I said Michael Kleyn will be deputising. I
10 immediately went back and I asked for a copy of the – the memorandum and she said no you cannot have it. She will update it and send a new one and discuss it when I return.

I left to go and chat to my deputy. I told him what happened and I said to him please do not sign anything in my absence. Secondly I said can you please get pricing for what the banks would offer on 15 billion and when you get the letter review it or the memorandum and then hold it till I return. He agreed on that, thank you Chair.

CHAIRPERSON: Let us take a five minutes adjournment.

ADV KATE HOFMEYR: Okay Chair.

20 **CHAIRPERSON:** We will adjourn for five minutes.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: We may proceed.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Ms Stimpel we were at paragraph 86 on page 15 of your affidavit where you record there that you were going to go on leave and you gave feedback to Mr Kline about your meeting and as I read it you record there that you instructed him not to sign the BAC submission in your absence. Was it as clear as that Ms Stimpel?

MS CYNTHIA AGNES SORAYA STIMPEL: (Inaudible – microphone off)

ADV KATE HOFMEYR: Ms Stimpel please just turn on your microphone.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** My apologies.

ADV KATE HOFMEYR: Yes, so just clarify for us I asked you was it as clear as that that you instructed him not to sign it?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes, I instructed him not to sign it and he also clarified by saying no I will not sign anything without your knowledge ...(intervention)

CHAIRPERSON: While you are not there?

MS CYNTHIA AGNES SORAYA STIMPEL: ... while you're not here, correct.

20 **ADV KATE HOFMEYR:** I want you to skip over paragraph 87 and come back to it, because it's useful for us first to see what happened in a sense in SAA on the 11th of May which we pick up at page 88, over the page 16 on your affidavit and then we can talk about how that interfaced with you outside of SAA on your leave. So if we start at paragraph 88 you will see there that you record that on the 11th of May the South African Airways Global Supply Management Unit made a

request to the BAC to support the confinement and award of a contract for sourcing of funds for SCA Group to be in P –Capital, and let’s look at that document, it’s under tab 35, at page 445. So this as I read it is the GSM, that’s the Global Supply Management’s request to the BAC to support the confinement of the contract to source funds to be in P-Capital, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That’s correct Chair.

ADV KATE HOFMEYR: And that background on the page that we see under the bold heading is the same background we are familiar with,
10 that’s what the transaction advisor was originally procured to provide, as a service.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then you go over the page to 446, which now contains the motivation for this extension in the scope of the transaction advisory services. Could you read for us what’s recorded there as the motivation.

MS CYNTHIA AGNES SORAYA STIMPEL:

20 “Loans to the value of 7.3billion are maturing on 30th of June 2016 and SAA is obliged to settle the loans on or before the maturity date. Due to time constraint the only feasible approach is to engage the appointed transaction advisor to urgently source the funds required to settle the loans. Sourcing the funds was not included in the transaction advisor’s scope of work as SA believed that the funds could be successfully sourced without the transaction advisor’s

assistance. The outcome of SA's efforts to secure funding without the assistance of the transaction advisor in the market has proved otherwise. It is against this background that GCM on behalf of the business unit is requesting for BAC to support, to confine, and award the contract for sourcing of funds to settle the loans maturing on 30th June 2016 to be in P-Capital Pty Limited. A duly signed confinement declaration form is attached in Annexure A."

ADV KATE HOFMEYR: Thank you. I would like to just pause on some
10 of those propositions. Let's go back to the point about due to time
constraint the only feasible option is to engage the appointed
transaction advisor urgently to source the funds. What is your
comment on that, would you have supported that as a motivation?

MS CYNTHIA AGNES SORAYA STIMPEL: No I would not, because
we've always been in a time constraint and we've managed it, we've
had loans maturing, we had to roll them over, we had to seek Board
approval and then go back and there is a constant going back and forth
to Board, getting the approvals to International Treasury because once
the loan matures you have to do a new agreement, so we – it was
20 something we were doing as almost a daily basis, we knew that so I
wouldn't have called that a constraint that we needed to go now and
source the R7.3, whatever was maturing we were going to roll over
anyway.

ADV KATE HOFMEYR: And if against your view that you've just
described there was urgency where would you say that urgency arose

from?

MS CYNTHIA AGNES SORAYA STIMPEL: For me the urgency arose through Board's delays I felt, and the whole delay starting from 2015, and then on our interim CFO who at the time had she told us the FTC was off the table in January and not in April we could have already made plans of how we're going to roll those funds again or gone out for a new RFP, by then we could have at least managed the process but we were always waiting, being told to wait and sort of on the back burner and that I feel was where the urgency came about Chair.

