

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**14 JUNE 2019**

**DAY 113**

20

**PROCEEDINGS ON 14 JUNE 2019**

**CHAIRPERSON:** Good morning Ms Hofmeyr, good morning everybody.

**ADV KATE HOFMEYR:** Morning Chair.

**CHAIRPERSON:** Thank you. Are you ready?

**ADV KATE HOFMEYR:** Yes indeed.

**CHAIRPERSON:** Thank you. Let us proceed.

**ADV KATE HOFMEYR:** Thank you Chair. Where we concluded matters yesterday was at the point at which BNP had been provided with a letter of award in relation to the sourcing of funds. I would like to start  
10 there this morning again if we may? Ms Stimpel you will find that in bundle B because that is the one we are now working in for today's evidence and it appears at page 490 which is under Tab 46. Ms Stimpel you will recall that we had looked at this towards the end of yesterday. It is the letter of award for the sourcing of funds for South African Airways that is dated the 25 May 2016. I would like us just for a moment to turn over the page to look at the date on which the acceptance and agreement by BNP CaPieterl is filled in there. That is at page 491. Ms Stimpel can you just indicate to us there you see after the signature of the acting Chief Procurement Officer there is a section  
20 that says 'accepted and agreed to by BNP CaPieterl Pty Limited, what appears thereafter?

**MS CYNTHIA AGNES SORAYA STIMPEL:** It says by who warrants that he or she is duly authorised and then the full names of Mr Phulesane Daniel Mahlangu his designation being Director and it is dated the 3 June 2016.

**ADV KATE HOFMEYR:** Thank you. There is some significance I would like to suggest relating to that date which is the 3 June 2016 because the next point that you make in your affidavit from page 19 at paragraph 108 is that on the same day that the letter of award is sent to BNP which is again just to remind ourselves the 25 May 2016 there is a letter from BNP back to SAA asking about a cancellation fee and we are going to go through that in some detail now. But just to be clear Ms Stimpel were you aware of this correspondence at the time?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Not at all Chair.

10 **ADV KATE HOFMEYR:** And so how did you come to learn of these documents?

**MS CYNTHIA AGNES SORAYA STIMPEL:** The first time I got to know of these particular documents there was the one where there was the letter of acceptance in my own personal case when SAA sent documents but the full detail that I have now I got from the Zondo investigators.

**ADV KATE HOFMEYR:** Thank you. If we can then go to that letter that comes back.

**CHAIRPERSON:** I am sorry.

20 **ADV KATE HOFMEYR:** Yes Chair.

**CHAIRPERSON:** I am sorry Ms Hofmeyr. You referred us to 490 and then 491.

**ADV KATE HOFMEYR:** Correct.

**CHAIRPERSON:** My attention was still on 491 when you referred I think to another document.

**ADV KATE HOFMEYR**: Indeed. Apologies Chair.

**CHAIRPERSON**: Before you go to that other document I just want to – I note that at 491 where it says accepted and agreed to by BNP CaPieterl Pty Limited then it says by ... It seems to me that there was meant to be something along the lines – along by or below by but before who warrants that he – she or he is duly authorised and then below that then...

**ADV KATE HOFMEYR**: Yes.

**CHAIRPERSON**: There should be a full name and so on. Now no name  
10 or signature appears along – alongside by

**ADV KATE HOFMEYR**: Correct.

**CHAIRPERSON**: And no name or signature appears before by and who warrants. But there is a full name provided under – under who warrants and that is the full name.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: No it may be that – it may be that there was just a misunderstanding.

**ADV KATE HOFMEYR**: Hm.

**CHAIRPERSON**: Of what was meant to happen here but you – one just  
20 has somebody who has put in a full name

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: There is no signature as such which might not legally you know mean anything – any difference if it is it is the same person who wrote his or her name. But I just noticed it.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: There seems to be something there.

**ADV KATE HOFMEYR**: Chair I will specifically make a note of that because we will be having evidence from Mr Mahalngu.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: So it is indeed he who can likely

**CHAIRPERSON**: Yes, yes.

**ADV KATE HOFMEYR**: Clarify this aspect for us.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: For present purposes just working off the text  
10 of it.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: Notwithstanding the concern you raise with respect.

**CHAIRPERSON**: Ja.

**ADV KATE HOFMEYR**: Appropriately because there is no signature.

**CHAIRPERSON**: Hm.

**ADV KATE HOFMEYR**: We – the only thing we do see here is some acknowledgement.

**CHAIRPERSON**: Yes.

20 **ADV KATE HOFMEYR**: From a person indicating to be authorised as a director of BNP>

**CHAIRPERSON**: Yes

**ADV KATE HOFMEYR**: On the date the 3 June 2016.

**CHAIRPERSON**: Ja. Ja.

**ADV KATE HOFMEYR**: I would say that is the high water mark of what

we can make of the document.

**CHAIRPERSON**: Ja no look if to the extent that the person who put his name here is Mr Mahlangu

**ADV KATE HOFMEYR**: Hm.

**CHAIRPERSON**: It would be difficult for him to indicate what purpose he put his name here for

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Other than to accept.

**ADV KATE HOFMEYR**: Indeed.

10 **CHAIRPERSON**: Ja so...

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: It might just not have been done in the manner that was really contemplated.

**ADV KATE HOFMEYR**: Precisely.

**CHAIRPERSON**: But the purpose must have been then to accept.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: And then let us go to the page that I missed.

20 **ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: It is over the next tab Chair which is 47 and it is page 494.

**CHAIRPERSON**: Yes I have got it. I missed what the two of you were talking about there.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** I apologise because my mind was still on the other page.

**ADV KATE HOFMEYR:** Chair let me...

**CHAIRPERSON:** Maybe you should – could just...

**ADV KATE HOFMEYR:** Chair let me go over that again is I may?

**CHAIRPERSON:** Ja please. Yes please.

**ADV KATE HOFMEYR:** What I was seeking to explore with Ms Stimpel is we now have a letter this is at 494 which is dated 25 May 2016. And  
10 it is a letter that Ms Stimpel you then refer to at paragraph 108 of your affidavit which is at the bottom of page 19. And it is a letter which begins:

“We acknowledge with thanks the award of this  
mandate and hereby graciously accept it.”

So this seems to be at least on its face an earlier acceptance than the one that we saw dated 3 June. But it goes on in the same breath as graciously accepting the mandate to start talking about what would happen if there is a cancellation of the mandate. And you will pick that up in the penultimate paragraph of that letter where the following is  
20 recorded. They say:

“This is to ensure...”

They have been talking about the efficient funding package that they wanting to obtain and they say:

“This is to ensure that we deliver on all the mandate entrusted to us by SAA. Accordingly should SAA decide to unilaterally terminate our

services ahead of us fulfilling our mandate for whatever reasons on any matter outside of our control a cancellation fee of 50% of all the fees as per our proposals to SAA shall become due and payable in five working days following the cancellation notification date? Looking forward to our partnership with SAA in ensuring its successful turnaround of its business.”

Now Ms Stimpel can you just help us there? What would 50% have been of all the fees as per the proposal that was then accepted by the board on the 24 May?

- 10 **MS CYNTHIA AGNES SORAYA STIMPEL:** It would have been 50% of the 225 million if one included VAT 256 million and then the other fees as transaction advisor of 2.68 million and then 50% of that.

**ADV KATE HOFMEYR:** Hm.

**MS CYNTHIA AGNES SORAYA STIMPEL:** So that is quite substantial.

**CHAIRPERSON:** So the actual amount would be how much 50%?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I will have to do quick ...

**ADV KATE HOFMEYR:** About 112 million plus another 2 is 114 million, right?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Ja almost ja.

- 20 **CHAIRPERSON:** Yes okay.

**ADV KATE HOFMEYR:** Excluding VAT.

**CHAIRPERSON:** Okay, okay.

**ADV KATE HOFMEYR:** Talking about – yes in the order of about 115 million is that right Ms Stimpel?

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



**CHAIRPERSON**: And I see the – Mr Hofmeyr that the date of that letter is the same as the date of the other one.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: That you were talking about.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Ja.

**ADV KATE HOFMEYR**: The curiosity

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: Is though that on the actual letter of award.

10 **CHAIRPERSON**: Hm.

**ADV KATE HOFMEYR**: The signified acceptance is dated a matter of days later the 3 June.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: But at least this letter is the same day.

**CHAIRPERSON**: Yes, yes.

**ADV KATE HOFMEYR**: So there is an exchange on the 25<sup>th</sup> May as we have it.

**CHAIRPERSON**: Yes, yes.

**ADV KATE HOFMEYR**: SAA sends out its letter of award.

20 **CHAIRPERSON**: Hm.

**ADV KATE HOFMEYR**: BNP sends back this letter.

**CHAIRPERSON**: Hm.

**ADV KATE HOFMEYR**: In which they indicate a gracious acceptance of it and they immediately say if this thing is terminated at all we want 50% of our fees.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** Which Ms Stimpel has clarified for us at that point stood at about 115 million. What is your experience of cancellation fees in these types of arrangements? Are they customary?

**MS CYNTHIA AGNES SORAYA STIMPEL:** They are not customary Sir. For your own business and someone like a company like SAA who every single manager has been tasked to save cost in fact every single person, every employee in the company. We would not be negotiating a cancellation fee in any of our contracts. They are service providers to  
10 us and if they are unable to provide that service we terminate the contract. So why would you then against your best interest for the organisation put in a cancellation clause? If you on the other hand SAA serving someone else they can put the cancellation clause in. So this for me and which is strange I did not have sight of this document while I was still in the employ of SAA. I only got sight of it much later and having seen that from the date of the award having if – the round robin happened on the 24<sup>th</sup> board approval the 25<sup>th</sup> the letter goes out as a letter of award, the 25<sup>th</sup> our client comes back BNP already putting an – a cancellation clause in there and you asking yourself why? They  
20 have not even done any work? How would you even justify putting in that clause? Normally you put it in after you negotiated your – this is just a letter of acceptance. Then you negotiate your contract and the agreement and in that agreement you going to then discuss those type of aspects. And – so for me this was really I say curious...

**CHAIRPERSON:** Quite unusual.

**MS CYNTHIA AGNES SORAYA STIMPEL:** To find this that I could see this right in the letter up front. Correct Chair thank you.

**ADV KATE HOFMEYR:** Ms Stimpel quite a bit was happening on the 25 May of 2016 because on that date and if you go over to the next tab 48 at page 496 there was a letter from the then Minister of Finance Mr Gordhan to Ms Myeni as the chairperson of the board of SAA. You have also referenced that in your affidavit at page 110. Just to clarify were you aware of this letter at the time?

**MS CYNTHIA AGNES SORAYA STIMPEL:** No Chair I was not.

10 **ADV KATE HOFMEYR:** But I would like...

**CHAIRPERSON:** I am sorry did you say page 110?

**ADV KATE HOFMEYR:** Sorry page 496.

**CHAIRPERSON:** Oh okay.

**ADV KATE HOFMEYR:** Apologies Chair I think the – it was behind tab 48.

**CHAIRPERSON:** Did you say it is a letter from the Minister of Finance?

**ADV KATE HOFMEYR:** Correct. At 496.

**CHAIRPERSON:** Oh okay I got it. Thank you.

20 **ADV KATE HOFMEYR:** Thank you. You were not aware of it at the time as I have your evidence but I would like to ask you one or two questions about it because it appears to be an indication at least from the Minister of Finance conclusively indicating that the proposed engagement with the Free State Development Corporation is beyond the mandate of that entity. You will find that in the second main paragraph on that page where he indicates that he had received an

earlier letter from the board on the 15 March in which the board had indicated that a due diligence was being conducted on the Free State Development Corporation which was SAA's preferred bidder. Chair that is just important for us to know what was going on so still in March 2016 the Free State Development Corporation is still being engaged with as a potential funder. But you will recall from the evidence yesterday that as early as January of that year Ms Stimpel had relayed back to the interim CFO treasury's view that this was beyond the mandate of the Free State Development Corporation. But at this point  
10 we have an indication that still in March though those endeavours are continuing and then it goes on the letter to say:

“In the last few days I have received a letter from the member of the executive council for finance in the Free State province reporting on an investigation conducted by the Provincial Treasury regarding the loan offer for 14 billion from the FDC to SAA.”

It says:

“Based on the investigation it is evident that the process of obtaining funding from FDC contains  
20 material flaws. Even if these could be resolved the process would be protracted and SAA would be unlikely to be able – would be unlikely to be able to secure the financing within the required time frames to settle the maturing debt.”

And then it is your – the last paragraph that I would like have your

comment on. What the Minister concludes with is that:

“Consequently I have concluded that SAA was unable to consolidate – to conclude the debt consolidation within the specified deadline therefore I request SAA to immediately begin the process of refinancing or rolling over the R6 billion in guarantee debt maturing in June and July 2016 into longer term debt. This process must be finalised by 31 May 2016 as per my original letter.”

10 What do you understand that to be conveying to the board of SAA?

**MS CYNTHIA AGNES SORAYA STIMPEL:** What I understand there Chair is that the Minister of Finance is directing the board of SAA saying that we have noted you have not been able to do the debt consolidation which we have confirmed throughout the process and therefore to continue rolling our debt over. With the refinancing means finding other funders. If for instance Standard Bank does not want to continue with the funding be it a City Bank or a Standard Chartered or a FNB or you roll it over with the same bank. And which we have been doing the past years in the same process. And so they were directing  
20 us to continue that process seeing that the debt consolidation was not happening. Thank you Chair.

**ADV KATE HOFMEYR:** And just in terms of figures. The debt consolidation was really what the 14 or 15 billion was aimed at was it not?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes at the time it was

roughly about 14 billion. If we look at the letter the date of the letter in May. Correct. And that was also the extent of the full guarantees.

**ADV KATE HOFMEYR:** Yes.

**MS CYNTHIA AGNES SORAYA STIMPEL:** So it was backed 100% security with government guarantees.

**ADV KATE HOFMEYR:** Thank you. And then ...

**CHAIRPERSON:** I am sorry. Was that – was it two different things 14 billion and 15 billion or was it one thing?

**MS CYNTHIA AGNES SORAYA STIMPEL:** The 14 billion Sir is – Chair  
10 is the amount of the government guarantees that National

**CHAIRPERSON:** Oh.

**MS CYNTHIA AGNES SORAYA STIMPEL:** The National Treasury has given SAA.

**CHAIRPERSON:** Hm.

**MS CYNTHIA AGNES SORAYA STIMPEL:** The round figure of - it – because it is 14. Some odd amount. The 15 billion was the round figure for the debt consolidation.

**CHAIRPERSON:** Oh. Okay.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Correct thank you Sir.

20 **ADV KATE HOFMEYR:** It is difficult when you have got 1 billion floating around to be sure precisely where to locate it?

**CHAIRPERSON:** Because now some correspondence talks about 15 billion, others 14 so you get confused.

**MS CYNTHIA AGNES SORAYA STIMPEL:** No I agree and noted Chair.

**CHAIRPERSON:** Okay. Okay alright.

**ADV KATE HOFMEYR:** Ms Stimpel and Chair just for record purposes but I am not suggesting we go there. That letter that the Minister of Finance refers to having received from the board of the 15 March is the next annexure but it records correctly as the Minister records it that in March there is still a due diligence being engaged upon in relation to FDC. But I would like to then move on from there to another letter in the sequence. Chair this is a letter which appears at page 503 under Tab 50 – 50. It is a letter again from BNP CaPieterl addressed Pieter is the recipient at 503. Ms Stimpel again I take it you were not aware of  
10 this document at the time?

**MS CYNTHIA AGNES SORAYA STIMPEL:** No Chair I was not aware of this document.

**ADV KATE HOFMEYR:** Chair from this point on in Ms Stimpel's affidavit ...

**CHAIRPERSON:** I am sorry. That is at page?

**ADV KATE HOFMEYR:** Yes. 503.

**CHAIRPERSON:** 503. Let me get there first. Yes.

**ADV KATE HOFMEYR:** Chair this is a letter what appears to be from BNP CaPieterl to somebody named Pieter. Ms Stimpel has clarified she  
20 was not aware of this letter at the time.

**CHAIRPERSON:** Well the one I have at 503 is from Mr. Mahlangu to Pieter.

**ADV KATE HOFMEYR:** Correct, correct.

**CHAIRPERSON:** Ja okay. Same letter.

**ADV KATE HOFMEYR:** Indeed. Mr Mahlangu being the representative

of BNP CaPieterl whom we have seen on the other letters. Chair Ms Stimpel's affidavit in some parts from now on deals with this correspondence which was given to her by the investigations of the commission. We have subsequently engaged with Mr Pieter Van Der Merwe who is the addressee of this letter and he is in fact the witness giving evidence later today.

**CHAIRPERSON**: Okay.

**ADV KATE HOFMEYR**: So it is my suggestion that we pass over those aspects with Ms Stimpel.

10 **CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: We will engage them directly with Mr Van Der Merwe.

**CHAIRPERSON**: That is fine. That is fine.

**ADV KATE HOFMEYR**: Thank you.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR**: I would then like to move Ms Stimpel in your affidavit to page 21 because we are going to skip over those letters we will engage on them further later in the day with the next witness. But I would like to come to paragraph 115 on page 21 of your affidavit.

20 Because it is in that paragraph that you talk about a meeting that was held on the 3 June 2016 between National Treasury SAA and SAA funders. Can you please tell us about that meeting? Did you attend it?

**MS CYNTHIA AGNES SORAYA STIMPEL**: Yes I did.

**ADV KATE HOFMEYR**: And who from SAA was in attendance?

**MS CYNTHIA AGNES SORAYA STIMPEL**: We had Ms Nhantsi was



there. It was myself, it was Mr Joshua I think it is Du Plessis, it was Lindsey Olitsky. There was the lady from Flee, Elsha Du Preez and I think that was it.

**ADV KATE HOFMEYR:** Well can I just clarify were there any members of the board present at that meeting?

**MS CYNTHIA AGNES SORAYA STIMPEL:** No there were no members of the board present at that meeting.

**ADV KATE HOFMEYR:** And then tell us what occurred at that meeting?

**MS CYNTHIA AGNES SORAYA STIMPEL:** So on a regular basis Chair  
10 is that we meet with the banks together with National Treasury for various reasons. The one is that National Treasury is giving – providing the security to SAA through its loan book, through government guarantees. And secondly is that SAA needs to present.

a. Its financial results.

b. Its where it is going with its long term turnaround strategy and how it is doing generally from a financial operation perspective but also from its airline operations from its ground handling to its roots etcetera.

And so on a regular basis and this particular date was chosen the 3  
20 June which we held at National Treasury's offices and there SAA made presentation to each of these banks showing them our standing where we are currently with our financial situation. Also reflecting what our routes are? Which are our best routes? Where we struggling? What the – where we are with our aircraft etcetera. So it is an all-round overview of the business. This is presented to each of the banks but

separately.

- a. Because of the confidentiality surrounding the information. Not from a SAA perspective only but also for the banks we dealing with because you have a different relationship, a different loan percentage wise and sensitivity and exposure to each of those banks.

So when we presented we present to each bank on its own. So be it a City Bank, be it Standard Chartered, be it a Nedbank and so we presented to each of these banks throughout the day. We started – it  
10 was from about 8;30 in the morning and we finished in the evening about 4 or 5 ja.

**ADV KATE HOFMEYR:** And just to be clear was there any representative of BNP Capital in those meetings?

**MS CYNTHIA AGNES SORAYA STIMPEL:** No there was not any Chair.

**ADV KATE HOFMEYR:** I would then like to take you to a letter from BNP Capital which you will find at page 526 and that is under Tab 53. Now that is a letter as I have it from BNP Capital to South African Airways. It is a – it is a three page letter. Chair it is a letter we will return to this afternoon in the evidence but there is a reference to this  
20 meeting in the first paragraph on the first page on the 3 June 2016 between National Treasury, SAA and SAA's funders. And then it appears to record the key points of those meetings, do you see that Ms Stimpel?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes I do.

**ADV KATE HOFMEYR:** And those points 1, 2 and 3 are those some of

the points that were covered during the meeting?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes correct. Okay thank you.

**ADV KATE HOFMEYR:** Do you know how BNP would have learnt of the contents of those meetings?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I actually do not know because this was only the team that were working obviously at SAA and then presenting directly to the banks for BNP to have got this information had to be someone who was part of the team that was  
10 present on the day.

**ADV KATE HOFMEYR:** Does it surprise you that they were given this information?

**MS CYNTHIA AGNES SORAYA STIMPEL:** It does surprise me it should not have been told to BNP.

**ADV KATE HOFMEYR:** Thank you. I would then like to focus on the second page of that letter which you will find at 527. That is where there is a heading “Grissag AG” the entity whose director will be giving evidence later. A detailed account there is given of the costs that Grissag by that stage had incurred in sourcing funding and this is  
20 presented as how I read the letter a justification for that cancellation fee that they were motivating for on the 25 May. But it concludes on the following page at 528 with a capital lettered request to SAA which reads as follows:

“Our primary urgent request to SAA is to sign off the term sheet indicating its preferred choice.”

This is a reference Chair to the term sheets that had been provided by Grissag AG at that point in relation to the terms on which it was willing to fund. And it goes on to say:

“Importantly” this is what BNP is asking for that that term sheet must be signed.

10                   “Importantly omit the write-up not binding. This is stating the obvious and forward same before the close of business today to enable the directors currently in Paris to get on with the work of finalising the raising of funds for and on behalf of SAA.”

Ms Stimpel as I read that and I would like your comment on this. It is asking for a version of the term sheet to be concluded that does not contain a non-binding caveat. Is that as you read it?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes it is how I also understand it.

**ADV KATE HOFMEYR:** Thank you.

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

20                   **ADV KATE HOFMEYR:** And you go on in your affidavit to indicate that it appears from the documents that you have been shown that that request was in fact acted upon by SAA and the cause as I have it for your comment in that regard is the next item which you will find at page 530. What is that document Ms Stimpel?

**MS CYNTHIA AGNES SORAYA STIMPEL:** This is a term sheet as well – a term loan facility done by Grissag and for the client SAA.

**ADV KATE HOFMEYR:** And if we just page through it...

**CHAIRPERSON**: And I see it is on 25 May?

**ADV KATE HOFMEYR**: Yes.

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

**ADV KATE HOFMEYR**: A lot happened on 25 May Chair. But what you will see from the last page is that it was actually signed on the 8 June by the SAA representative. But let us go there because over the first page there are what I take to be the terms of the term loan facility. It identifies the parties as a borrower is South African Airways, lender is Grissag AG. The guarantor is the Government of the Republic of South  
10 Africa. It moves on to deal with the terms of the facility. If we turn over the page pricing, repayment, representations. Over the next page miscellaneous. Now Chair we will get into this in more detail with the evidence later today but usually on that fourth page 533 under that last part of the table there is a whole lot of language about this being non-binding. And that is now not here on this page. The caveat that it is non-binding has been removed and if you turn over to the last page you will see at 534 the bold at the top 'by our signature we hereby accept in principle the terms of this term sheet.' And that is signed as I have it there on the 8 June by Ms Nhantsi the interim CFO. We will also  
20 explore that with her.

**CHAIRPERSON**: Well Grissag signed on the 25<sup>th</sup>.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Of May.

**ADV KATE HOFMEYR**: Indeed. Well the evidence this afternoon will give you ...

**CHAIRPERSON:** Will – may change that.

**ADV KATE HOFMEYR:** Greater insight into that.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** As I have it – it actually occurred at a meeting with Grissag on 8 June ...

**CHAIRPERSON:** Oh, is that so.

**ADV KATE HOFMEYR:** But our – our later witness will clarify that for us.

**CHAIRPERSON:** Okay, okay. Maybe it had been contemplated ...

10 **ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** It would be signed on the 25<sup>th</sup>.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Okay, alright.

**ADV KATE HOFMEYR:** But the – the significance for present purposes Ms Stimpel is as I understand your affidavit there is that letter of 8 June that comes from BNP talking about a meeting to which they did not attend on 3 June.

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

20 **ADV KATE HOFMEYR:** Indicating what was discussed at that meeting in circumstances where you have queried their receipt of that information given the confidentiality of those discussions. Is that correct?

**MS CYNTHIA AGNES SORAYA STIMPEL:** That is correct.

**ADV KATE HOFMEYR:** And then on that day it appears that the Interim CFO of SAA did precisely what BNP was requesting which was to return

a term sheet signed that could – did not contain that non-binding caveat. Is that correct?

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

**ADV KATE HOFMEYR**: Did – is that – I know you were not aware of it at the time but if that a source of concern for you?

**MS CYNTHIA AGNES SORAYA STIMPEL**: That is indeed a source of concern.

**ADV KATE HOFMEYR**: And why?

**MS CYNTHIA AGNES SORAYA STIMPEL**: Well that we would sign a  
10 non-binding sheet. Secondly is that we have not gone through – *ja* –  
with all the background to this for our Interim CFO then to sign it and  
then not take – *ja* – push SAA into this. For me it is definitely a  
concern.

**ADV KATE HOFMEYR**: Thank you.

**CHAIRPERSON**: The – are you – are you saying that the basis of your concern is that there were a number of unusual features about how it was gone about?

**MS CYNTHIA AGNES SORAYA STIMPEL**: The whole process from the start ...

20 **CHAIRPERSON**: Yes.

**MS CYNTHIA AGNES SORAYA STIMPEL**: And we already started with – through the initial process of procurement getting the FDC.

**CHAIRPERSON**: Hm.

**MS CYNTHIA AGNES SORAYA STIMPEL**: Then finally we come now to the BNP.

**CHAIRPERSON:** Hm.

**MS CYNTHIA AGNES SORAYA STIMPEL:** I will tell you where my main concern is if I can be more specific rather.

**CHAIRPERSON:** Ys.

**MS CYNTHIA AGNES SORAYA STIMPEL:** In that SAA engaged BNP as a transaction advisor.

**CHAIRPERSON:** Huh-uh.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Then they changed it to sourcing of funds. Now – and so the agreement now is done through  
10 Grissag who is going to be providing the funds and just looking at this you will see now Grissag is offering a 3.5 percent in the fee that – but they are adding 1 percent payable on each drawdown as SAA takes out the money depending.

So – so there is even more issues as one looks at this that if you start calculating the cost the cost would incur and I am not sure if that was thought through because then you would – you would say my final cost once you agree you would also list – look at your final cost, yes.

**CHAIRPERSON:** Okay.

20 **ADV KATE HOFMEYR:** We have seen previous BAC score cards or checklists you will recall from yesterday that requires all sorts of things like risk assessments to be done, financial impacts to be done. Are those the sorts of processes that you would want to see occurring before conclusion of this type of in principle agreement?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes and especially from a



term sheet of funding. We have got others from Standard Bank, Absa etcetera and those are gone through again in Treasury Department because we have worked with the finance. This – none of us in Treasury were privy to. Not the Head of Cash Manager – Michael Kleyn – who looks at these terms sheets on a daily basis.

He had not – he was not privy to seeing this and then this is being signed and putting SAA at possible risk, yes thanks.

**ADV KATE HOFMEYR:** I would then like to move – we are at page 21 of your affidavit. Again at the bottom of that you reference certain  
10 correspondence between BNP and SAA which you were shown by the investigators but again that is correspondence actually with Ms Nhantsi who will be giving evidence. So my suggestion is that we move to that with her in her evidence Chair.

So we can go over the page if you will Ms Stimpel to page 22 and at that page there is a heading whistle blower and it beings thereafter at paragraph 122 where you say:

“After the Board approved BNP to provide funding requirements I was left feeling extremely uncomfortable about it. I found the following  
20 aspects particularly disturbing.”

Can you tell us – you have summarised as I have it four issues in your affidavit but talk us through what they were in principle.

**MS CYNTHIA AGNES SORAYA STIMPEL:** For me was the whole process of just the way we have gone – the approach we have taken to secure funding for SAA. We have diverted from the traditional way and

our historical way of sourcing funds in that we went to the banks, we went to an RFP. So by even getting external new parties on we still should follow a proper RFP process.

What we have done is we have added in names. We have then brought in a transaction advisor, changed the scope of it to – to widen it to source funds. Hereby also going against the scope of 15 – if you are changing the scope it is only 15 percent of costs which is far more. So we have already gone against that.

Then secondly is once we have procured this transaction  
10 advisor the fee was at 1.5 percent – the final fee that was decided on – from three to 1.5 and – and still a phenomenal amount of 225 to be – million to be paid to this party and the fact that Treasury Department was not involved in this made me feel totally uncomfortable and I felt that I needed to do something about it.

Yes I did talk to – to two of my colleagues – Michael Kleyn and Silas Matsaudza – at the time and I said to them you know that this process was not done correctly. Can we stand together and speak up about it and they both said no they need their jobs. They are not going to – do to anything. So I said well I cannot sit by and let this happen.  
20 I need to speak about it. I also consulted with my family etcetera.

The risk was that I would probably lose my job should I speak out and I said that should I resign it will come out later anyway and they will say who was the person in that position. Who was the Group Treasurer? Why did they not do something about it and I said I have to take the risk and I have to speak out and so on that basis I decided

that I will become a whistle blower and speak out on it.

**ADV KATE HOFMEYR:** Thank you. I would like to take you to page 23 – the affidavit at least. At the bottom of that page at paragraph 124 well around the middle you talk there about really – it is – it is a reference back to your first steps - I take it – as a whistle blower which was the WhatsApp message that you sent when you were on the pilgrimage in France but you record there at paragraph 124 what the response had been by that stage from National Treasury. Can you tell us about that?

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** Yes. After sending that WhatsApp message I did not receive any response from Treasury at the time.

**ADV KATE HOFMEYR:** Right. We will come to when you did have a response. That comes later but then tell us about the next paragraph – 125 – where you went to see another colleague – Mr Joshua Du Plessis. What were you going to speak to him about?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I had already drawn up a draft letter whistle blowing. I had done some research about it and I thought now how do I approach it. Who do I approach within the  
20 organisation because you also need to go to your next seniors and for my next best senior would be a, my boss who was at the time Ms Nhantsi and I was reporting about her going ahead with the BNP and not being open to listening what I had to say.

Not being open to hold back the RFP or just open the RFP to or start a new RFP but rather go ahead with the BNP and with the fees

that they – we were going to pay BNP. So I drafted my letter. I made an appointment with Mr Joshua Du Plessis. We met in his office and I showed him the letter and I said look this is what I would like to disclose. I just need your guidance.

I think you are the next best senior person I can speak to because he was on the Executive Committee. He was the Executive of strategy at that time and I thought that would be the best. So we had a discussion and his advice to me was Cynthia do not go the internal route because if you do it goes directly to Board and Board will  
10 suspend you immediately.

**ADV KATE HOFMEYR:** He also as I have paragraph 125 made reference to an example of another colleague. Can you tell us about that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Correct he did. He mentioned that there was a case prior to mine regarding the Airbus deal. There was our Head of Operations at the time – Mr Sylvain Bosc who then also reported through the normal internal whistle blowing process within SAA regarding the Airbus deal. He was then suspended from SAA.

20 **ADV KATE HOFMEYR:** And then as your affidavit progresses you talk about those interactions with your family that you have traversed in your testimony this morning.

**CHAIRPERSON:** Maybe – I am sorry – before that ...

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** Is that where that story ended of the colleague who

had been suspended as he told it to you or did he ultimately get dismissed?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair. His went on also for more than a year back and forth ...

**CHAIRPERSON:** On suspension?

**MS CYNTHIA AGNES SORAYA STIMPEL:** On suspension – back and forth through obviously trying to have a hearing and eventually when they finally had his case he won his case ...

**CHAIRPERSON:** Hm.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** And in his case was that SAA had to reemploy him ...

**CHAIRPERSON:** Hm.

**MS CYNTHIA AGNES SORAYA STIMPEL:** But SAA ignored everything. He then took it back to his lawyers. They had a follow – follow up hearing on that and he ultimately won his case – *ja* – with damages. SAA had to pay his lawyers and he then resigned – left the company and is now working at new airline.

**CHAIRPERSON:** Oh. That – that was just important because here you – as I understand – you were being told this to say look what happened  
20 to so and so ...

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

**CHAIRPERSON:** And whilst suspension has its own place in the whole thing it is also important to know what ultimately happened.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Indeed Chair.

**CHAIRPERSON:** Okay but one of the things is that he was suspended

for a long time?

**MS CYNTHIA AGNES SORAYA STIMPEL**: For a very long time sir.

**CHAIRPERSON**: Yes, okay alright.

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

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR**: You carry on Ms Stimpel in your affidavit dealing with your engagements with your family. I take it that this was quite an important and difficult decision for you given the extent to which you engaged with them. Is that correct?

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

**ADV KATE HOFMEYR**: And then if we go to page 24 paragraph 128 because there I pick up the response that you received from National Treasury on 23 June. Can you take us through that?

**MS CYNTHIA AGNES SORAYA STIMPEL**: I received a call from Mr Hugo Du Toit at the time asking me if I was still willing to disclose and have I got the information ready for them and I said yes I do and that is it possible for us to meet somewhere and he agreed and so I did meet with Mr Hugo. I placed all my documents onto a flash disc.

20 My cover letter stating that this was – was a whistleblowing information that I was giving. So following the principles of a whistle blower and then listing all the issues in chronological order, listing and attaching all the documents and which I then provided to National Treasury Mr Hugo.

**ADV KATE HOFMEYR**: Ms Stimpel can I just get a point of clarification there because your affidavit goes on and we will deal with this evidence

shortly about your efforts to get documents that were relevant to parts of this procurement that you were not aware of at the time. So can I just clarify what – what was it that you gave over to Mr Du Toit in relation to documents you had?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Okay. So it was based – everything that I had at the time.

**ADV KATE HOFMEYR:** Hm.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Which started with December's Board Resolution which I found was extremely irregular.  
10 The one we saw with the letter being circulated at Board yesterday which we discussed. That I was extremely uncomfortable with and that I had already raised to National Treasury at the time and then obviously when the FDC came in. So that was part of the documents.

It was the documents I had on hand as in the first the transaction advisor and then how we changed from transaction advisor to now source the funding. So basing all that information that I had up to date. What I did not have was any of these letters regarding BNP because I was not privy to those at the time, thank you Chair.