10 **ADV KATE HOFMEYR:** I would like to pick up that point, you do address it later in the affidavit but this question about whether you can justify a confinement of a procurement process on the grounds of urgency because that is what seems to be lurking in this motivation that because of this urgency we must confine to this particular existing service provider rather than going out competitively, and you make the point later at paragraph 92 that SAA's own procurement policy clearly states that poor planning on SAA's part can never be regarded as a ground of urgency.

I would like to take you to that policy just so that we can find
20 that provision. You will find it as one of the supplemented documents in File C and you will find it there at page 890. Well let me just orientate you, the document begins at 868 under Tab A1, is that the supply management policy you're familiar with?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And then if we go to within that policy page

890, you will see Ms Stimpel the section dealing under 11.13 with limited or confined bidding, do you see that?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And it gives circumstances in which under (1) SAA shall use limited bidding only in the following exceptional circumstances, and it lists the circumstances, but at 11.13.1.6 I think is the point that you were making in your affidavit. Would you read us the provisions of that clause?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes it states that:

10 “Bad planning shall not be acceptable as justification for the use of limited bidding.”

ADV KATE HOFMEYR: What was your view at the time, had there been bad planning?

MS CYNTHIA AGNES SORAYA STIMPEL: I felt that there was because we had ample time to put out and why were we rushing this now with – and taking an existing transaction advisor who was only tasked and mandated to do certain transactions and now opening the scope so broad to go out and source funding and then pushing the approval to say it is because we need to source funding with immediate
20 effect or else SAA will be in jeopardy. Sorry, yes I agree.

ADV KATE HOFMEYR: Ms Stimpel there is an odd circularity I would suggest, and I would like your comment on to what is happening here because you will recall you have already testified about the initial inclusion of the sourcing of funds in the RFP that was going to go out for these transaction advisor services. You took issue with that as I

have your evidence because you said but the Board has not approved a sourcer of funds in January 2016 so our request for proposal must be faithful to what the Board has approved, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: The consequence of that is that there's a process BNP gets appointed as transaction advisor and then shortly thereafter there's in a sense a resurrection of the source of funds issue and now a process to confine to BNP getting that deal in a sense from SAA, is that correct?

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** That's correct Chair.

ADV KATE HOFMEYR: Well let's look at what financial implication that was going to have for SAA, and that appears at page 446 where we were dealing with first the motivation for this confinement, tell us what the financial implication says in that first paragraph.

MS CYNTHIA AGNES SORAYA STIMPEL: The industry norm is that the transaction advisors charge a success fee from two to three percent of the funds sourced and SAA negotiated a percentage with the transaction advisor, the two parties settled for a success fee of 1.5% should BNP be tasked to urgently source the funds. Indicated below is
20 the projected success fee to be paid to BNP Capital if the transaction advisor succeeds in sourcing the R15 billion required to settle all the loans. The success fee lies not in a once off payment, the terms will be negotiated with the transaction advisor to ensure that the payments of the success fee are staggered.

ADV KATE HOFMEYR: And then what is the total liability on that

success fee as recorded in the table that then appears?

MS CYNTHIA AGNES SORAYA STIMPEL: So based on the success fee they've chosen a 1.5% of 15billion making it 225million. If you include it at that time it was 14% VAT it would have made it R256million.

ADV KATE HOFMEYR: Well let's go back to the financial implications, because you had an interaction with Ms Nhantsi just before you left to go overseas at which you recall a 3% figure was being debated and as I recall your evidence you said you made it clear to her that you were concerned about how high that fee was, is that correct?

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** That's correct.

ADV KATE HOFMEYR: What then is your comment on the statement here that the industry norm is that transaction advisors charge a success fee ranging from two to three percent of the funds sourced.

MS CYNTHIA AGNES SORAYA STIMPEL: Still I don't think, I disagree with this, I know there were other schools of thought, but I disagree with such a high fee. Banks charge basis points so it's a percentage of a one percent for instance, so they will go 35, 25, 50, 85, basis points for them arranging for the funding. Where they would they would charge it on the margin, so for instance if they're saying I am going to
20 lend SAA (indistinct) 6.5% I am going to add on the 3% margin and they will charge us the interest rate of 9.5%, but they are not going to add it in for sourcing the funds, so I disagree with that statement that this is the industry norm and that's my view. Thank you.

ADV KATE HOFMEYR: But it does seem as though at least the position had moved from when you met with Ms Nhantsi because if 3%

was on the table then the second part of that sentence records that there's been some negotiation down to the 1.5%, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That's correct yes.

ADV KATE HOFMEYR: But you are away at this point in time is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: You did not receive this, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That's correct I did not receive it.