**ADV KATE HOFMEYR:** And as I have it you also did not have the BNP  
20 bid submission at the time?

**MS CYNTHIA AGNES SORAYA STIMPEL:** No. At the time I also did not have that. I only had that once I had taken it myself ...

**ADV KATE HOFMEYR:** In the next month?

**MS CYNTHIA AGNES SORAYA STIMPEL:** In the – in July.

**ADV KATE HOFMEYR:** We will come to that.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Okay, thanks.

**ADV KATE HOFMEYR:** Thank you and – and you conclude at paragraph 128 to say that:

“He came and collected the documents and you did not hear anything further from him in this regard.”

Is – is that the end of the story of your engagements with National Treasury on this topic?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes. I have not then spoken any further to them except when we had our normal meetings but that is  
10 us presenting our SAA either financial standing or what is happening on the funding or what is happening on our cash position, correct but nothing related to the whistle blowing issue, thank you.

**ADV KATE HOFMEYR:** At page 24 paragraph 129 you talk about receiving a call from Ms Thuli Mpshe. What was that call about?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Okay. Ms Thuli Mpshe was our Head or General Manager of Human Resources. At that time we had the – the telephone discussion she was already suspended from SAA. She acted as CEO for SAA for a time and then she was taken off and Mr Musa Zwane was brought in. She was then brought back to GM  
20 HR and subsequently was suspended and so I kept in contact with Ms Mpshe more because I was concerned about our colleagues that were getting suspended and she was one of the staff I reached out to when I told that I would like to whistle blow.

So on this particular day she returned my call and we spoke and I also indicated to her that I intended to whistle blow and I gave



her the background to all the information that I had and why my concerns were so relevant and why it needed to be done and she then gave me advice as well and said report to National Treasury.

So I said I have done that and she said report to the Public Protector and also then gave me an additional number. She said OUTA who is normally involved with e-tolls have changed their mandate and looking at any abuse of taxpayers money and she gave me a contact number to – to phone, thank you Chair.

**ADV KATE HOFMEYR:** And as I understand your evidence in the  
10 affidavit you did follow suit on both of those legs, both the Public Protector and OUTA. Can you explain what you did in that regard?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you. Yes I did that  
Chair. So I first started with the Public Protector because I had actually saved a flash disc which I thought I could go over to the offices and – and give it but then I Googled and – to their website and I came up with – it led me to the corruption watch website and in there it said type out your query which I did.

I typed out the query which was actually limited. So it would not – had a limited amount of letters or words you could use. So I had  
20 to reduce it and I was quite brief in saying that I have a matter of urgency which I would like to whistle blow on. I gave my details my cell number, my email etcetera and I said I am prepared to whistle blow on that and I gave rough essence of the matter being that this is the amount and this is the company SAA etcetera.

I did not – I did receive an acknowledgement from the email

saying thank you for your inquiry. We will get back to you. I did not get anything back from them. I was waiting and the next step was I then – the telephone number I had from Ms Mpshe was Wayne Duvenage from OUTA. I called him and told him that I have a matter which I would like to disclose and he said to me well let us set up a meeting and let us set up a meeting for 1 July, thank you Chair.

**ADV KATE HOFMEYR:** Ms Stimpel you – you appear from the evidence that you have given to have regarded this matter as urgent. Why was that?

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** My concern was that we were going to pay out 225 million for – for obtaining the – the funds. So yes I was fully aware that SAA needed the funds and at the same time we were paying expensive debt and rolling it out but it should not have cost us 225 million and I felt it is my duty a - as a SAA employee but also as a South African citizen to be mindful of not wasting money of not just being part of the process that everyone was engaging in as we read in newspapers throughout the time that money was just being wasted on unnecessary procurement transactions for little gain and value to the organisation. So I felt if there was anything that I can do  
20 to either stop this or prevent this from happening I was going to do it, thank you Chair.

**ADV KATE HOFMEYR:** And at page 25 paragraph 131 you reflect on that meeting you had with OUTA on 1 July. What happened in that meeting and then what steps did you take back at SAA thereafter?

**MS CYNTHIA AGNES SORAYA STIMPEL:** So we had – I had handed

over my – the flash disc with all the information. There was a team there with Mr Duvenage and his team from OUTA. They had gone through – they had their laptops. They had gone through all the information and they asked a lot of questions as we were going through obviously and then asked me if I had seen the BNP file and I said no I had not seen their – their bid document at all.

I have not had the privilege yet to see it and I had asked in the initial stages around March already when the client was first approved and then I got so busy because it was our year end and  
10 various other key issues that landed on my desk that I needed to take care of that I had it at the back of my mind and I just did not do anything and they asked me would it be possible for you to see if you can get the document and I said yes I will try and get it. I will ask the Commodity Manager for it, thank you.

**ADV KATE HOFMEYR:** And that as I have it is what you did then on 4 July. This is picked up at paragraph 132 of your affidavit. What steps did you then take to seek to get access to those documents?

**MS CYNTHIA AGNES SORAYA STIMPEL:** So on 4 July I had gone to Mr Silas Matsaudza's office to ask him if I could get the documents  
20 from him. He was not at his desk and I asked his team around him where is he and they said he is in a meeting. So I said please let him know I was around. If he can come see me and I went back to my office. I continued with my daily work.

The next day – couple of hours later I went back to find out if Mr Matsaudza was back at his desk. He still was not there and I came

back to my desk and I went again. It was towards – I went there a couple of times. Probably three times already. By the end of the day I went again. It was about 4 o' clock and I thought no he must be back at his desk now and I went there and he still was not at his desk.

They said no he has already left. He has gone home and then I said oh please tell him I need to speak to him urgently because I need to review some documents. As I turned away from his desk I found these documents all lying on the floor lying on their side and I read the name on one of them on the side there stating BNP the  
10 document and I thought here is the document just lying on the floor.

So I took the document and I brought it back to my office. I went through the document. Found some information there which I did not know about and which I knew would strengthen the reason why we should not be dealing with BNP and so I scanned the document to myself. I went back to the office to put the document back and by then their office was – their office was locked.

They have an open plan and so I left the document on my desk. The following morning I came back to my office. I then took the document and I went to Mr Silas Matsaudza's office to tell him look I  
20 wanted these documents. You were not here the whole day yesterday. So I just wanted you to know that I did take the document and I did scan it and I am not returning it to you and I gave him back his documents, thank you.

**ADV KATE HOFMEYR:** And what was his response when you did that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Mr Matsaudza to my surprise

got very angry and he said how could you take this document without my permission and I said to him Silas you know that this guy is supposed to be sourcing – this company is supposed to be doing sourcing of funds.

That is my area in Treasury and I should know about this client. They have not once come and spoken to me or any of my team and I wanted to know more about the client and he said well he is going to report me to the Procurement Head which is his boss and to the CFO who is my boss – Phumeza Nhantsi.

10 **ADV KATE HOFMEYR:** And that as I have it took place on 5 July. Is that correct?

**MS CYNTHIA AGNES SORAYA STIMPEL:** That is correct. It took place the next morning yes.

**ADV KATE HOFMEYR:** I would then like to take you just back to 4 July in the sequence because your affidavit at paragraph 135 on page 25 what else happened on the previous day 4 July because that is when a motivation was addressed to the Board to – to seek approval for that cancellation fee that we looked at earlier this morning.

20 Chair by this stage however the cancellation fee had reduced from 50 percent of the total fees to an amount of R49.9 million payable to BNP Capital. There is some significance in the reduction of that amount but it will come out in further evidence but I would like to take us to that document which motivates to the Board for approving this cancellation fee. You will find it under Tab 59 at page 5-5-5 – triple 5.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And that document ...

**CHAIRPERSON:** I have got it.

**ADV KATE HOFMEYR:** Is from the Interim CFO - as I have it – to the SAA Board. Ms Stimpel were you aware of this at the time?

**MS CYNTHIA AGNES SORAYA STIMPEL:** No I was not Chair.

**ADV KATE HOFMEYR:** And if we just look at it the purpose:

10                    “Is to request the Acting CEO and the Board to  
                         approve the cancellation fee that the transaction  
                         advisor will require should SAA terminate the  
                         mandate of sourcing the funds.”

                         And it then proceeds as we have seen. These are quite  
standard for motivations. It is purpose and then a motivation is  
offered. A recommendation and then a note on the financial  
implication. The first thing I would like to just look at on that second  
page 5-5-6 is who the compiler and who the recommender of the  
document are. Who are they Ms Stimpel?

**MS CYNTHIA AGNES SORAYA STIMPEL:** They are the Interim CFO –  
Ms Phumeza Nhantsi - and the recommender is the Acting CEO –  
Mr Musa Zwane.

20    **ADV KATE HOFMEYR:** And if we can go back to page 5-5-5 can you  
take us through what motivations in the bullet points were offered for  
this cancellation fee? If you start at the first bullet point it seems to be  
related to the extensive fundraising exercise that had been engaged  
upon. Is that correct?

**MS CYNTHIA AGNES SORAYA STIMPEL:** That is correct. So it states

here:

“BNP Capital from the date of the mandate from SAA to put together a dedicated team of professionals with various expertise and track records in the fulfilment of the mandate. The fundraising exercise included consultation from their global partners like China Development Bank, Etihad in Abu Dhabi, Brazil, Canada and Europe Grissag AG.”

10 **ADV KATE HOFMEYR**: And then the second motivation?

**MS CYNTHIA AGNES SORAYA STIMPEL**: It states there that:

“This exercise entails continuous incurring of both man hours and disbursements in the coordination and the execution.”

**ADV KATE HOFMEYR**: The third motivation over the page?

**MS CYNTHIA AGNES SORAYA STIMPEL**: “That BNP Capital has engaged and tasked Grissag AG to find a total of 15 billion from its various long term investments around the globe.”

20 And the fourth one goes.

“Grissag AG has incurred the breakage cost in breaking up the investments.”

**ADV KATE HOFMEYR**: And so the recommendation – as I have it there – is that this cancellation fee – if you go down to financial implication of 49.9 million – must – should be paid to BNP Capital in the event of a

termination of the mandate. Is that as you understand it?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes correct. That is how I understand it.

**ADV KATE HOFMEYR:** Chair the evidence or at least the documents reveal that that recommendation then went to the Board and the only Member of the Board who in fact supported it was Ms Myeni. The other Members of the Board in fact did not approve the cancellation fee of 49.9 million but I would like us just to take a moment with Ms Myeni's response to the request for her approval. You will find that at page  
10 5-5-9. You will see in the second half of the page the email begins:

“Dear SAA Board Member, attached herewith for your consideration and approval please find the round robin in respect of the approval for the cancellation fee to the transaction advisor. Please kindly communicate your decision as indicated in the round robin form.”

And then we will go to Ms Myeni's response in a moment but there is a persistent theme that certainly I pick up in this mode of operation in the Board that we have seen through all of these  
20 documents which is that they seem regularly to go for round robin decision making. Is that something that is customary in SAA? What would be your comment on its relation to good governance?

**MS CYNTHIA AGNES SORAYA STIMPEL:** There – there should – there are set Board Meetings. They – the timetable is set out by the Company Secretary's Office. So all meetings are scheduled a year



ahead. So you have full calendar of where your dates are. I agree there will be times where you will need a round robin meeting because of matters of urgency and then Board needs to consider it.

This particular one I – I was not there at SAA because I was suspended by then. So on the 7<sup>th</sup> I am not sure. I do not think there was a Board Meeting in July and so hence this is the reason for the round robin which they put in but there should be judgment calls made when you – which are urgent enough to put for round robin and which are not.

10           The – the process we went through yesterday when the – to appoint the transaction advisor from a normal mandate as transaction advisor to now source our funds when there was a Board Meeting coming up 27 May and to do it on the 24<sup>th</sup> as a round robin to me did not make sense at all. So yes the Board does have a policy that we normally for us as – as employees we have to stick with all the deadlines.

So we are not allowed to put any documents through to round robin and so I am just surprised that from what I see that they have used it now as a habit and I would take that as noted, thank you Chair.

20    **ADV KATE HOFMEYR:** And then if we can just go to Ms Myeni's response which appears at the top of that page. Could you just read into the record what she records there?

**MS CYNTHIA AGNES SORAYA STIMPEL:** The 5-5-9 page?

**ADV KATE HOFMEYR:** Yes.

**MS CYNTHIA AGNES SORAYA STIMPEL:** So she responds to

Mr **Madu Nyoni**.

“Dear Madu, does this need Board approval? If so I approve it. Regards, Ms Dudu Myeni.”

**ADV KATE HOFMEYR**: Thank you Ms Stimpel. Chair we will return to the importance if any to be attached to that email with further witnesses. Ms Stimpel if I could then go back because I asked you to reverse one day ...

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

**ADV KATE HOFMEYR**: Back to 4 July so we could see what had been  
10 presented to the Board on that day for approval but you had already got in your testimony to 5 July which was the date – as I understand your evidence – on which you returned the file to Mr Matsaudza and you then engaged with him – as I have your evidence. He expressed concern about you having taken the documents and let us pick it up then if we may at page 26 of your affidavit.

**MS CYNTHIA AGNES SORAYA STIMPEL**: Huh-uh.

**ADV KATE HOFMEYR**: And you begin telling this story from paragraph  
128. That is where you record that Mr Matsaudza became very angry and this surprised you as you had not done anything out of the  
20 ordinary. He asked you why you had taken his documents and you said that you needed to see it and then as you recounted he told you that he was going to report you.

**CHAIRPERSON**: That was paragraph 138?

**ADV KATE HOFMEYR**: Correct.

**CHAIRPERSON**: I do not know why I had 128 but ...

**ADV KATE HOFMEYR:** Oh, apologies Chair.

**CHAIRPERSON:** 138?

**ADV KATE HOFMEYR:** 138.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** On page 26.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** But at the conclusion of that paragraph you tell us what you then responded to him with. I would ask you to tell us that and then take us through what happened in the remainder of that day.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you. I told him that – because it was a Tuesday morning and we normally had our weekly meetings with National Treasury and I was on my way to the National Treasury’s Office and I said to him I have to go to a meeting with National Treasury and upon my return we can discuss the matter, thank you Chair.

**ADV KATE HOFMEYR:** And what happened when you were on your way to National Treasury?

**MS CYNTHIA AGNES SORAYA STIMPEL:** So I had gone to National Treasury. At the time I received a – a phone call from Ms Nhantsi and  
20 she told me not to attend the meeting. That I must return to the office at SAA and that I should wait for her.

**ADV KATE HOFMEYR:** And did she indicate that she had received information from Mr Matsaudza?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes she did. She said that he was with her. He had come to her office and told her that I had

given – I had taken those files and she wanted to – and she said do not go to the office – do not go to National Treasury because you are going to be – you are going to give the information to National Treasury and I said I am going for the meeting and – and she said well do not go to the meeting.

Stay at your desk and until I get back – she said she will attend the meeting and she will then get back to me once – and meet with me once she has returned, thank you.

**ADV KATE HOFMEYR:** What could have been the problem with you  
10 giving those documents to National Treasury?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Personally I do not think it should have been a problem. If you look earlier when we were sourcing funds especially on the consolidation National Treasury has been involved in those meetings. They have looked at each of our bidders that we have had which have been primarily the banks at the time and even in the last one where we had up to December and early January when we included FDC we had National Treasury part of that meeting as observers.

So they were fully aware. Once we have engaged in the  
20 funding process with any bank National Treasury gets involved because they provide the – the guarantee and their legal department together with SAA's legal department and together with the funders legal department work together on drawing up the legal agreement. So with BNP they would have had to know the company anyway.

So if they had to see the documents it was important that

they also had to see. They were going to work them and they had to know who the legal person was. They had to draw up the guarantee regulations, terms and conditions with BNP. So they would have had to know that.

**CHAIRPERSON:** As far – as far as you know would there be any legitimate basis for somebody at SAA not to want National Treasury to know any aspect concerning a transaction that involves money that relates to SAA?

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

10 **CHAIRPERSON:** Would there be any basis for anybody at SAA not to want National Treasury to know?

**MS CYNTHIA AGNES SORAYA STIMPEL:** There should be no basis sir.

**CHAIRPERSON:** Because it is not like National Treasury is a competitor to SAA. National Treasury is National Treasury and SAA needs National Treasury.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Exactly Chair.

**CHAIRPERSON:** And in many cases it needs National Treasury's approval for certain transactions.

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** Yes for each of our funding transactions.

**CHAIRPERSON:** Yes.

**MS CYNTHIA AGNES SORAYA STIMPEL:** We need National Treasury.  
So ...

**CHAIRPERSON:** Yes.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Strong it is and SAA cannot

function without National Treasury.

**CHAIRPERSON:** So ...

**MS CYNTHIA AGNES SORAYA STIMPEL:** They are their backbone literally.

**CHAIRPERSON:** So you – you know of no basis on which anybody could object to National Treasury seeing

**MS CYNTHIA AGNES SORAYA STIMPEL:** There should not basis.

**CHAIRPERSON:** Any documents relating to SAA ...

**MS CYNTHIA AGNES SORAYA STIMPEL:** The information should be ...

10 **CHAIRPERSON:** Transactions?