10 **ADV KATE HOFMEYR:** And if we go over the page to 447 that's quite clearly reflected because your name is scratched out and that of our deputy, Michael Kline, is included, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That's correct Chair.

ADV KATE HOFMEYR: And what does he signify there next to his signature?

MS CYNTHIA AGNES SORAYA STIMPEL: He writes there, he signs it and states recommended under the premise that the company is under pressure to arrange funding.

ADV KATE HOFMEYR: Ms Stimpel if we go back in your affidavit to
20 paragraph 87, which was on page 15 the one that I said I wanted to return to, you indicate there that you received a Whatsapp from Mr Kline on that day?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Tell us about that message.

MS CYNTHIA AGNES SORAYA STIMPEL: So the reason I was away if

it was normal leave I would have stayed but it was a birthday present from my husband, it was a pilgrimage walking from Paris to Chateaux and it was a five day pilgrimage which I was doing, and which I got in December and could only take it in May because that was the date the pilgrimage was running so I was away walking in between small towns and on this particular day which was I think it was the 11th when he signed it and he sent me this message saying I was put under pressure to sign, I did sign the document and with that I was immediately upset in that how could he sign without me being there, he had promised me
10 that he wasn't going to sign it, we were going to discuss it, and I then immediately went to the head of our group and said to him when we get to the next town can I take a few minutes and he said fine, so there I did, I went to sit quietly and I actually wrote a message to National Treasury, the two people that I deal with, Ms Avril Healthstead and Mr Rajesh Rajilal and I wrote to them, I said this is a Whatsapp whistle blowing message, I don't know how else to do it, but I have just received notification that a BAC document has been signed for – to pay a small client and I said I really don't know anything about the client except that they were going to be our transaction advisor and we were
20 going to pay them R2.6 odd million and now they are going to be sourcing the funds for SAA and I said at a fee of initially I said R300million, Michael in his message had corrected that by saying 1.5%, so I said the figure I wrote is wrong it's actually R225million, so I wrote this message to National Treasury because I was concerned, I just felt why are we pushing this agenda, all this time we've been delaying

funding, why suddenly do we have to take this client and why do we have to pay them this phenomenal fee. Thank you.

ADV KATE HOFMEYR: You provided us with a copy of that Whatsapp communication that took place while you were on your pilgrimage in France. You will find it at page 443, which is under tab 34, and Ms Stimpel you will correct me if my sense of this communication is wrong but it really does read as though it's sort of moments in time that are developing because it starts – you will see the date in the text, 2016.05.11, so that's the 11th of May and it's at 8.15 and then you talk
10 about everything you've described, you say it's a whistle blowing report, it's a whistle blowing message, and you apologise having to send it by sms and you say you will do a formal email or letter and then you go into the details as they have been relayed to you by Mr Kline and you there reference the 2% of the quantum, but if you go right down the page there appears to have been a second message later, what seems to be just before midnight you will see it's sort of five lines up from the bottom that reflects as 11.24.09 pm and you say:

“Cynthia Stimpel speaking. The success fee has now been changed to 1.5% ...”

20 And you go on to raise your concerns in relation to that and you reference there in the last line:

“Michael said he signed a BAC doc as I was not there and the interim CFO has put him under pressure.

Best regards”

This is quite something to do on a pilgrimage; did you feel strongly

about it?

MS CYNTHIA AGNES SORAYA STIMPEL: I was yes, I was – ja I just felt that this was wrong, this isn't our approach we should be following funding and the fact that we were doing this showed that we wanted to enlist someone who wasn't – and pay them a huge fee on what basis, when we've been rolling funding, we've been doing funding over the years with the minimum cost to SAA. So yes I felt strongly about it, I had to take time out, I literally sat at a coffee shop because they had wifi so I could do this, and that's how I did it. Thanks.

10 **ADV KATE HOFMEYR:** Well despite that Whatsapp message as I have it two days later on the 13th of May the BAC did approve the decision to confine the sourcing of funds to BNP. You reference that at page 17 of your affidavit from paragraph 95 and you will find that BAC document at page 453, which is under tab 37. I'm interested just to pause at this document for a moment to look at the various options that are given to the committee when it makes its resolutions, there seem to be various options, they can approve, they can recommend to the Board, they can refer back for rework, they can decline or they can note, is that correct?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** That's correct.

ADV KATE HOFMEYR: And so what we see signified there is what decision on the part of the BAC?

MS CYNTHIA AGNES SORAYA STIMPEL: It's recommended and one sees there that it should go to CEO, Exco, Audit, PTPC and for recommendation to Board, correct.