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

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** Okay, thank you.

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

**ADV KATE HOFMEYR:** Thank you. I – you indicate at paragraph 141 on page 26 that Ms Nhantsi also spoke to you about the media. What did she say?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** She also told me that if this gets leaked out in the media she will hold me responsible for that and I said to her why would I go to the media. I have no intention of going to the media and Ms Nhantsi said I will still hold you responsible for it, thank you.

**ADV KATE HOFMEYR:** What is the “this” that could have gone to the media?

**MS CYNTHIA AGNES SORAYA STIMPEL:** The “this” I would say is the fact that I had taken the BNP documents – their bid documents. She already knew that I was very much against the appointment at the time of the BNP becoming the source of funds and the phenomenal fee that we were going to pay them and she knew I had objected to that and now that I wanted to see the client and see their profile and to see whether they do have the capacity and the capability to provide the sourcing of funds with SAA.

At that time I had no idea even that they were dealing with  
10 **Chris Hack.** So for me was I needed to satisfy myself that this was a company that was above-board and could do what it said it was going to do and was worth the value that it was going to be paid although I – well I will not say worth it – was for me is how could they still be charging this value and that was what I had at the back of my mind. So to go to the media I think that is what she was referring to. That I would leak out the information around BNP to the media.

**ADV KATE HOFMEYR:** And then at paragraph 143 on that same page you talk about what happened towards the end of day when Ms Nhantsi called you to her office. Can you take us through those events?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** So yes I thought she would call me to the office around 12 o’ clock but that was midday – nothing. In fact I did go up to her office and I was told by her secretary that I must wait at my desk. They will call me. So I went back to my desk and continued doing my normal daily work and at 4 o’ clock the afternoon – 04:00 pm – I was called to come up to her office.

**CHAIRPERSON:** Before that ...

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

**CHAIRPERSON:** I see that at paragraph 142 you say that she instructed you not to attend the meeting at National Treasury. Did you comply with that instruction?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes I did. I was actually on my way to National Treasury's Office. That particular day sir I had taken my car in for a service. So I was travelling with a colleague – Ms Lindsay Olitzki - we travelled together. So that is when I received  
10 the call and we were almost in Pretoria at the time.

So I told Lindsay about it and I said look I better not attend because it would be seen that I am going against her orders and so I sat at a coffee shop while Ms Olitzki attended the National Treasury meeting. When she finished she came back and we were back in the office by 12, thank you.

**CHAIRPERSON:** Okay, thank you.

**MS CYNTHIA AGNES SORAYA STIMPEL:** So I did not attend, yes.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** And then you talk at 143 in your affidavit about  
20 when you did manage to meet with Ms Nhantsi. What happened in that meeting?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I came into the office. It was Ms Nhantsi's office and in the meeting was Ms Nhantsi together with Mr Manqele. I did not know him. I had no idea who he was. He introduced himself as the new ...



**CHAIRPERSON:** Mokoena or Manqele.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you, Manqele.

**CHAIRPERSON:** Manqele.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Manqele.

**CHAIRPERSON:** Mr Bongani Manqele, M-A-N-Q-E-L-E. That is Manqele.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Manqele.

**CHAIRPERSON:** Hm, okay.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair. I entered  
10 the office and the two people were sitting there and I greeted and sat  
down and Ms Nhantsi in front of her had a letter and she pushed it  
across to me and she said this is your suspension letter and I said to  
her. I thought we were going to discuss what happened. Why I took  
the documents.

Can I explain my side of the story? Why I needed to see the  
documents and she said do not explain anything to me. You have been  
suspended. Sign the letter and I said to her do I have any legal  
recourse and she said oh you can to go the CCMA and you need to find  
your own legal representative at your own cost.

20 I read through the letter. It stated that I had obviously – *ja* –  
I had been suspended due to taking confidential information that was  
lying on the floor – confidential information that I was not privy to  
according to the statement that I have therefore been duly suspended  
until further investigation.

**ADV KATE HOFMEYR:** And Chair I note we are at the tea break but if

we could just go to that letter ...

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** To conclude it.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** You will find it at page 5-7-0 under Tab 61.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And if you will just read the first paragraph because it – it just records what you have recollected about the terms and basis for your suspension.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** It states here that:

“You are hereby notified that you are suspended from work. An ...”

**CHAIRPERSON:** I am sorry. I thought I got the page but I it looks wrong.

**ADV KATE HOFMEYR:** 5-7-0.

**CHAIRPERSON:** 5-7-0, okay thank you, proceed.

**ADV KATE HOFMEYR:** Thank you.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair. I will start again. The heading says:

20 “Notification of suspension from duty. You are hereby notified that you are suspended from work. An investigation and/or the outcome of a disciplinary hearing which includes amongst other things removal of company confidential tender documents without permission from procurement.

Your suspension from work will be on full pay.”

Thank you.

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

**MS CYNTHIA AGNES SORAYA STIMPEL:**

**CHAIRPERSON:** Yes, thank you.

**ADV KATE HOFMEYR:** Chair we will take up – with your leave – the next events after the tea break if that is suitable.

**MS CYNTHIA AGNES SORAYA STIMPEL:**

**CHAIRPERSON:** Yes, thank you. We will take the tea adjournment and  
10 resume at half past 11. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** You may proceed.

**ADV KATE HOFMEYR:** Thank you Chair. Ms Stimpel I understand that there is a further point that you wanted to make in relation to that term sheet that was signed on the 8<sup>th</sup> of June by Ms Nhantsi on behalf of SAA and Grissag AG, what was that point?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair, having  
20 looked at this term sheet that Ms Nhantsi had signed with Grissag on the transaction for the 15billion my thinking was...(intervention).

**CHAIRPERSON:** I’m sorry that term sheet was on what page again?

**ADV KATE HOFMEYR:** Chair let me give that to you, it commences...(intervention).

**CHAIRPERSON:** I think when we took the adjournment we were on

the letter of suspension.

**ADV KATE HOFMEYR:** That's correct, we'll have to go back just to page 530 for that term sheet.

**CHAIRPERSON:** Okay thank you.

**ADV KATE HOFMEYR:** it's under tab 54.

**CHAIRPERSON:** Okay thank you, you may proceed.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair, just looking at the term sheet dated 25<sup>th</sup> of May 2016 which was signed by Ms Nhantsi but the date was the 8<sup>th</sup> of June, the – even inn that point I  
10 thought Ms Nhantsi had an opportunity then to probably cancel – I mean stop the whole payment that was going to be made or shall I say the transaction with BNP because one could have then said, you know what here's Grissag offering a far better rate, change – come out with a new RFP completely, put new critical criteria that would include clients like Grissag who can deal directly with the SAA and rather than going via a middle person and so I thought this would have been ideal opportunity for her to also do that, but I see that opportunity wasn't  
taken and that's what I wanted to raise, thank you sir.

**ADV KATE HOFMEYR:** Thank you Ms Stimpel if we can then return to  
20 page 27 of your affidavit, we left before the adjournment on the point of your interaction with Ms Nhantsi and your receipt of the suspension letter and then at paragraph 145 on page 27 you talk about your engagements with the media because that was a concern, as I have it from your evidence that Ms Nhantsi had raised the previous day when she was calling you about a National Treasury – apologies same day

because that was the 5<sup>th</sup> of July still. What – recount for us please if you will, what is contained at 145 which is, as I understand it is just a summary of your engagements with the media.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair, so after receiving my suspension letter that was probably five minutes past four, I'd gone back to my office, obtained – I'd taken my handbag and walked out, I left everything there even my jacket and had left and because again, having had my car in for a service I needed a lift back to the place where I had left my car and I went, again to my colleague  
10 Lindsay asking is it possible if she can get me to the place where was being serviced and then I showed her the suspension letter and told her about it but as we got into the car by then it was almost four thirty, my phone rang. It was a number that I could not identify, the person identified themselves as Sabela Skitty? saying that they are a journalist from the Sunday Times and they would like to chat to me and I said why, and he said, well we've just heard that your job is in jeopardy and can we please chat, and I just said to him, I'm sorry I cannot talk to you and I switched the phone off.

**ADV KATE HOFMEYR:** Thank you and then in the chronology as I  
20 have it the next thing that happened on the 7<sup>th</sup> of July is that a letter was sent to SAA by Webber Wentzel Attorneys who were they and why were they involved at this stage?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Okay so for - from my having met without Alta on the first and subsequently on the day that I was suspended, the 5<sup>th</sup> I contacted Alta when I got home that evening

and we arranged to meet again the following day, the 6<sup>th</sup> and then on the 7<sup>th</sup> they – in fact met on the 6<sup>th</sup> and they asked me then to meet with their attorneys called Webber Wentzel. I met with those attorneys, I actually went to their offices in Sandton and gave them the whole background of what's transpired since my first concerns which started in December with the original Board resolution and they – with the BNP they felt that they could stop this, so they wrote a letter of demand to SAA to stop the transaction going forward with BNP and they sent that on the 7<sup>th</sup> of July.

10 **ADV KATE HOFMEYR:** If we can go to that letter, you'll find it at page 548 under tab 58, thank you. You'll see that – is that the letter you were referring to?

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

**ADV KATE HOFMEYR:** I'd like to just advance to the demand that was made at the conclusion of the letter, you'll find that on page 552, as I read what precedes this in the letter it's really a summary in an essence all the evidence you've given to us over the last two days in summary fashion talking about where the concerns lay in the whole process of procurement and engagement of BNP and then in paragraph  
20 11 on page 552 are the requested undertakings that were sought from SAA, can you take us what the – through those two undertakings.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair I will do so. So it states,

“To suspend the performance of it's payment obligations under any contract arising from the transaction advisor tender and

the funding services decision and number two to suspend the conclusion of any contracts arising from the transaction advisor tender and the funding services decision pending a lawful and a competitive procurement process for the relevant services”,

Thank you Chair.

**ADV KATE HOFMEYR:** And as I ready 12 they requested an undertaking in writing by the authorised official by close of business 13 July, failing which they indicated they would launch appropriate  
10 proceedings in the High Court. Do you know whether those proceedings were launched?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes they were launched because SAA did not come back to them or to Webber Wentzel directly on the first part and so I had to work with Webber Wentzel again so that we could put documents through the High Court to interdict, thank you Chair.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** And the contents of that letter to the extent that they set out the history, Webber Wentzel got that history from you?

20 **MS CYNTHIA AGNES SORAYA STIMPEL:** Yes I worked with Webber Wentzel, the same information that I've presented here and the same information that I gave to National Treasury, the only addition was the BNP files.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Thank you Ms Stimpel, the next document I'd

like to take you to which you refer to at paragraph 146 of your affidavit on page 27, you'll find under tab 62 at page 573, now Ms Stimpel I'm conscious of the fact that this document is dated the 8<sup>th</sup> of July 2016 as I have your evidence you are no longer at SAA at this time, is that right?

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

**ADV KATE HOFMEYR:** So can I take it that this is not a document you saw then?

**MS CYNTHIA AGNES SORAYA STIMPEL:** No I did not see it then.

10 **ADV KATE HOFMEYR:** Chair I'd like to just focus on this for a moment because it becomes relevant to later evidence and it also will enable me just to explain one aspect of the files of Ms Stimpel's evidence. Ms Stimpel what is this letter because you have subsequently seen it haven't you?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I have, through your – the (indistinct) investigators offices.

**ADV KATE HOFMEYR:** Yes, so it appears to be a letter from BNP director Mr Mahlangu to South African Airways, is that correct?

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

20 **ADV KATE HOFMEYR:** And what is it dealing with?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Okay its dealing with – regarding its FSB license and it says there that they'd like to clarify the issue of the FSB license being B Capital received a letter from the FSB dated 12<sup>th</sup> May 2016 indicating its intention to temporarily suspend BnP's license for a period of three months. Based on the reason that



according to the FAIS Act Section 10, the key individual failed to successfully complete the first level regulatory examinations applicable to the categories and sub-categories for which they are authorised to approve or approved.

**ADV KATE HOFMEYR:** Thank you lets just pause there for a moment, when we looked at the RFP that went out for transaction advisor services you'll recall the critical criteria there included a FSB license is that correct?

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

10 **ADV KATE HOFMEYR:** And BnP won that bid did it not?

**MS CYNTHIA AGNES SORAYA STIMPEL:** They won that bid.

**ADV KATE HOFMEYR:** And as this letter reads, it seems to be informing SAA on the 8<sup>th</sup> of July 2016 that earlier in May, and Chair earlier than the date on which they were awarded the extension of scope for the sourcing of funds, they had received correspondence from the FSB indicating it's intentions temporarily to suspend BnP's license, is that as you read the letter?

**MS CYNTHIA AGNES SORAYA STIMPEL:** That's how I understand it Chair, correct.

20 **ADV KATE HOFMEYR:** Chair just to give you a bit of background what the investigation has done is engage with the FSB, well as it then was it is now the Financial Service Conduct Authority in order to obtain their records in relation to the BnP license, that response to the request for information that was sent to the FSCA is the next tab in this file, it begins at page 578 but because of its relevance and significance to

evidence you will hear in due course, this was then followed up with a request for an affidavit from Ms De Silva who is the author of this initial letter and that has subsequently been provided to the Commission. It will be found in file C of Ms Stimpel's documents, I don't intend to deal with it further at this point but that's just to frame it in terms of where we find it and why it's relevant, the only point I will make at this stage and which you pick up at paragraph 147, Mr Stimpel, is that the response that was received from the FSCA including all the contemporaneous documents at the time, as I have it from paragraph 10 147 of your affidavit indicated that contrary to what is said in the letter from BnP Capital on the 8<sup>th</sup> of July 2016, it was not the case that on the 12<sup>th</sup> of May their license was indicated as there being an intention to temporarily suspend the license. The FSB documents, as we have them, actually include a suspension of the license on the 12<sup>th</sup> of May. is that your understanding of the documents?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Correct, that's my understanding, thank you.

**ADV KATE HOFMEYR:** Thank you. I'd then like to move to page 28 of your affidavit because you indicated in your evidence that the letter of demand went out on the 7<sup>th</sup> of July, the deadline for an undertaking was 20 the 13<sup>th</sup>, I understood you to say there was no undertaking given is that correct?

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

**ADV KATE HOFMEYR:** And then urgent proceedings were launched do you recall when that was?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes after the 13<sup>th</sup> I think there's still a couple of days waited and then I worked together with Webber Wentzel for the documents to be submitted at the High Court and we were there on the 21<sup>st</sup> of July to have all the signatures done and then Commission of Oath signed and then we had to submit it at the High Court before – I think it was before midday. So it was submitted and SAA did receive it on the 21<sup>st</sup> through their offices, thank you Chair.

**ADV KATE HOFMEYR:** And you detail at paragraph 151 on page 28  
10 what happened on the 21<sup>st</sup> of July from SAA's perspective, let me just get clarity, did SAA ever respond directly to Alta or Webber Wentzel about their position in relation to the urgent application?

**MS CYNTHIA AGNES SORAYA STIMPEL:** They did – I'm not aware if they did, that I'm not aware of, what I am aware of is that in a press conference they indicated that they have stopped the transaction then, yes.

**ADV KATE HOFMEYR:** Thank you so I'd like to take us to the media statement that was released on that day by SAA, you'll find that under tab 68 at page 833. There are a few features of this statement that I'd  
20 like to traverse with you, the first of those is under the first paragraph it indicates that it's a statement of the 21<sup>st</sup> of July 2016 and as I read it, it records,

“South African Airways has taken a decision to terminate the services of BnP Capital as a financial services provider to the airline, the effect of this decision means SAA has terminated

both it's appointment of BnP Capital as transaction advisor and the appointment to source funds on behalf of the airline, the decision was communicated to BnP Capital yesterday",

Do you see that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Correct, thank you.

**ADV KATE HOFMEYR:** And then if we go to paragraph 2, one of the aspects of the statement that is of interest I submit, is at the bottom of paragraph 2, Chair you'll recall yesterday when we were looking at the first appointment letter of BnP Capital as transaction advisor, we were  
10 querying the date of that letter which was 20 March because that was two days after the bids closed and before any processes had been embarked upon within SAA. This statement again records the award as having been made on the 20<sup>th</sup> of March 2016 you'll find that at the end of paragraph 2, where it is recorded,

"The appointment of BnP Capital as transaction advisor was ostensibly in accordance with prescribed procurement processes and the award was made on 20 March 2016",

Do you see that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes I can see that, thank  
20 you Chair.

**ADV KATE HOFMEYR:** We will seek to clarify that with Mr Mahlangu when he comes but again there seems to be, at least an understanding from SAA's part that, that decision was taken on the 20<sup>th</sup> of March and then paragraph 3 deals with the attempts to source funds and what had happened in relation to the endeavours with a previous potential

funder, do you see that Ms Stimpel?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes I do, thank you.

**ADV KATE HOFMEYR:** What do you understand that potential lender to have been that was identified in that paragraph?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I identify that as FTC.

**ADV KATE HOFMEYR:** Right and it concludes with the withdrawal was communicated by the potential lender to SAA in April 2016, do you see that?

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

10 **ADV KATE HOFMEYR:** So as I understand this paragraph, and correct me if you take it different view, there's an effort here to explain the background to the sourcing of funds and why it ended up with BnP and what's being communicated here is that there was a withdrawal from a previous potential funder in about April 2016, is that your understanding of the paragraph?

**MS CYNTHIA AGNES SORAYA STIMPEL:** That's my understanding Chair.

**ADV KATE HOFMEYR:** Again Chair, that may be significant because it suggests an interaction with FDC if they are the potential lender until at  
20 least 2016. And then it goes on to give further background to the due diligence that they thereafter conducted, their concerns around the FSB license and ultimately as I have it the decision to terminate. They also deal with you or at least their interactions with you in paragraph 9, can you tell us what they record there?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Char before I

go onto the interactions with me, is that they mention the due diligence and we came across it, in also, previous correspondence to National Treasury where it makes reference that a due diligence was done but for the treasury team at SAA we've had no sight of that, if there was any due diligence done, so I'd just like that to be noted, thank you. Okay so to go onto the point regarding myself they obviously state here that I've been placed on suspension and that I've been suspended for misconduct, that I've acted in contravention of SAA's code of conduct and that the decision to suspend me has nothing to do with the media reports suggesting that I had allegedly objected to SAA's decision to tender to the award of BnP Capital.

**ADV KATE HOFMEYR:** Well what is your response to that statement?

**MS CYNTHIA AGNES SORAYA STIMPEL:** My view is still that it's incorrect, that I've been placing my concerns in many ways whether it was via a sms, a WhatsApp, an email, via telephone calls, via physically having meetings I've stated my objections, I've listed the issues I had around the whole process leading up to the point of BnP sourcing – becoming the sourcer now of funds and so – and I had already stated I will take this further, so for SAA that it was based on misconduct I find is incorrect. The other thing is, also that I've gone to the media regarding – leaking out information, is also incorrect because I have not done that, thank you.

**CHAIRPERSON:** Although they say you were suspended for misconduct they don't seem to say what the allegations of misconduct against were or what the allegation was.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Exactly Chair, I only received that the end of July, then I had a list of what my misconduct was.

**CHAIRPERSON:** Yes but if the alleged misconduct was about the document relating to BnP then maybe they didn't really want to talk about that because they seemed to want to distance that from – to distance your suspension from this issue of BnP.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Exactly and agreed Chair.

**CHAIRPERSON:** But it had everything to do with BnP?

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** It had everything to do with BnP sir.

**ADV KATE HOFMEYR:** And if we could Ms Stimpel then go to that notification of charges that you received at the end of July, you'll find that at page 837, Ms Stimpel you'll see there – was this the first time that the charges against you were made known to you?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes the day I received them there was no prior discussion on it, I received it as is here and I had to sign it, I was called in and told to be in the office at three, collect it, sign it and leave.

20 **ADV KATE HOFMEYR:** And who did you meet with when you collected it?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Again I met with Ms Nhantsi and then the acting General Manager of HR.

**ADV KATE HOFMEYR:** Thank you and if we could go to paragraph 2 on page 837, because this, as I have it records the foregrounds on

which you are alleged to have misconducted yourself. I'll just read through them and then I'd like your overarching comment in relation to those charges, the first is,

“Unauthorised possession and removal of company documents, the second is insolence, the third is breach of substantive provisions of the contract of employment including the confidentiality undertaking and the fourth is breach of SAA's anonymous reporting policy”,

Lets just deal with each of them, unauthorised possession and  
10 removal of company documents, what is your response to that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I've taken the BnP documents being part of treasury, sourcing funds being one of my main responsibility for SAA, I need to know who I am working with so I do not see it as unauthorised and I did not see it as confidential it's something that I needed to – it was confidential for me not to pass on to others but for – to do my work I needed to know it, the fact that SAA has taken BnP from transaction advisor to become the sourcer of funds, I needed to know who the company was, so I felt I need to know their profile, their capacity and their capability, thank you Chair.

20 **ADV KATE HOFMEYR:** And the charge of insolence?

**MS CYNTHIA AGNES SORAYA STIMPEL:** The insolence relates to an WhatsApp message which I had sent to a colleague who was off sick at the time and the date is even on the WhatsApp which was the public holiday, 16<sup>th</sup> of June, I was at home with a bit of a flu and I hadn't seen my colleague who had undergone an operation and I wanted to know



how she was so I sent a message checking on her, are you well, how's your recovery doing and then I updated her – because she was an SAA employee on what was happening currently at SAA.

**CHAIRPERSON:** Was this before your suspension?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Before my suspension so this goes back to June, so I was surprised, very surprised that this came in as a point of insolence as a charge against my misconduct.

**CHAIRPERSON:** And how much earlier, compared to the incident that gave rise to your suspension.

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** My suspension happened on the 5<sup>th</sup> of July and the – this...(intervention).

**CHAIRPERSON:** Sometime in June.

**MS CYNTHIA AGNES SORAYA STIMPEL:** It was the 16<sup>th</sup> of June, the public holiday.

**CHAIRPERSON:** But before you went on suspension nobody had made an issue of it?

**MS CYNTHIA AGNES SORAYA STIMPEL:** No not at all, this only came up on the date I received it which was the 27<sup>th</sup> of July.

**CHAIRPERSON:** Okay.

20 **ADV KATE HOFMEYR:** Ms Stimpel I – you'll forgive me but I still don't understand why the WhatsApp interaction on the 16<sup>th</sup> of June is evidence of insolence, can you just help me with that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I think I can give you some background because the lady that I had dealt with which is Borjina Kowalski, she also worked in the procurement department and we were

– besides working colleagues we were also friends and I think she was approached and she wanted to know, has Cynthia been in contact with you because when I went into the office to take the BnP documents, she sits right at the end, she was there and I greeted her, I didn't speak to her at all and I just said to her I'm taking documents , she didn't know what I was taking and so they obviously would have asked her, was Cynthia in the office and she would have said yes and then is Cynthia in communication – I don't know if she was threatened because for them to have seen that WhatsApp message meant that they had to go through her phone, so whether she had to hand it in and was coerced to give it in or threatened, I have no idea, we have not spoken since so I have no idea. I was just surprised that in that WhatsApp message, I think we have a copy of it...(intervention).

**CHAIRPERSON:** Maybe before we go there I think Ms Hofmeyer's focus is to see if you can tell her or tell me anything that suggests that there was insolence, there could be a charge based on that WhatsApp for insolence.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you so its based in...(intervention).

20 **CHAIRPERSON:** Whether you understood where he connection is between your WhatsApp message and the charge of insolence, what was insolent about you sending that message in other words?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair, I'm sorry I wasn't more clear. In the message I gave a background of what was happening at SAA and then I also stated that our Board continues its

unethical behaviour, that was my sentence.

**CHAIRPERSON:** Ja but I guess the question would still remain, do you understand what's insolent about that, you may have said something that the Board might not like and other people in management might not have liked but do you understand what was insolent about that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Not that I could – in there I spoke about – at that time Mr Nico Bezuidenhout had just resigned and left to go to Fast Jet, I listed that, it was all in the media it was nothing that was not in the media, I also stated that the Board had said  
10 that they always funded Mango and then they withdrew their statement afterwards and then I ended saying, and our Board continues with it's unethical behaviour, thank you Chair.

**ADV KATE HOFMEYR:** Thank you Ms Stimpel. The breach of substantive provisions of the contract of employment including confidentiality undertaking, what is your response to that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I had no idea what I did there. Breach of substantive provisions as far as I know that I have conducted myself in the utmost integrity and honestly while I worked at SAA so I was not sure what they were charging against there. In the  
20 detail later they bring out that was going to the media. Ja thank you.

**ADV KATE HOFMEYR:** And just help me also on number 4 the breach of SAA's anonymous reporting policy, what did you understand that charge to be?

**MS CYNTHIA AGNES SORAYA STIMPEL:** That charge was that I did not go through the whistle blowing process within SAA. So they have –

we have our own whistle blowing where you could go through either – through phone call or email for whistle blowing and so they are saying it was a breach that I did not use that method.

**CHAIRPERSON**: But you are not obliged to use it were you?

**MS CYNTHIA AGNES SORAYA STIMPEL**: No you are not obliged.

**CHAIRPERSON**: It is something that is available to you to use if you want to use?

**MS CYNTHIA AGNES SORAYA STIMPEL**: That is correct Chair.

**CHAIRPERSON**: If you choose to go to the police you go to the police.

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

**CHAIRPERSON**: So why do they charge you with that kind of thing?

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

**ADV KATE HOFMEYR**: Ms Stimpel at the bottom of page 28 paragraph 155 you indicate that you initially decided to challenge the suspension but you go on to explain why you did not follow through with that process. Will you please explain to the Chair what was going on and why you changed your decision to challenge the suspension?

20 **MS CYNTHIA AGNES SORAYA STIMPEL**: Well at the time I was still working with – because when I received I was suspended and at that point in time I was really at a loss because I did not know what my next action would be and how do I approach the CCMA I have never been in this type of situation before. But during those days following from the 5<sup>th</sup> to receiving the final charges was that I had been working with Webber Wentzel regarding trying to stop the BNP transaction. So up to the 21<sup>st</sup> I was engaged constantly. We were con – because it meant

reviewing the documents, going and seeking evidence, making sure that everything was a hundred percent before they took it to court. So on the 21<sup>st</sup> once that was done come the 25<sup>th</sup> I get noted that I must come and collect this and the 27<sup>th</sup> I went in to pick it up and then they said there must be a hearing. When I went back to [indistinct] to ask how do I approach – in fact I went to Webber Wentzel they said we need to get you a labour lawyer and then we need to see how to now set up a CCMA date and SAA had said that they would have a hearing which we did attend on this date which they had asked us to attend. But SAA  
10 was not ready for the hearing at the time. Thank you.

**ADV KATE HOFMEYR:** And then you go on at page 29 to detail – it is the conclusion of the preceding paragraph 155. You talk about continued postponements and delays that happened in the case. So when does that period of postponement take you to?

**MS CYNTHIA AGNES SORAYA STIMPEL:** So the first the disciplinary hearing should have happened in August which I had appeared there. I did get a labour lawyer from Webber Wentzel. They were very kind to offer me a labour lawyer at the time. And we – SAA was not ready. There was no-one there we waited and eventually they moved it and  
20 said we will set another date. My legal representative...

**CHAIRPERSON:** What – was that for what is called conciliation if you got to understand those concepts?

**MS CYNTHIA AGNES SORAYA STIMPEL:** It was initially for the disciplinary hearings Sir.

**CHAIRPERSON:** Oh that was still the disciplinary hearing

**MS CYNTHIA AGNES SORAYA STIMPEL:** The disciplinary hearing.

**CHAIRPERSON:** Oh.

**MS CYNTHIA AGNES SORAYA STIMPEL:** At their offices and they were not available, SAA team. And then subsequent to that my lawyer indicated that we should try and move directly to CCMA rather than wait for a disciplinary hearing. And that meant that we had to take my case to the labour court which we did. And we then appeared at the labour court on the 22 August which we had a full court hearing. SAA did have their representative there as well as I did on my side and the court  
10 ruled that we could take our – my case to the CCMA. We then every time thereafter dates were set for the CCMA hearing and every time we came to the CCMA it was moved or postponed by SAA and this happened August – well we met in August at the labour court. September it moved to October to November. There was nothing in December and then in January it was moved to February. February it was moved to March and my lawyer then advised me it is best just to settle this it will continue for another year and you cannot continue with your life. You need to start getting – continue with what you need to do and focus and he recommended at the time I did not want to – I wanted  
20 to go on with my case and he recommended to get peace of mind settle. Let us approach SAA and see if they would settle and I discussed with my family and they agreed and so I went with his recommendation  
Chair.

**ADV KATE HOFMEYR:** Ms Stimpel one of the aspects of the version of Ms Nhantsi who will be giving evidence in due course is she questions

your decision to settle. She indicates that it is evidence of a lack of conviction on your part in the merits of your case challenging these charges. What is your response to that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** I would say in contrary to that because I really wanted to continue with my case. I definitely saw merit in it and the main thing that my lawyer recommended at the time was he said how many months have passed it has already been since July it is now already into March. You need to get on with your life and that is when I made the decision yes I will go with his recommendation  
10 and so yes we did agree to settle. It had nothing to do with that there was no merit in my case at all.

**CHAIRPERSON:** At a certain stage you were waiting for a disciplinary hearing at SAA. From what you have said it looks like that never sat, did it ever sit?

**MS CYNTHIA AGNES SORAYA STIMPEL:** It never did Sir.

**CHAIRPERSON:** And then you decided with your lawyer to go to the CCMA?

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

**CHAIRPERSON:** I suspect that maybe that may have been what is  
20 called con arb or something like that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes. Conciliations and Arbitration.

**CHAIRPERSON:** Is that what it was about?

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

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** So while you were waiting you were still on suspension, you were still being paid?

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

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** Yes. So it is not like you were not being paid for the 7 or 8 months or whatever you were being paid?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes I was still being paid.

10 **CHAIRPERSON:** But the hearing was just not taking place?

**MS CYNTHIA AGNES SORAYA STIMPEL:** The disciplinary hearing did not take place at all Sir.

**CHAIRPERSON:** And the arbitra – con arb – con arb was not taking place itself it got postponed all the time?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Correct. We were always prepared. I always sat three days working with my lawyer before the dates. When the dates came we were sitting ready. They would bring in their lawyers. There would be some discussion and then there would be a postponement.

20 **CHAIRPERSON:** But I would have thought that because that was now under the auspices of the CCMA they would not have got – the matter would not have been postponed unless

1. It was by agreement between the lawyers on both sides.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Which it did.

**CHAIRPERSON:** And the CCMA or the CCMA ruled that there were



good grounds for a postponement with your lawyer opposing any request for postponement from the CCMA's side. Do you know whether each time it happened it was one of those two situations?

**MS CYNTHIA AGNES SORAYA STIMPEL**: Correct Chair they were both always in agreement. There was always a discussion. They would – the two lawyers would get together, discuss. My lawyer would come back and say this is one of the reasons we cannot continue whatever and we going to post – motivate for a postponement. So that is what happened. So the lawyers yes did get together, they did come up with  
10 an agreement for whatever reason. The one time the lawyers were there we were waiting for the SAA representatives they did not come. And then when there were SAA representatives they want the senior representatives. They sent the HR person and they sent a risk person to represent SAA but it was not Ms Nhantsi. It was not Mr Zwane and my lawyer said he was not prepared to continue if the executives of SAA were not present. So there was always a postponement.

**CHAIRPERSON**: Well we not here about unfair suspensions and unfair dismissals but of course one of things which have said by some witnesses here is that in regard to corruption in government  
20 departments and entities and parastatals what was happening was that you would find that in each of the entities that are affected there would be people who would insist on the right things being done. Who would be opposed to wrong things being done? And there would be people who would be pursuing wrong things, breach of rules or procurement procedures pursuing corrupt agendas and that those who were standing

for the right thing were opposed to these corruptive agendas were seen as stumbling blocks and that sometimes maybe very often all kinds of charges would be brought against them. They would be suspended on no sound grounds. They would be – charges would be brought against them that have no basis just to make life difficult for them and if possible to get rid of them. And so that is part of the reason why I am looking at the issue of whether the postponements were by agreement because that might give a certain context then in a situation where it is like a disciplinary hearing where maybe from your side you could argue  
10 whatever you argue and SAA just postponed. There was a third party involved here and this is CCMA and so on. But – so that is the reason why I am looking at it but it still remains important to look at is the – were there proper basis for the charges against you why you were suspended and so on an so on. Okay.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair. I still feel there was not proper basis. That is my personal view.

**CHAIRPERSON:** Ja so we might not go into finer details but still it is important to try and have a look at whether there were proper basis for – for suspensions and so on. Because if there were proper basis the  
20 case might not fit into what has been suggested but if there we no proper basis it might fit into that. Thank you.

**ADV KATE HOFMEYR:** Thank you Chair. Just two follow up questions from that Ms Stimpel. Do you regard yourself as being in the category that the Chair has described of persons who were suspended on merit list charges because they stood up to what they regarded as being

irregular and potentially corrupt?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes I do.

**ADV KATE HOFMEYR:** And a second follow up in the course of your evidence I have noticed at least two references to other employees of SAA who were suspended. You made reference to Mr Bosc because when you went to engage about what you should do to whistle blow as I have it you were cautioned that you would just be placed on suspension as he was and then I recall you referencing Ms Mpshe. Chair Ms Mpshe will be giving evidence in this session so we will hear from her  
10 first hand but she was also on suspension as I have it when she called you and you asked her about the whistle blowing and she suggested the Public Protector. Could you give us the benefit of your insight as to that as a feature of the way in which management was being dealt with and employees were dealt with within SAA?

**MS CYNTHIA AGNES SORAYA STIMPEL:** What was transpiring around SAA at the time if anyone challenged what was being directed from board at the time or certain senior executives that have been placed in positions at the time – if you challenged anything that you knew was not correct they – you were immediately suspended. Your charges were  
20 not given at the time and only afterwards charges were made up and then you were given your charges. So it was a method at the time I was suspended there were at least four other people suspended. That is how many during my time and it seemed to have a pattern that you were given documents to sign. So your signature is on it. You were not part of like I was also given and if you did not question it and challenge

it the documents would be approved and – but if you challenged it they would find a way of getting you suspended. If you were tasked to do something some people were tasked to get rid of certain people in their departments or find issues against them and suspend them. And if challenged that then they would – I will not say they but senior management would try and find some issues against you to get you suspended. So it seemed to have been a pattern that was going around in those couple of months. Thank you Chair.