ADV KATE HOFMEYR: And then there are some conditions contained at the bottom, I have struggled greatly to decipher what these conditions record, are you at all better placed than I am to decipher those conditions. Is that handwriting that's familiar to you? I mean my bad attempt, but we will ask Ms Nhantsi about this because she references it in her statement. It seems to me the main being ...(intervention)

MS CYNTHIA AGNES SORAYA STIMPEL: It looks like ...(intervention)

CHAIRPERSON: Main basis, main basis of the support is to get
10 funding and then something ...(intervention)

MS CYNTHIA AGNES SORAYA STIMPEL: Due – it's due to the urgency and ...(intervention)

CHAIRPERSON: Ja, due to the urgency ...(intervention)

ADV KATE HOFMEYR: Practicality maybe?

MS CYNTHIA AGNES SORAYA STIMPEL: Practicality of the requirement.

CHAIRPERSON: Of the required ...(intervention)

ADV KATE HOFMEYR: We're all trying.

CHAIRPERSON: ...fund is offered to the best something
20 ...(intervention)

ADV KATE HOFMEYR: Rate in the market.

CHAIRPERSON: Rate in the market.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: Well we will explore that further but the bottom line as I have it is that the BAC then on the 13th of May recommends to

the Board that BNP be appointed to source the funds, is that your understanding?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: But you're still away at this point, is that right?

MS CYNTHIA AGNES SORAYA STIMPEL: I'm still away at this point yes.

ADV KATE HOFMEYR: Okay, you then go in your statement to deal with the BAC submission checklist that was – that accompanied the submission that went to the BAC from the GSM, I would like to take a
10 look at that and there are actually two copies of it in the papers and the better copy is at page 448, so if we can go to 448 you will find that under tab 35, you raised some concerns about the content of this BAC submission checklist because as I understand your evidence there are ...(intervention)

CHAIRPERSON: I'm sorry ,what was the page number?

ADV KATE HOFMEYR: Apologies Chair, 448.

CHAIRPERSON: 448.

ADV KATE HOFMEYR: So we go back a bit in the file, under tab 35.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** You make the point at paragraph 96 that this checklist contains really the areas of compliance that need to be satisfied, or of which the BAC needs to be satisfied when it makes its decisions and you highlight how many of these items of compliance have in annex to them not applicable. What concerns you about that?

MS CYNTHIA AGNES SORAYA STIMPEL: So the purpose clear

description of the submission, they put down yes, then confirmation of signed business case, that meant the motivation around it, they've got not applicable. Details of the lender, number of bidders, so because they put it in a confinement they put it as non – ja, so they didn't need to look at that. Details of the tender bidders not applicable, bid evaluation not applicable, financial due diligence not applicable, bid award recommendation not applicable. Financial impact assessment not applicable, assessment ...(intervention)

ADV KATE HOFMEYR: Why – sorry can I pause there just for a
10 moment because I can understand why you would say not applicable if you're not in a bid scenario right, but financial impact assessment would that not still be relevant even if you were confining?

MS CYNTHIA AGNES SORAYA STIMPEL: I would agree, it should still be, you need to still review it.

ADV KATE HOFMEYR: And what about assessment of fair value?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes and risk assessment.

ADV KATE HOFMEYR: But all of that is indicated as not applicable?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct. Had it gone
20 through a true process of checking, comparing, take the transaction advisor as is and opening it out and then doing a full comparison they would have then reviewed at that end and picked up the FSB license or picked up any other shortcomings regarding the client. At the time – pardon?

CHAIRPERSON: So where it says assessment of fair value not applicable is it correct that what it in effect means is don't worry about

whether there is fair value or not.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes and this is done by the
...(intervention)

CHAIRPERSON: That's not our concern?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct, that's how I would
assume it. The GSM because they were now confining it felt that there
was no need to go through checklist again and ensure that you have all
your criteria in place. Thanks Chair.

ADV KATE HOFMEYR: Right, and then we move to page 18 of your
10 affidavit, if we may, because we're now at the stage where you have
returned, you say at paragraph 98 you returned from your leave on the
17th of May and you get a full account from Mr Kline and he gives you a
copy of the submission that he signed, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That's correct Chair.

ADV KATE HOFMEYR: And then from the 18th of May you for want of a
better description snap into action, because you are now going to the
banks to get hypothetical quotes. Ms Stimpel why did you do that the
day after you returned?

MS CYNTHIA AGNES SORAYA STIMPEL: When I returned I first sat
20 with my deputy, Michael Kline, and got the information from him, and I
wanted to know what exactly happened, how was he put under
pressure, was there a gun held to his head, etcetera, and he said that
he was called to Mr Lester Peter's office, who literally, in words were,
jumped up and down and told him you don't take responsibility here so
you just sign, and based on that Michael said he signed it.

I was still concerned and then when I came back to my desk I tried to arrange a meeting with Ms Nhantsi to discuss this further because when we left she said she was going to wait for prices and we would discuss it, she knew that I was going to go away.

I couldn't get hold of her and I decided well I am going ahead anyway to get prices in the market and see and at least have comparable prices that I can put forward to her so she can see there is a strong possibility of saving costs for SAA, and so that's what I did.

When I sat my desk I thought do I go to our major banks, I
10 know that the banks talk to one another and the minute you talk to one bank and the other they all know what's happening out in the market so I wanted to limit it, so I then worded my email under a hypothetical quote and I then only sent it to three banks, I sent it to Standard Bank, I sent it to ABSA and I sent it to Rand Merchant Bank.

ADV KATE HOFMEYR: Let's go to that email in which you make the request for a quote. You will find it at page – I would like to start at page 460 because these email trails from the bottom up so speak in terms of time, so if you go to 460 which is under tab 39, you will see there your email sent to ABSA Capital and the subject is hypothetical
20 quote, as you've described, can you read for us the text of your enquiry.

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair, I will do so. I wrote:

“Dear Thule [who is our relationship person at ABSA Bank and asked her] would it be possible to give me a hypothetical quote

on the following. I'm trying to benchmark some numbers please. This is purely hypothetical. Should SAA go into the market for a transaction advisor or funds arranger for an amount of R15billion what would be the fees for this service from yourselves please."

ADV KATE HOFMEYR: And then her response is above that, what does she come back with?

MS CYNTHIA AGNES SORAYA STIMPEL: She writes back the same day:

10 "Dear Cynthia,
Arranging fees are generally lower than ten basis points and you would also need to factor in participating fees for the lenders and the arranger which usually range between 25 to 40 basis points. A deal can always be made."

ADV KATE HOFMEYR: I understood your earlier evidence to be basis points are percentages of a percent.

MS CYNTHIA AGNES SORAYA STIMPEL: That's correct.

ADV KATE HOFMEYR: So we're talking in terms less than one percent now and remember for the purposes of this part of your evidence it's
20 useful to keep in mind that what's been proposed and BAC approved is a 1.5% for BNP, and as I have it you've returned and you're concerned about the extent of that fee and so you are now engaging with banks to get a comparator, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct yes.

ADV KATE HOFMEYR: Is that something in your view that should have

been done prior to the setting of the 1.5 with PNB?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes definitely Chair.

ADV KATE HOFMEYR: If you ...(intervention)

MS CYNTHIA AGNES SORAYA STIMPEL: It should have been done.

ADV KATE HOFMEYR: If you turn then back a page to 259 we can follow the email train, you then respond to Ms Zulu and you say would this be calculated on the full quantum amount of borrowing let's say it's a total of 50 basis points on 15billion. Thanks and regards and then she responds ...(intervention)

10 **CHAIRPERSON**: I'm sorry what page is that?

ADV KATE HOFMEYR: Apologies Chair, we're back a page.

CHAIRPERSON: We were at 460.

ADV KATE HOFMEYR: Yes so we go back to 459.

CHAIRPERSON: Okay, thank you.

ADV KATE HOFMEYR: Just to follow the email sequence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So Mr Stimpel you go back to ask about whether that percentage that she's quoted as I have it would be influenced by the total quantity, so you say would this be calculated on
20 the full quantum of borrowing and you say for example let's say a total of 50 basis points on 15billion and then her response is reflected above that, what does she come back and say to you?

MS CYNTHIA AGNES SORAYA STIMPEL: She writes:

“Not quote, the arranger will earn the 10 basis points and then in addition their portion of the debt will be 25 basis points of

participation fee.”

So in essence one party will have 35 to the maximum of 50 basis points and others there could be 25 to 40 basis points because they are only participating – and negotiate – and then she writes I will negotiate hard to get close to 25 basis points given the quantum involved.

ADV KATE HOFMEYR: Right and then you thank her as I have it and then on the 20th of May you start communicating with Ms Nhantsi about this quote and you will find that email under tab 40 at page 462.

So what – if you could give us just the essence of this email
10 what are you communicating to Ms Nhantsi on this day?

MS CYNTHIA AGNES SORAYA STIMPEL: My intention was to raise the concern of us having gone ahead to approve the BNP – to source funding at BAC, the next level of approval was going to go through the obviously EXCO, TIPCO, Audit & Risk and Board Committees and I was hoping to stop that because I felt that with us getting a better rate you can still stop it and do a comparison and then make a decision on how we’re going to go forward and so I sourced these prices, I got – the reasons why there’s a delay from when I came back to the 20th, I was waiting for RMB to come back to me as well, and so I submitted to her
20 what RMB was saying and what ABSA had said. I even went to the extent where I drew up a little Excel table just calculating on the amount and saying this is what BNP is charging us, this is what the banks are charging us and if I went with the maximum amount the banks would charge us this would be the fee and the fee came to R85million. By then I realised we could definitely be saving if this is

the route we're going to go and so I wrote to her and that was the essence, raising my concern and that we should do a full comparison.