**CHAIRPERSON**: Well...

10 **MS CYNTHIA AGNES SORAYA STIMPEL**: Is it clear now?

**CHAIRPERSON**: While it may have been so but it is quite important that when you make a statement like that you are alive to the fact that your evidence could be challenged and – and there could be an attempt to say let us look at each one of those – or let us test what you are saying and then there would be an attempt to show that there were proper basis for at least maybe some of the suspensions and so on. So just be careful when you – when you say you know it seems like there was a pattern. But if you have got facts on which you base that that is fine. I am just saying be careful.

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

**CHAIRPERSON**: So that you do not say there was a pattern if you do not have facts to back that up with.

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

**CHAIRPERSON**: But if you do have facts by all means you have to state that.

**MS CYNTHIA AGNES SORAYA STIMPEL**: Ja.

**CHAIRPERSON**: Okay.

**MS CYNTHIA AGNES SORAYA STIMPEL**: No I can only then speak on the two that I do know Mr Sylvain Bosc.

**CHAIRPERSON**: Yes.

**MS CYNTHIA AGNES SORAYA STIMPEL**: And Ms Thuli Mpshe which I have mentioned previously.

**CHAIRPERSON**: Yes.

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

10 **CHAIRPERSON**: Those ones.

**MS CYNTHIA AGNES SORAYA STIMPEL**: Noted.

**CHAIRPERSON**: Those ones you say.

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

**CHAIRPERSON**: They were no proper grounds.

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

**CHAIRPERSON**: Okay.

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

**ADV KATE HOFMEYR**: And the suspension of Mr – Doctor Dower do you have any knowledge of that? Chair these are witnesses who will be  
20 coming in due course.

**CHAIRPERSON**: That is – that is fine.

**ADV KATE HOFMEYR**: We take note of the

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: The need for specificity.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR:** In relation to these types of themes that seem to be emerging.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** So you will be hearing evidence from at least Ms Mpshe and Doctor Dower in this session and potentially Mr Bosc in the second session.

**CHAIRPERSON:** That is fine.

**ADV KATE HOFMEYR:** But just in terms of your knowledge of Doctor Dower's circumstances were you aware of his suspension?

10 **MS CYNTHIA AGNES SORAYA STIMPEL:** I was aware only because a notification gets sent out to all the staff when anyone leaves the company especially if they are senior and if they are suspended. So we as staff members got a notification that Mr Dower has been suspended from SAA. There was some – they also had serious – everyone it was listed in the email that it was also under some misconduct and nothing further stated than that. So yes I was aware that Mr Dower was suspended. Thank you.

**ADV KATE HOFMEYR:** Ms Stimpel I would then like to take you to the last page of your affidavit page 29 and paragraph 157 you talk about  
20 the terms on which you settled with SAA and you talk about what pecuniary benefits you took – you gave up as a consequence of that settlement. Can you tell us what those were?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes to basically ja I was 59 at the time and that was one of the reasons my lawyer said should you win your case and go back they will find something else and – or place

you in a position where you are unhappy and hence well we came to the position of accepting settlement. With SAA my settlement was based basically on initially it was supposed to be around 8 months but because I already got paid for March and April they took that away so it turned out to a six month's settlement and of my salary and I was – and that is all I received together with my normal pension. SAA does offer travel benefits I did not receive any of the travel benefits and ja and that was basically it.

**CHAIRPERSON:** Did your settlement – was your settlement formulated  
10 in such a way that your employment with SAA would continue for six months and your 60<sup>th</sup> birthday would fall within that so that you would effectively take retirement without having left before. Is that how it was structured?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes so because I was 59 turning 60 so we worked on sort of early retirement benefits. But with the early retirement I should have got travel benefits or other but I got none of those. So yes it – they factored in the 6 months' salary that I would have got turning 60. Yes and then that is what I got paid. Correct Sir.

20 **CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And Ms Stimpel the last paragraph of your affidavit refers to a disciplinary hearing that took place in 2018 against Mr Zwane and Ms Nhantsi. What is your knowledge of that process?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Okay thank you. I just want to make a record change that this date could be incorrect and maybe

you can contact ...

**ADV KATE HOFMEYR:** Advocate Cassim?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Yes and just get the correct dates there please.

**ADV KATE HOFMEYR:** That 20 April 2018?

**MS CYNTHIA AGNES SORAYA STIMPEL:** Correct yes. It was in 2018 but I may have the dates wrong and I meant to check it up. So my apologies. But yes I was called in by CDH at the time which is Cliff Decker Hofmeyr Attorneys who had asked me if I could please come  
10 and be a witness and testify on behalf of SAA this time to witness against Ms Nhantsi and Mr Zwane. The company had placed both of them on suspension after some investigation and they were doing their disciplinary hearing. And because one of the issues that came up was on the BNP case and they asked me if I could come and testify on the BNP case which I agreed to and which I did. Thank you.

**CHAIRPERSON:** Was your evidence in relation to Ms Nhantsi include what you had been suspended for in relation to taking the document that we – that she did not – she was unhappy you had taken and = and your intention to – or taking it to National Treasury or intending to take  
20 it to National Treasury or going to attend a meeting there but them thinking you are going to disclose it to National Treasury. Did it include that?

**MS CYNTHIA AGNES SORAYA STIMPEL:** It included everything that I have had here to date Sir. So similar process I had to go through the process of from the start covering the whole process from the first



board resolution up to BNP being appointed, how it was appointed etcetera up to the point of my suspension. The reasons why I was suspended together with the documents that I took. Together with the charges that were related in my suspension. Thank you Chair.

**CHAIRPERSON**: At the time of that disciplinary hearing had there been a change of the board of SAA or was it still the board that was there when you were suspended?

**MS CYNTHIA AGNES SORAYA STIMPEL**: It was a new board. Thank you.

10 **CHAIRPERSON**: It was a new board?

**MS CYNTHIA AGNES SORAYA STIMPEL**: It was a new board that were put in place Chair and based on some investigation the board had asked – had placed at the time the two senior executives on suspension and then asked – and had an investigation and then had the subsequent disciplinary hearing. Thank you.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR**: Thank you Chair and just for the purposes of the record and future evidence the findings of that disciplinary process are contained as the last annexure in Ms Stimpel's bundle from page  
20 841 and that is an aspect that Ms Nhantsi takes up in her statement and will do so in her evidence.

**CHAIRPERSON**: Thank you.

**MS CYNTHIA AGNES SORAYA STIMPEL**: Ms Stimpel the last question from my side just relates to the criticism that is made of you and Ms Nhantsi's statement to the commission which we will deal with next

week. She has numerous criticisms of your character and the manner in which you engage with her and I would like to give you an opportunity for the record to respond to that.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Are you going to read what she wrote?

**ADV KATE HOFMEYR:** I can.

**MS CYNTHIA AGNES SORAYA STIMPEL:** I do not have it in front of me.

**ADV KATE HOFMEYR:** There are a series of allegations as to your  
10 bullying mode of engaging with her. There are allegations about on one instance you representing a racist attitude and those are the aspects that I would like to have your comment on.

**MS CYNTHIA AGNES SORAYA STIMPEL:** Thank you Chair. I do not have it in front of me that so I just want to know which point it was because it goes throughout the document but I actually object to that. My – I recall in her writing she says I used to storm into her office and swear. It is actually not in my nature to swear. I think the word I use often is damn. If I have to go a bad swearing word and I was always highly respectful of Ms Nhantsi. I always made an appointment first  
20 before I could see her and she had a secretary that would not allow you to enter her office so I found that very untruthful of her to state that in her statement. I have not done that. Also there is the statement saying that I have told her she does not belong in that position because she only got for – because of BEE. I would never have done that and again I say that is untrue. On the contrary I always felt sorry for Ms

Nhantsi. I saw her first as a mother ...

**CHAIRPERSON**: Ja I think it says because of affirmative action.

**MS CYNTHIA AGNES SORAYA STIMPEL**: Yes, yes. Affirmative action.

And – but I always saw her first as a woman and as a mother and I always respect that first in my colleagues. I see them first as that person who has to take care of others, who has to nurture others and that is how I saw her first. And I even told my colleagues I wonder why she is following this agenda and pushing the BNP you know and not listening to us and seeking advice from any of us around her. So yes I  
10 disagree with all those. They all untrue. Thank you.

**ADV KATE HOFMEYR**: Chair there are no further questions from our side subject to any further from you.

**CHAIRPERSON**: Okay. No thank you. Thank you very much for coming to share your evidence with the commission. You may be asked to come back at a later stage. I am sure you will have no problem but for now you are excused.

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

**CHAIRPERSON**: Thank you.

**MS CYNTHIA AGNES SORAYA STIMPEL**: Much appreciated.

20 **ADV KATE HOFMEYR**: Chair the next witness Mr Van Der Merwe is here. We happy to start with him now unless it is convenient to take an earlier break. We are in your hands.

**CHAIRPERSON**: No I think we can start.

**ADV KATE HOFMEYR**: Certainly.

**CHAIRPERSON**: Do you want five minutes to...

**ADV KATE HOFMEYR:** Could we just arrange the table.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And have things ready.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** Okay. We will – five minutes?

**ADV KATE HOFMEYR:** Five minutes will be fine.

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

**REGISTRAR:** All rise.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready?

**ADV KATE HOFMEYR:** We are indeed Chair.

**CHAIRPERSON:** Thank you. Let us proceed.

**ADV KATE HOFMEYR:** Thank you. Chair we next have the evidence of Mr Pieter van der Merwe.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** If I could ask for him to be sworn in.

**CHAIRPERSON:** Yes. Please administer the oath or affirmation.

20 **REGISTRAR:** Please state your full names for the record.

**PIETER JOHANNES VAN DER MERWE:** My name is Pieter Johannes van Der Merwe.

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

**PIETER JOHANNES VAN DER MERWE:** No.

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

**PIETER JOHANNES VAN DER MERWE:** Yes.

**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.

**PIETER JOHANNES VAN DER MERWE:** So help me God.

**PIETER JOHANNES VAN DER MERWE:** (duly sworn, states)

**REGISTRAR:** Thank you.

10 **CHAIRPERSON:** Yes thank you. You may proceed.

**ADV KATE HOFMEYR:** Thank you Chair. Mr van der Merwe you have in front of you a bundle of your evidence documents. They include a statement – a sworn statement – from yourself and a few other documents that I would like to just go through with you initially so that we can orientate ourselves in the file.

I have left on the witness table the bundle of Ms Stimpel's evidence because there may be once or twice where I need to ask you to reference a document in those files but if we can start with your file. It commences at page 1 with a sheet headed "Statement of  
20 Pieter van der Merwe". Do you see that?

**PIETER JOHANNES VAN DER MERWE:** Yes, thank you.

**ADV KATE HOFMEYR:** Mr van der Merwe if you bring the microphone a bit closer to you and also turn it on at the bottom, thank you.

**PIETER JOHANNES VAN DER MERWE:** Yes Chair.

**ADV KATE HOFMEYR:** So that is the first document which runs to

page 10 and as I have it at page 10 it was deposed to on 7 June of this year before a Commissioner of Oaths. Is that correct?

**PIETER JOHANNES VAN DER MERWE**: Yes Chair.

**ADV KATE HOFMEYR**: Thank you and then what follows it are the series of annexures to the affidavit which run – at least the sworn statement – which run to page 32. I then would like you to look at from page 36 which is another statement under oath from you – as I have it – that will be under the divider 2 and under the tag A2.1. Do you have that?

10 **PIETER JOHANNES VAN DER MERWE**: Yes Chair.

**ADV KATE HOFMEYR**: That appears to be a second statement of yours and if you go to its last page which is at page 40. Again signed before a Commissioner of Oaths but this time on 8 April 2019. Is that correct?

**PIETER JOHANNES VAN DER MERWE**: Yes Chair.

**ADV KATE HOFMEYR**: And that as I understand it was a previous sworn statement you provided to the Commission. Is that correct?

**PIETER JOHANNES VAN DER MERWE**: Yes Chair.

**ADV KATE HOFMEYR**: Mr van der Merwe I understand that there are some aspects that you want to correct in relation both to this earlier  
20 statement in April as well as one or two in relation to the June statement. As I did with Ms Stimpel I propose Chair to deal with those corrections in the course of the evidence.

**PIETER JOHANNES VAN DER MERWE**: Yes Chair.

**CHAIRPERSON**: That is fine.

**ADV KATE HOFMEYR**: Thank you Chair and then just to understand

the remaining two documents in that additional bundle section – at least there are three remaining documents. The first is a CV of a person which is actually an annexure to your – your April statement. Is that correct?

**PIETER JOHANNES VAN DER MERWE**: That is correct Chair.

**CHAIRPERSON**: That is at what page?

**ADV KATE HOFMEYR**: That is at page 40.1 Chair.

**CHAIRPERSON**: Yes, thank you.

**ADV KATE HOFMEYR**: And then if we go over again pass the next tab  
10 to page 41 this is a copy of an email which we will deal with in your evidence but just to confirm I understand it to be an email that you received on 22 April 2016 which you then subsequently forwarded to the Commission's investigators. Is that correct?

**PIETER JOHANNES VAN DER MERWE**: That is correct Chair.

**ADV KATE HOFMEYR**: And the same applies – as I understand it – for the document at page 43 that similarly is an email you received on 22 April 2016 and forwarded to the Commission's investigators. Is that correct?

**PIETER JOHANNES VAN DER MERWE**: That is correct Chair.

20 **ADV KATE HOFMEYR**: Thank you. Each of those emails have letters attached to them which were the attachments in the emails but we will come to that in the evidence.

**PIETER JOHANNES VAN DER MERWE**: That is correct.

**ADV KATE HOFMEYR**: Thank you. Mr van der Merwe if we turn to page 3 of your sworn statement and when I say page 3 I am – I am

really referring to the paginated pages at the top right hand corner because you have internal numbering which is different but when we refer to pages it will be the one in the top right hand corner of the page. Do you have that?

**PIETER JOHANNES VAN DER MERWE:** Yes I do Chair.

**ADV KATE HOFMEYR:** Thank you and you begin there in the introductory section telling the reader of your affidavit about the formation of Grissag AG. Can you please tell the Chair about how that company was formed and its origins?

10 **PIETER JOHANNES VAN DER MERWE:** Yes Chair. I met with Mr Sergey Pokusaev - whose CV is attached in the document itself – we met at – informally – at a lodge in Zimbabwe. He was conducting business for the Government at that stage and I stayed there for a period of time and we basically – we came to know each other and I was actually asking him if there is a possibility - because I have learnt that they do funding for Governments – if I can introduce that similarly funding to be done to South African entities at that stage which he then agreed and that is how Grissag was started.

20 **ADV KATE HOFMEYR:** Just two follow up questions. When about was that?

**PIETER JOHANNES VAN DER MERWE:** When I actually met him was in 2014 and the registration process was – if I am correct – in 2015.

**ADV KATE HOFMEYR:** And you said in your testimony that Mr Pokusaev was a representative of the Government. Which Government was that?



**PIETER JOHANNES VAN DER MERWE:** No Chair. He previously ...

**ADV KATE HOFMEYR:** Thank you.

**PIETER JOHANNES VAN DER MERWE:** Worked for both the Russian Federation and for the Soviet Union. He is aged 71 this year. He worked directly under – under the Minister of Finance with huge experience. He has visited more than 107 countries in his life. So he is very familiar with financing and especially international financing law.

**ADV KATE HOFMEYR:** So at the time that you met him in 2014 - and  
10 apologies for the error on my part – what position was he occupying at that stage?

**PIETER JOHANNES VAN DER MERWE:** He was retired. He retired in 2000 and at that stage he was residing in Amman in Jordan until 2016.

**ADV KATE HOFMEYR:** And then you mention the creation of a company in 2015. Tell us about that. What was the name of the company and who were the Directors?

**PIETER JOHANNES VAN DER MERWE:** Grissag SA (Pty) Ltd which was registered in South Africa under South African Law and there were just two Directors - Mr Pokusaev and myself.

20 **ADV KATE HOFMEYR:** Has that remained the position insofar as Directors are concerned since 2015?

**PIETER JOHANNES VAN DER MERWE:** That has remained until 2019, yes Chair.

**ADV KATE HOFMEYR:** To this day?

**PIETER JOHANNES VAN DER MERWE:** I have changed it recently

about three months ago.

**ADV KATE HOFMEYR**: Right, thank you. At paragraph 8 on ...

**CHAIRPERSON**: I am sorry. You have changed – you have changed it – did you say you have changed it?

**PIETER JOHANNES VAN DER MERWE**: Yes.

**CHAIRPERSON**: What does that mean?

**PIETER JOHANNES VAN DER MERWE**: We also have an entity which is based in London which is also Grissag. It is just AG Limited instead of the (Pty) Ltd. There we have four Directors. In South Africa I have  
10 – Mr Pokusaev has resigned. I think it was in February or March and I added a business BEE component and new Director to the Grissag AG (Pty) Ltd South Africa, Chair.

**CHAIRPERSON**: So there has been a change of directors to some extent?

**PIETER JOHANNES VAN DER MERWE**: In 2019 Chair.

**CHAIRPERSON**: In 2019 in regard to the South African version of the company?

**PIETER JOHANNES VAN DER MERWE**: Correct Chair.

**CHAIRPERSON**: But you say there is also a similar company in  
20 London?

**PIETER JOHANNES VAN DER MERWE**: Registered in – in the UK.

**CHAIRPERSON**: Yes.

**PIETER JOHANNES VAN DER MERWE**: With the same name.

**CHAIRPERSON**: Yes.

**PIETER JOHANNES VAN DER MERWE**: We have got different entities

Chair. There ...

**CHAIRPERSON**: It is different entities but in substance it is the same people?

**PIETER JOHANNES VAN DER MERWE**: Correct Chair.

**CHAIRPERSON**: In terms of Directors and so on?

**PIETER JOHANNES VAN DER MERWE**: Not entirely because ...

**CHAIRPERSON**: *Ja*.

**PIETER JOHANNES VAN DER MERWE**: The South African entity has got now a BEE component ...

10 **CHAIRPERSON**: Yes, yes.

**PIETER JOHANNES VAN DER MERWE**: With Mr Pokusaev ...

**CHAIRPERSON**: Yes.

**PIETER JOHANNES VAN DER MERWE**: Resigning on that ...

**CHAIRPERSON**: *Ja*.

**PIETER JOHANNES VAN DER MERWE**: But in the – in the component in – in the UK itself ...

**CHAIRPERSON**: Hm.

**PIETER JOHANNES VAN DER MERWE**: There are four Directors.

**CHAIRPERSON**: Hm.

20 **ADV KATE HOFMEYR**:

**PIETER JOHANNES VAN DER MERWE**: I am the only South African on that – as a Director and the other three Directors are Mr Pokusaev who is currently in Russia ...

**CHAIRPERSON**: Hm.

**PIETER JOHANNES VAN DER MERWE**: And there are two UK citizens

who ...

**CHAIRPERSON:** Oh, okay.

**PIETER JOHANNES VAN DER MERWE:** Are Directors there.

**CHAIRPERSON:** Okay, thank you.

**PIETER JOHANNES VAN DER MERWE:** Thank you Chair.

**ADV KATE HOFMEYR:** Thank you Chair. Can I just get clarity? At the time that the 15 billion debt consolidation of SAA was taking place which is really the years 2015 and 2016. The company Grissag AG that was registered in South Africa during that entire period who were its  
10 Directors?

**PIETER JOHANNES VAN DER MERWE:** Chair as I stated myself and Mr Pokusaev since 2015 until 2019.

**ADV KATE HOFMEYR:** Thank you and then in relation to the London entity that you refer to we will go through your evidence with all of the various interactions that the South African company had at various points in time with the SAAs endeavour to raise funds but was the London company involved in those interactions?

**PIETER JOHANNES VAN DER MERWE:** Chair no. If I can just say the reason for that was it was made clear to me that any business that has  
20 to be done inside South Africa must be a South African entity. So for that reason the South African entity was registered Chair.

**ADV KATE HOFMEYR:** Thank you. Now at the bottom of page 3 of your statement you start to talk about your engagement with the Free State Development Corporation. Can you please explain to the Chair how those arose, when they arose and what they entailed?

**PIETER JOHANNES VAN DER MERWE:** Yes Chair. During 2015 - I think the company was registered in February or March 2015 – I basically then went to various departments and even our neighbouring countries like Lesotho and Swaziland and because I am residing in the Free State Province I also went to Bloemfontein and I met up with the FDC.

My biggest market for – was at that stage – was for housing. We really – I tried to get a model on-board where we can do the gap housing – for instance – where Grissag then can be part of doing the  
10 funding as - as such. So I then met up with the FDC and I wrote them a proposal.

At that stage they explained to me that they are more interested in buying certain buildings which they rent out for – for different reasons and in the documentation there – there is a letter which – which can confirm and the date that we were talking about a possibility of funding this house – actually the buildings as – as such which at that stage was a priority for the FDC, thank you Chair.

**ADV KATE HOFMEYR:** That letter – just for your reference – is at page 11 and it is dated August 2015 – as I understand your statement. Can  
20 you confirm that that is the correspondence you were referring to?

**PIETER JOHANNES VAN DER MERWE:** Yes Chair I confirm that is the correspondence that I received from the FDC.

**ADV KATE HOFMEYR:** Over the page at page 4 of your statement. You talk about the reasons why that funding for the housing project did not go through. Can you explain to us what the issue was there?

**PIETER JOHANNES VAN DER MERWE:** Chair for Grissag to do funding in any country for any project as such we see ourselves not as investors. They are a funding entity and it is private capital that they use. So when they engage in – in any project they want to make 100 percent certain that they will be repaid.

So they would insist on having a bankable guarantee which will be the surety for the payback of any amount that is needed for a specific project as such, thank you Chair.

**ADV KATE HOFMEYR:** And why did that become an issue in relation to  
10 the housing project with the FDC?

**PIETER JOHANNES VAN DER MERWE:** With the FDC itself they corresponded to me to say that it is very difficult because they need to get a guarantee from Treasury and at that stage such guarantees are not available to be issued and I even asked them do they have a current – a book with enough assets where they can issue a guarantee against that and the reply that I got was that it was not doable for them to issue a guarantee.

They were more hoping that we would use the new asset that was supposed to be bought as – as a payment guarantee should they  
20 not pay back from the – the funder's perspective was they do not want to end up with a lot of property in foreign countries. Thank you Chair.

**ADV KATE HOFMEYR:** And then on the same page – page 4 from paragraph 10 you start to talk about your interactions with Seacrest as an entity. The full name is Seacrest Investments 115 (Pty) Ltd. You – you recount at paragraph 10 that that also began in August 2015. Can

you tell us about those interactions? Who approached you?

**PIETER JOHANNES VAN DER MERWE:** Chair I was contacted by Mr Leon Etzebeth who is an attorney in Nigel and he has got a representative or somebody renting office space from him. I am not 100 percent certain how the relationship works – a Mr **Rambal**. If I am – if I am correct with the pronunciation of that and they asked me if Grissag would be interested in funding SAA who wanted to do debt consolidation. At that stage the amount was R14 billion.

**ADV KATE HOFMEYR:** Did he indicate to you how he came to learn of  
10 Grissag AG as a potential funder?

**PIETER JOHANNES VAN DER MERWE:** Chair they did not directly tell me that they have had some engagement with a specific person. They just said to me at that stage - and that was my understanding - that there was a tender that was out for funding SAA for this 14 billion and they made it very clear to me that as Grissag has not been registered as an FSP provider at that stage and we did not have any BEE component that we cannot basically on our own tender on this specific tender and I said that we do not have a problem we can do a JV if it is beneficial for both the parties, thank you Chair.

20 **ADV KATE HOFMEYR:** Mr van der Merwe just to get greater clarity I was interested in how Mr Etzebeth learnt of Grissag as a potential funder. Did he ever disclose that to you when you first communicated?

**PIETER JOHANNES VAN DER MERWE:** Chair no. I cannot recall a direct time or a date that he disclosed how we met but as I said in – from – because this is August of this year – I started with market as

early as March when the company was registered. So it could have come from - from any source at that – at that stage. So I – I honestly cannot say it was - I was introduced by a specific person Chair.

**ADV KATE HOFMEYR:** Thank you and you have – you have dealt with the terms on which Seacrest was explaining to you the need for them to be involved in the arrangement with SAA - as I have it. You were told two things. You were told Grissag did not have an FSP licence and similarly it would not satisfy BBEE requirements and so the idea as I understand it is that you would then form a JV with Seacrest insofar as  
10 the funding for SAA was concerned. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** And you talk at paragraph 12 about a Memorandum of Agreement that was subsequently entered into between Grissag and Seacrest. A copy of that is attached as Annexure VDM2 to your sworn statement. You will find it at page 12. If we could just take a look at that.

Mr van der Merwe the first thing I note in relation to this is that at paragraph 12 of your statement you talk about a Memorandum of Agreement that as subsequently signed on 27 August between Grissag  
20 and Seacrest but if you go to page 15 which is the last page of this agreement it does not appear to bear a signature of Seacrest. Can you assist us there?

**PIETER JOHANNES VAN DER MERWE:** Yes Chair. The agreement was definitely signed. I just could not find the copy at that stage because it happened a few years back and the transaction went



nowhere. So I did not find it as a necessity to keep it and after I have been contacted by the – the Commission I found whatever documents I had and I prepared that. So this arrangement as in this addendum that is the arrangements that we discussed and that is what we agreed upon, thank you Chair.

**ADV KATE HOFMEYR:** So just to be clear despite it not being signed I take your evidence to be you have gone through the terms as reflected here and you are satisfy that they accord with the terms of the agreement that was reached with Seacrest. Is that correct?

10 **PIETER JOHANNES VAN DER MERWE:** That is correct, *ja*.

**ADV KATE HOFMEYR:** I would like to just highlight one or two points in the agreement. Did this agreement relate to the SAA funding opportunity?

**PIETER JOHANNES VAN DER MERWE:** Yes Chair.

**ADV KATE HOFMEYR:** And if you go to page 13 you will see Clause 2.4 there. The copy is not all that easy to decipher but I think we will – we will do alright. At 2.4 it says:

“Amongst the terms that the interest rate will be  
fixed at 4.5 percent per annum.”

20 What interest rate is that referring to?

**PIETER JOHANNES VAN DER MERWE:** Chair that is the interest rate that S - SAA would pay back the loan when the money was paid out. So that is a – a fixed interest rate that we charge. It is 4.5 percent in this specific arrangement.

**ADV KATE HOFMEYR:** Well can I – can I probe that a bit further

because if you look at Clause 4 on that page. It records that:

“Seacrest’s benefit from the transaction in terms of will be the difference between the interest rate of 4.5 percent at which Grissag’s founders will arrange the funding for the loans and such higher interest rate as Seacrest may be able to negotiate with SAA.”

Mr van der Merwe I draw your attention to that because your answer to my previous question was that 4.5 percent would be what  
10 SAA paid. Well can we just probe that because as I understand this JV Agreement Seacrest was going to engaging with SAA. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** Chair that is correct. The 4.5 was the funding that was made available but in this specific – specific case to Seacrest itself and Seacrest would put a certain percentage which they would negotiate for their own benefit. That percentage was never discussed with me or disclosed to me. Thank you Chair.

**ADV KATE HOFMEYR:** Right. So you knew though the Grissag interest rate would be 4.5 percent in the transaction and you were aware from the terms of this agreement that Seacrest would add a  
20 mark-up – so speak – and that would be its interest in the transaction anything above 4.5 percent but from SAAs side SAA is going to pay the Seacrest amount whatever it is above 4.5 percent. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Thank you. Chair I see we have reached the lunch adjournment time. If it is convenient to break now. We can

continue after the lunch.

**CHAIRPERSON:** Yes, thank you. So this additional interest or portion of the interest that would have nothing to do with you?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**CHAIRPERSON:** It was just going to be between SAA and Seacrest?

**PIETER JOHANNES VAN DER MERWE:** The reason for that was because they were – I was using the BEE component which was compulsory as – as it was explained to me and for the fact that we would be making use of an FSP licence which I did not have at that  
10 point in time. So that will be their contribution and that is why they sought some sort of relief in getting some payment but what that payment amount was I – I – that was never discussed with me.

**CHAIRPERSON:** I would have expected that the normal thing would have been that everything would be in this agreement and that then between the two of you – you would divide what – you know – your proceeds from the transaction among between the two of you the way you would have agreed.

**PIETER JOHANNES VAN DER MERWE:** Chair that is correct. That is normally how we conduct the contracts.

20 **CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** But they insisted on doing it in this way.

**CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** So this contract was not drafted by myself.

**CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** It was – it was drafted by Seacrest Investments.

**CHAIRPERSON:** Yes and you say you never got to know exactly what percentage they agreed upon with SAA?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair. I – I was not aware what percentage ...

**CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** They put forward ...

10 **CHAIRPERSON:** *Ja.*

**PIETER JOHANNES VAN DER MERWE:** Towards SAA for funding.

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

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready?

**ADV KATE HOFMEYR:** Indeed Chair.

**CHAIRPERSON:** Let's proceed.

20 **ADV KATE HOFMEYR:** Thank you. Mr van der Merwe we were before the lunch adjournment at page four of your sworn statement and we were dealing in the last paragraph on that page with the memorandum of agreement that had been concluded between Grissag AG and Seacrest, you recall that?

**MR PIETER JOHANNES VAN DER MERWE:** Yes Chair.

**ADV KATE HOFMEYR:** You say at the end of paragraph 12 there that you never saw the tender yourself nor did you try to look for it. So can I just clarify there, you took SeaCrest at it's word did you that they would have to be the interface with SAA because of the requirements of BBBEE as well as the FSP license, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** I'd like to take you to the tender that was sent to the various, potential funders at the time because you will note fro it that those were not stipulated requirements of the tender and for that  
10 purpose I'd like you to go to the evidence bundle of Ms Stimpel and you'll find it in A of that bundle. Chair I've just realised that you may not have your, Ms Stimpel bundle with you, am I correct on that (indistinct) Mr van der Merwe. I am going to make reference to one or two of the documents in Ms Stimpel's bundle, how would you like to proceed?

**CHAIRPERSON:** Well if it is...(intervention).

**ADV KATE HOFMEYR:** Oh we have an extra Chair, I've just been told.

**CHAIRPERSON:** Well I'm sure mine should be with Zonaka.

20 **ADV KATE HOFMEYR:** There seems to be an affirmation, yes Chair.

**CHAIRPERSON:** Okay I'll adjourn for two minutes for her to bring all that I need onto the table here.

**ADV KATE HOFMEYR:** Apologies for that.

**CHAIRPERSON:** We'll adjourn.

**SHORT ADJOURNMENT**

**INQUIRY RESUMES**

**CHAIRPERSON:** I thought you had been asked whether this will be all that I will need, it turns out you were not asked.

**ADV KATE HOFMEYR:** I was not apologies Chair.

**CHAIRPERSON:** Okay, alright, thank you.

**ADV KATE HOFMEYR:** Thank you so much, Chair I've also been reminded that Mr van der Merwe's legal representative is here today and would like to place himself on record, if we may do that.

**CHAIRPERSON:** Oh yes we should have done it earlier, let's do it  
10 now.

**ADV KATE HOFMEYR:** Thank you.

**MR ANDRE VON METZINGER:** Thank you Chair, Andre Von Metzinger as I introduced myself earlier from MVM attorneys under instruction from Mr van der Merwe and Grissag, thank you.

**CHAIRPERSON:** Thank you very much.

**ADV KATE HOFMEYR:** Thank you Chair. So Mr van der Merwe I was asking that we go to file A of Ms Stimpel's evidence and the particular page I'd like you to turn up there is page 220 you'll find it under flag  
20 11. Mr van der Merwe just to orientate you in relation to this document, it was Ms Stimpel's evidence that this was the request for proposal that was sent out after the Board of SAA determined that it wanted to be more involved in the process of procuring the 15billion funding for SAA and they required that this request for proposal then be sent out to specified list of recipients one of which included SeaCrest. You will see that is a single page document with signatures on the second page

and it is accompanied by a term loan facility term sheet, have you seen this document before?

**MR PIETER JOHANNES VAN DER MERWE:** Chair, no I've never seen this document.

**ADV KATE HOFMEYR:** Now you can take my word for it but if you want to read it feel free to do so, as I read the text of this it makes no reference to requirements of either a FSP license or BBEE requirements, are you happy to proceed on the basis that it doesn't say that?

10 **MR PIETER JOHANNES VAN DER MERWE:** Yes Chair I acknowledge that.

**ADV KATE HOFMEYR:** Mr van der Merwe if that is so, why do you think SeaCrest would have said otherwise to you in relation to its interactions with you?

**MR PIETER JOHANNES VAN DER MERWE:** Chair I wouldn't have an answer to that but this document clearly states 15billion and I was approached initially for 14billion so there's definitely two different amounts that we're talking about so I cannot verify to say that perhaps there was additional documents when they starting engaging with the  
20 14billion but according to my records the initial amount was 14billion and it was then increased to 15billion, this document shows 15billion.

**ADV KATE HOFMEYR:** Yes can you take a look at point 9 on the document under the first amount of 15billion, do you see reference to bridging finance in the interim of 1billion, were you engaged at all about that?

**MR PIETER JOHANNES VAN DER MERWE:** Not at all Chair.

**ADV KATE HOFMEYR:** Insofar as the RFP's are concerned, this to the knowledge, certainly to ourselves as the Commission and our engagements with SAA this was the only one that was sent out at this point in time, were you not concerned to verify what you were being told about the terms on which the arrangement could be taken forward?

**MR PIETER JOHANNES VAN DER MERWE:** Chair I was not concerned about that because it's a common practice in the new South Africa that one of the biggest requirements is indeed have BBB  
10 representation, so no I did not question this.