ADV KATE HOFMEYR: I will go into the detail of this email in a little bit of time but there is something that I just want to pick up on on something you said. You indicated that you wrote to her on the 20 May because you had been waiting for further responses. I think you mentioned RNB. But I want to draw your attention to page 466 because 466 appears at least to me to be the response you got from RNB.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

10 **ADV KATE HOFMEYR:** And that is after the 20 May. It is the 25 May.

MS CYNTHIA AGNES SORAYA STIMPEL: Yes.

ADV KATE HOFMEYR: Am I reading that correctly?

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct ja because I was waiting for them...

ADV KATE HOFMEYR: So you had not received RNB...

MS CYNTHIA AGNES SORAYA STIMPEL: I had not yet I was still waiting for them and – but I went ahead with what I had so that she already had some figures on the table.

ADV KATE HOFMEYR: And that – so then can I just clarify because I
20 had understood you say you had RNB at the time of the 20 May you have now clarified that that is not the case?

MS CYNTHIA AGNES SORAYA STIMPEL: No sorry I have not had them but my reason for the delay I came back the 17th I did not respond the 18th or the 19th.

ADV KATE HOFMEYR: Yes.

MS CYNTHIA AGNES SORAYA STIMPEL: By the 20th after getting my first one waited another day or two and then I thought let me respond at least with what I have on the table.

ADV KATE HOFMEYR: And so the table is reflective of what you had received by that stage from ABSA is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct yes.

ADV KATE HOFMEYR: Right. So let us just look at that email at 462 if we may because you raising some concerns for Ms Nhantsi's consideration. You say in the second paragraph after the first break
10 you say:

“Therefore I am still very uncomfortable with the document that has been approved by the BAC for a fee of 1.5% to be paid on the success rate fee with BNP Capital and thought to ask you whether we can still reconsider the decision taken to confine to one service provider rather than open this wider to all.”

That appears to have been your consistent concern, is that right?

MS CYNTHIA AGNES SORAYA STIMPEL: Yes. And rather open it to wide all yes that is what I requested. Thank you.

20 **ADV KATE HOFMEYR:** Yes. And then at the end of the next paragraph you raise a reputational risk issue for SAA. Can you explain to us what your concern was there?

MS CYNTHIA AGNES SORAYA STIMPEL: That we have been going out to the banks since 2015 Chair already and so the banks knew that we were seeking funds. Part of the other activities we did with banks we

met on a regular basis between National Treasury, SAA and the funders because they wanted to know what was happening with SAA especially if there is major changes like a CFO change or any major events that happened in SAA. So for me is that if we now go out and we are saying we have got this client which personally I knew nothing about. I tried to google them and find nothing about their web site, was not much to find out the work they would have done and achieved in sourcing huge capital amounts is that what reputation would SAA face being associated with a small client like this sourcing 15 billion. So that was
10 my concern.

ADV KATE HOFMEYR: And then you conclude by saying you are available on your phone if she wishes to discuss it further even over the weekend or else you say you could meet on Monday and you say, as this is imperative that we review and reconsider this proposal in order to save money for the company and keep this company's best interest at heart. That again seems to be your persistent concern, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct Chair.

ADV KATE HOFMEYR: We then go to paragraph 101 of your affidavit
20 which is at page 18. Where you record there that Ms Nhantsi decided not to draw your attention – your concerns to the attention of the board and instead sought to secure their approval. And you indicate there that the approval was granted by round robin resolution on the 24 May. You say though that you were not aware of that at the time, is that right/

MS CYNTHIA AGNES SORAYA STIMPEL: That is correct.

ADV KATE HOFMEYR: So your communication with Ms Nhantsi is on the 20th you volunteering to meet over the weekend to discuss it further or on Monday. On the 24 May approval is given but you are unaware of that?

MS CYNTHIA AGNES SORAYA STIMPEL: I am unaware of that. I did not know it was approved at the time.

ADV KATE HOFMEYR: So what did you do on the 25 May and you can pick that up at page 102 – paragraph 102.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** Ja I subsequently got the response from Rand Merchant Bank and then forward that also to Ms Nhantsi saying this is the second one and again it is still a ball park figure that I have calculated. I have built this table and there can still be substantial cost savings for SAA and I submitted that to her. At the time I got – when I sent that to her I was then told that it has already been approved by a round robin.

ADV KATE HOFMEYR: Well before we get there could we – because Ms Stimpel with respect you do not seem to leave it at the email you engage in other modes of communication on the 25th. So the email
20 goes out. I have now got RNB. This is what RNB is saying. Let us just summarise RNB, was it coming in around the ball park that you had received from ABSA?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct they were in that range so – and RNB gave additional information they even gave around if you were looking at the capital markets which I did not even ask for

they gave additional information which is great for us to then also look at. So yes I still had the concern and because I knew there was a board meeting coming up on the 27th I did not realise on the 24th that they had done a round robin I was still looking at the meeting coming up ahead. And having sent the email and not having any response I thought let me engage Mr Nhantsi further. I then sent a sms saying please can we meet, can we discuss there is still this, can we look at it? And ja and then she responded to that.

ADV KATE HOFMEYR: Thank you Ms Stimpel. I do want to just pause
10 for a moment at the RNB quote. You will find it at page 466. Chair the reason for spending a little bit time on this is because one of the points that are taken up in Mr Zwane's application to cross-examine is Ms Stimpel is that the quotes that she sought to get from the banks were too hypothetical. There was not enough information in them in the nub of the criticism as I read it. And you referenced however that what RNB had come back with was actually some level of detail and alternative ways in which you could structure the funding as I read that email at page 466.

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

20 **ADV KATE HOFMEYR:** They seem to be dealing with three scenarios there. Can you just take us through what RNB were saying?

MS CYNTHIA AGNES SORAYA STIMPEL: Thank you Chair I will do so. So the first one is that we expect that SA would prefer to raise rand only that is ZAR and understand that the funding is largely going to be raised in order to restructure existing debt. As such we believe that a

bank loan package will be most appropriate. In order to assist SAA in arranging the bank package which we are assuming would be government guaranteed we would charge a fee of approximately 50 basis points of the total funding raised. RNB would be mandated as the lead arranger. Then point 2. If SA wish to raise funding from a capital market perspective we expect that 5 billion would probably be the maximum that could be raised in the SA market with a government guarantee. We would charge a fee of 20 basis points of the amounts issued. RNB would be the acting – and acting as lead arranger for the
10 issuance. On the third point. If SAA wish to access the full amount of funding from the capital markets a US dollar bond which is also government guaranteed would be more appropriate we would charge a fee of 30 basis points of the nominal amount issued. RNB would be acting as joint lead manager and we would recommend that at least two other joint lead managers are appointed who would share the proposed fee. Please note that due to the limited amount of information that we have the above is still purely high level indications.

ADV KATE HOFMEYR: Thank yo.

MS CYNTHIA AGNES SORAYA STIMPEL: And so – ja – if I may also
20 just clarify here. Asking the hypothetical quote is for the banks – had I gone for a pure quote the banks come back with a quote and you need to give specific information. At that time I felt I could not divulge what was happening around the BNP issue and I needed to at least get some figures so I could compare and do comparable analysis with the fees that we were getting. And so hence that is how I worded my emails.

And from both ABSA bank and RNB they understood what I wanted because they came back with a pricing. Where there was additional prices to be paid either as lead arranger or for any other additional fee for instance – they added those basis points in. Thank you.

ADV KATE HOFMEYR: Thank you and then we were just at the point where you engaged on sms with Ms Nhantsi because there had not been a response to your email and you will find that sms communication at page 471 that is under Tab 43. Ms Stimpel I am not going to ask to read all of that communication but what is the gist of it
10 as you recall it?

MS CYNTHIA AGNES SORAYA STIMPEL: In my message it was basically to again say that – to raise the point with Ms Nhantsi that I was away and came back to find that this was – the BNP was approved and then I wrote there it is unethical for us to pay this large amount when we know we can get better rates in the market. Then Ms Nhantsi responds by saying that we need to have a meeting to make me understand. Her words are

“Cynthia I think we need to have a meeting and make
you understand that at the end the board and
20 executives take the decision not you. We have a
crisis on our table and I need money.”

ADV KATE HOFMEYR: And if you go over the page that is actually better – that part of the correspondence is better reflected because you have the top part until I need money but then Ms Nhantsi’s message goes on as I have it she says

“I need money urgently and you keep on questioning the process. Unfortunately I am here to stabilize the airline and do what is right. It is not my problem that you decided to go away without even my leave approval. As I have said if you have questions talk to – talk – if you have questions about this talk to me next week. I do not have time please.”

And then if you go over the page at 473 your response – sorry please and then she goes on:

10 “In fact you need to explain what is unethical about this because that is a big statement that undermines our integrity.”

And what is your response?

MS CYNTHIA AGNES SORAYA STIMPEL: I then say:

“Please I have asked for a meeting and would like to meet and I have sent an email regarding my leave on the 5 May already. I was struggling to book the leave on the system.”

Because she alludes to me going without her approval.

20 **ADV KATE HOFMEYR**: And then the last bit of the communication is at the bottom. What is her response?

MS CYNTHIA AGNES SORAYA STIMPEL: She writes:

“As I have said this week it is madness for me you can set up a meeting for next week.”

ADV KATE HOFMEYR: Now that is happening on the 25 May as I have

it. As it so happens the board had already decided to approve it the day before, is that correct?

MS CYNTHIA AGNES SORAYA STIMPEL: Correct.

ADV KATE HOFMEYR: And just so that we can see that board resolution let us go to it. It is at page 480. And it is under Tab 45. It reflects again a round robin situation. Just tell us about that round robin situation because you mentioned earlier in your evidence that there was a scheduled board meeting that you were aware of, is that right?

10 **MS CYNTHIA AGNES SORAYA STIMPEL**: Correct.

ADV KATE HOFMEYR: So when was that scheduled board meeting to take place?

MS CYNTHIA AGNES SORAYA STIMPEL: On the 27 May.

ADV KATE HOFMEYR: So when you are corresponding on the 25th you are still in a position where you assumed that is when it is going to be discussed, is that right?

MS CYNTHIA AGNES SORAYA STIMPEL: Tabled at the board. Correct. That was my understanding because especially a matter of this nature should be at – at a proper board meeting. I did not expect
20 that it would be done by a round robin. But to explain how the round robin works Chair is that the documents are sent via email to each of the board members and they then have an opportunity to respond. They can either obviously got to read it and then they can approve or not and raise any concerns that they have via email. And this is all coordinated through the company secretary's office. Thanks.

ADV KATE HOFMEYR: So that round robin approval was given as of the 24 May and so the decision has been taken to procure funds – well to allow BNP to source funds for SAA and the letter of award that then goes to BNP goes the following day the 25 May when you were having that correspondence with Ms Nhantsi and you will find that at page 490 under Tab 46. And this is really the last aspect Chair because I see we are close to four o'clock that I propose to deal with today because we will move on to the last topic which is the cancellation fee after that.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** But let us just look at 490. Ms Stimpel this is a letter of award as I read it congratulating BNP Capital on being awarded the contract for sourcing of funds for South African Airways and they record there:

“Kindly note that this letter of award is subject to the following conditions.”

And those conditions include that the letter sets forth SAA's understanding of the terms and conditions of our engagement and the nature of scope of the services to be provided in order to ensure that both parties are aware of their responsibilities. It goes on under 2 to
20 say the letter of award and any other correspondence dealing with the subject matter constitutes the essential elements of the terms of our engagement and in the event of any inconsistency the agreement shall prevail. And at 3, any services rendered by BNP prior to signing the agreement will be governed by the – by SAA's general conditions of contract. And it says that they hereby extend congratulations. And

they ask for acceptance of the award by return and you see over the page that does come back later on the 3 June. Ms Stimpel are these terms standard in letters of award that specify that the terms and conditions of the engagement are contained in the letter of award or not?

MS CYNTHIA AGNES SORAYA STIMPEL: The letter of award would then have the full terms. This does not cover any of the – it just says letter of award sets forth the terms and conditions of our engagement. So there had to be an attachment to this. I do not see any. I have no
10 idea how the SEM department worked on this. If this was done in the treasury department we would have only sent a letter to say that they have been awarded this and we will follow on with the terms of agreement because that needs to negotiation between both parties legal department etcetera and so it would have been between SAA and the – the client's legal team and that would have been the correspondence. If this was the only letter it said sets forth but there is nothing in here that covers it that I can see.

ADV KATE HOFMEYR: Chair what we will move onto tomorrow is the cancellation fee that arises from this.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: What is noteworthy and we will commence with it is that on the very same day that this letter is sent a letter is received from BNP Capital in which they are motivating for a cancellation fee.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Of 50% of those fees that they would have earned on the sourcing.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But we will go into that in more detail.

CHAIRPERSON: Thank you. And we start normal time tomorrow?

ADV KATE HOFMEYR: I think normal time Chair.

CHAIRPERSON: Normal should do.

ADV KATE HOFMEYR: Because we gone quite swiftly.

CHAIRPERSON: Yes.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** There is a bit more to deal with with Ms Stimpel and then there is a second witness but I am confident we will conclude that in the day?

CHAIRPERSON: Okay. Okay. We will adjourn for the day and tomorrow we will start at ten o'clock. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 14 JUNE 2019