**ADV KATE HOFMEYR:** We saw the terms of the agreement that you concluded with SeaCrest, in term of which you, Grissag AG was going to charge 4.5% and SeaCrest was going to add a percentage above that when it bid for the tender, do you recall that?

**MR PIETER JOHANNES VAN DER MERWE:** Yes Chair I do.

**ADV KATE HOFMEYR:** Were you keen to win the tender?

**MR PIETER JOHANNES VAN DER MERWE:** Yes I was keen to win the tender.

**ADV KATE HOFMEYR:** Would any – do you think it would have been  
20 useful to have come in at the lowest possible interest rate on the transaction to secure the prospect of winning the tender?

**MR PIETER JOHANNES VAN DER MERWE:** Yes I definitely think so.

**ADV KATE HOFMEYR:** Would it not then have been in your interest to determine whether you actually had to have SeaCrest there because their involvement simply served to increase the interest rate at which



they would bid for the SAA funding tender.

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair but anyway if I look at what they proposed it was still beyond any of the competition in the market at that stage.

**ADV KATE HOFMEYR:** Explain that please, what did they propose, apologies Chair.

**CHAIRPERSON:** Yes you mean below, you mean the interest rate was below...(intervention).

**MR PIETER JOHANNES VAN DER MERWE:** Even if they should add a  
10 0.5 or a 1% towards that it would still be lower than what the repo rate in South Africa, at that stage was Chair.

**ADV KATE HOFMEYR:** But Mr Grissag your evidence earlier was that you had no knowledge whatever of the mark-up that they were going to add to the 4.5% is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** So you had no certainty that they would come in under the repo rate, did you?

**MR PIETER JOHANNES VAN DER MERWE:** No I did not have a  
20 certainty I just thought that it would be important for them to be - to come in below a rate otherwise it wouldn't make any business sense they can – SAA can just go to a commercial bank then Chair.

**ADV KATE HOFMEYR:** But as I understand your evidence, you didn't seek to investigate this at all.

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** Thank you. If we can the go to page 5 of your

sworn statement, you talk at paragraphs 13 and 14 there about other engagements that you were having over that period in terms of developing Grissag's business development and marketing, my sense from those paragraphs is you were actively pursuing funding opportunities, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** And give us a sense of who you were approaching at that time?

**MR PIETER JOHANNES VAN DER MERWE:** Very early in March  
10 already of 2015 we had meetings in Lesotho with the government, in Swaziland for instance and various Municipalities which I thought were in the need of funding for projects Chair.

**ADV KATE HOFMEYR:** You make references in paragraph 13 to a meeting with Eskom, with the Shanduka Group and one interaction with Mr Wolf Meyer at the time who was then the Chief Financial Officer, do you confirm that you had those interactions?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** And were you leading – were you contacting them or were they contacting you?

20 **MR PIETER JOHANNES VAN DER MERWE:** No I was contacting them Chair.

**ADV KATE HOFMEYR:** And you record at paragraph 15, that in December 2015 you were told by Mr Rambau that SAA was going to increase the amount to be sourced to 15billion, what explanation were you given for that increase?

**MR PIETER JOHANNES VAN DER MERWE:** There was no explanation given Chair, it was just the funding has gone up from 14 to 15 as some months has lapsed and they did not secure funding so the need for more money was getting a bigger loan at that stage Chair.

**ADV KATE HOFMEYR:** And at no point in these interactions, as I understand your evidence, did SeaCrest ever disclose what its mark-up was on your 4.5%, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** If you are subsequently told, and the evidence  
10 we heard yesterday confirms this, that they went in at 5.8%, which is a margin of 1.3% on your 4.5 – let me just get that right, they went in at 5.8% - yes it's a margin of 1.3% on your 4.5%, what would you make of that mark-up, is that in line with the levels for mark-up for sources of funds internationally, do you have knowledge of that?

**MR PIETER JOHANNES VAN DER MERWE:** Chair yes I do have enough knowledge, international, the mark-up for an amount this high is not more than 0.5%.

**ADV KATE HOFMEYR:** Chair that is consistent with the evidence,  
yesterday of Ms Stimpel when she engaged the banks for those  
20 hypothetical quotes. So would you have been concerned about a mark-up in the order of 1.3% in terms of the competitiveness of the bid?

**MR PIETER JOHANNES VAN DER MERWE:** Chair definitely yes.

**ADV KATE HOFMEYR:** But you made no effort to uncover what the percentage was that they were going in with?

**MR PIETER JOHANNES VAN DER MERWE:** Not at that stage but we

must remember that only term sheets and agreements was issue so the final documents from SAA was not approved, so at that stage no, the answer is no I did not make any effort to find out, it was not disclosed to me, it was, like privileged information Chair.

**ADV KATE HOFMEYR:** What were you asked for from SeaCrest in terms of proof of funds and other documentation, and I ask that because we heard evidence yesterday of the efforts of SAA to get greater clarity as to the source of the funds that SeaCrest was going to be providing, what did they ask you for?

10 **MR PIETER JOHANNES VAN DER MERWE:** SeaCrest – Chair SeaCrest did ask for proof of funds which I told them at that stage it's not even an option because the process that is done through the international banks that we work through is that you need to have a signed agreement and they then will first get approval from their central bank for such a transaction to take place and only after that, we are allowed to issue proof of funds, definitely not up front, they see it s just a fact seeking mission Chair.

**ADV KATE HOFMEYR:** Mr van der Merwe there was also evidence in the course of yesterday about a due diligence that was done by the  
20 legal department of SAA and conclusion by that department that they were concerned as to the source of funds aspects and a proposal from that department that nonetheless they recommended that an agreement be concluded subject to a series of conditions precedent which were designed – we went through them in some detail to enable SAA to be the recipient of this information and without it, no agreement coming

into existence. Were you aware of those – that position having been adopted by SAA?

**MR PIETER JOHANNES VAN DER MERWE:** Chair no.

**ADV KATE HOFMEYR:** What would have been your attitude if you had been told that there would be an agreement concluded, it would include conditions precedent but the required these proof of funds, confirmation from the Reserve Bank, Financial Surveillance Department etcetera as pre-requisites to the operation of the agreement.

**MR PIETER JOHANNES VAN DER MERWE:** Grissag Chair, view will  
10 be that an agreement will be drafted where it would be approved with the certain measures put in place, the proof of funds and the source of funds and the necessary due diligence that they need to be done but there needs to be an agreement so if all that points have been met SAA cannot walk away from the transaction at that stage. So that is our attitude towards funding any entity Chair.

**ADV KATE HOFMEYR:** I'd like to just dwell on the point for a moment because it does have some significance in the development of events because you see the Group Treasurer's proposal to the Board of SAA at the end of 2015, amongst other things was that the SeaCrest bid should  
20 be accepted but that was subject to the caveat that the agreement on these terms with these conditions precedent be concluded so that the position of SAA was protected insofar as they didn't know enough yet about what was happening behind SeaCrest with the funder. So if you had been privy to all of that at the time can I take it that you would have been satisfied having had the agreement signed to then provide

the necessary information?

**MR PIETER JOHANNES VAN DER MERWE:** Chair 100% we would be  
- would have been satisfied with that.

**ADV KATE HOFMEYR:** Chair we know from the evidence yesterday  
that was not to happen because on the 3<sup>rd</sup> of December a different  
decision was taken. Mr van der Merwe if we can return to page 5 of  
your statement. You begin at paragraph 16 to talk about the period  
while you were awaiting an outcome from SeaCrest about its  
engagements with SAA and at that point, still in 2015 you were dealing  
10 with the FDC on the housing project. Your affidavit – your sworn  
statement at least then goes on to talk about how SAA and funding  
through FDC came up, can you take us through those events.

**MR PIETER JOHANNES VAN DER MERWE:** Chair I actually engaged  
with the FDC before I engaged with SeaCrest Capital and my main  
focus was housing development and we had numerous of meetings with  
the same criteria, the FDC should be in a position to issue a bankable  
guarantee which is acceptable to the funder for the funds to be  
released as such and there is documentation stating some of the  
correspondence that relates to that and it was a request from my side,  
20 from Grissag's side that I asked them, is there a possibility that we can  
fund SAA through the FDC and not through SeaCrest as the transaction  
wasn't going anywhere and the answer at that stage was, they will look  
into that Chair.

**ADV KATE HOFMEYR:** And when about was that?

**MR PIETER JOHANNES VAN DER MERWE:** If I recall Chair, end of

November beginning of December I should say.

**ADV KATE HOFMEYR:** Of 2015?

**MR PIETER JOHANNES VAN DER MERWE:** Of 2015, correct.

**ADV KATE HOFMEYR:** In the course of paragraph 17 on page 5 you indicate that the FDC enquired whether Grissag was a Financial Services Provider and registered with FSB, why was it making those enquiries?

**MR PIETER JOHANNES VAN DER MERWE:** Chair I do not have the answer to that question, I do not know what the reason for that was, if  
10 it was standard practice, so I do not know what's the answer to that question.

**ADV KATE HOFMEYR:** Was that in the context of the SAA funding discussion or was it separate to that?

**MR PIETER JOHANNES VAN DER MERWE:** That was specially in the context of the SAA funding because with housing you can approach it differently.

**ADV KATE HOFMEYR:** Did you establish whether the Free State Development Corporation had a FSP license?

**MR PIETER JOHANNES VAN DER MERWE:** No I did not establish but  
20 they told me that they do have Chair.

**ADV KATE HOFMEYR:** And did you make any enquiries as to the likelihood that one State owned entity could lend money to another State owned entity was that something that concerned you at all?

**MR PIETER JOHANNES VAN DER MERWE:** Chair no, I did not know what the rules and regulations for that was and that's why I put the

enquiry for them to find out if it was possible Chair.

**ADV KATE HOFMEYR:** And what did they tell you?

**MR PIETER JOHANNES VAN DER MERWE:** The FDC came back to me in a short period of time, it was weeks, definitely not months and they said no, one State entity cannot finance another State entity and I accepted that Chair.

**ADV KATE HOFMEYR:** Well could we go back a moment because it seems to me there would have been further interactions before you got the no-go signal so to speak because as I understand your evidence  
10 you first raised, towards possibly the end of November early December 2015 with the FDC, the possibility of funding SAA through them, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** I understand your evidence to be, they said they would look into it, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct.

**ADV KATE HOFMEYR:** Was there any point thereafter, prior to the no-go conversation that you provided the with a term sheet in relation to what funding you would make available and on what terms?

20 **MR PIETER JOHANNES VAN DER MERWE:** Chair yes it's actually common practice for Grissag to issue a standard term sheet, so I did send an email, there's a copy in my affidavit with the basic terms and conditions and interest rate regarding funding the SAA for the same amount of 15billion rand.

**ADV KATE HOFMEYR:** Let's go to that, it's at page 16 of your sworn



statement, this is the first...(intervention).

**CHAIRPERSON:** Did you say page 16?

**ADV KATE HOFMEYR:** 16 yes.

**CHAIRPERSON:** Of the statement?

**ADV KATE HOFMEYR:** Well it's an Annexure to the statement, I apologise Chair.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** So it's Annexure 3, Mr van der Merwe this is the first note I have of a correction that you want to make to the affidavit – to your sworn statement because at paragraph 19 on page 6 you say, shortly after this discussion at the end of 2015 I sent Grissag term sheet to FDC, you say I've been shown a copy of the term sheet that FDC provided to SAA and then you say a copy is attached as FDM3 but if we go to FDM3 that does not appear to be a term sheet, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct, it's got the content of the term sheets Chair.

**ADV KATE HOFMEYR:** So what exactly is Annexure 3?

**MR PIETER JOHANNES VAN DER MERWE:** It's a letter addressed to the FDC with the terms and conditions as set out in a standard term sheet that Grissag is used Chair.

**ADV KATE HOFMEYR:** And were you the author of that letter?

**MR PIETER JOHANNES VAN DER MERWE:** I was the author of that letter Chair.

**ADV KATE HOFMEYR:** If you go over to page 17, you – under item 4

there, paragraph 4 indicate the interest rate on the loan and you talk about a fixed 4% per annum to be calculated on each of the draw-down in the event of the guarantee of 3billion being delivered and then there seem to be alternatives, depending on the period within which the agreement and the amount for which the funding is to be provided, is that a fair reading?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** What I notice about that is, the highest percentage there is 4% whereas the percentage that you were going to charge when you were dealing with SeaCrest was 4.5, why come down?  
10

**MR PIETER JOHANNES VAN DER MERWE:** This is a later version Chair, so this was issued in December and I had numerous discussions with the funders itself and I negotiated a better rate as they were quite eager to go ahead with the funding.

**ADV KATE HOFMEYR:** I would like to take you to the actual term sheet that was provided by FDC to SAA so that you can tell us whether you had sight of it at the time, you'll need to go into the bundle of Ms Stimpel's evidence and you will find that term sheet at page 316, which is under tab 21. We can – if we may just start at the commencement of  
20 that Annexure which is actually at page 313, under tab 21. You'll see that page 313 is an email from Mr Shepherd Moyo to SAA funding RFP, it seems to be copied to Ms Phumeza Nhantsi who is Shepherd Moyo, Mr van der Merwe?

**MR PIETER JOHANNES VAN DER MERWE:** Mr Shepherd Moyo at that stage was the CFO of the FDC.

**ADV KATE HOFMEYR:** And it says,

“Good day please find attached our proposed terms sheet for funding as per the RFP”,

And then if you go over to page 316, you’ll see what was the attached term sheet, do you see that?

**MR PIETER JOHANNES VAN DER MERWE:** Yes Chair I see.

**ADV KATE HOFMEYR:** It appears to have been sent on the 24<sup>th</sup> of December 2015, were you involved in this at all?

**MR PIETER JOHANNES VAN DER MERWE:** No Chair I’m a family  
10 man, at that stage I was on holiday so I was not conducting business definitely on the 24<sup>th</sup> of December Chair.

**ADV KATE HOFMEYR:** It doesn’t appear to reflect that gradation in the various interest rates that we saw in your letter to FDC at the time at page 318 there’s a fixed interest rate of 4%, it appears on the full extent of the loan is that – am I reading this correctly?

**MR PIETER JOHANNES VAN DER MERWE:** Yes Chair you’re reading this...(intervention).

**ADV KATE HOFMEYR:** So you weren’t engaged on that at all?

**MR PIETER JOHANNES VAN DER MERWE:** No Chair.

20 **ADV KATE HOFMEYR:** And the document there is what I take to be a Grissag logo did you give them the logo to use?

**MR PIETER JOHANNES VAN DER MERWE:** That is possible that they could have copied that logo Chair.

**ADV KATE HOFMEYR:** But you were not engaged at all in this document?

**MR PIETER JOHANNES VAN DER MERWE:** Chair not in this specific term sheet.

**ADV KATE HOFMEYR:** If we return to your affidavit – sworn statement apologies Chair.

**CHAIRPERSON:** I'm sorry but if you look at the date for when this document was sent, would there have been an agreement or understanding between your company and FDC that they could produce a term sheet like this and send it over?

**MR PIETER JOHANNES VAN DER MERWE:** Chair that's possible  
10 because the rates and the terms and conditions are standard to what was issued in all of the term sheets, there was little variations, I think dealing with the SAA in total, I do not have copies of everything, but there must have been circulated, up to 10 versions of the different type of term sheets for basically the same amount and some of the periods differ fro 10 to 15 to 20 yes but the information that they have submitted here is, according to the standard that we have agreed upon.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Well can I just probe that a bit further because, again I understand your interest to be securing the  
20 opportunity to provide this funding, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** Now as I understand the letter, you wrote to FDC, there was a sliding scale of interest rates the highest of which being 4% the lowest of which being 3%, given that variation, you may have entertained a greater competitive position, mightn't you because

the lower the interest rate the greater the benefit to SAA is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** But this term sheet does not indicate that gradation it simply is a fixed rate of 4% on 15billion.

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** And when you say there's slight variations you'll forgive me but the difference of half a percent on 15billion rand I would suggest is not a small difference.

10 **MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Thank you, you then, back in your sworn statement at page 6 paragraph 20 say, a short time thereafter, now just to orientate ourselves in the previous paragraph you're at the end of 2015 and then in paragraph 20 you say,

“A short time thereafter, probably a few weeks, FDC came back to me and said that it would not be possible for it to source funds for SAA as it was not allowed for one State owned entity to fund another State entity”.

20 Mr van der Merwe can you give us some sense of your degree of certainty about that time period that it was probably a few weeks after the end of 2015 that you received this feedback from FDC?

**MR PIETER JOHANNES VAN DER MERWE:** Chair not less than 90% certain.

**ADV KATE HOFMEYR:** And that would have put you in January of 2016, is that right somewhere thereabouts?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct.

**ADV KATE HOFMEYR:** Could it possibly have been as late as March or April of 2016?

**MR PIETER JOHANNES VAN DER MERWE:** Definitely not Chair.

**ADV KATE HOFMEYR:** Thank you. If we then proceed you start to deal thereafter in your sworn statement with the events of 2016 and you say a month or two later towards the beginning of 2016 we were already in January so I would like you to again be quite specific if you would to the best of your recollection when this next event occurred  
10 because this next event as you have it here is a call from someone who introduced himself as the CEO of BNP. When to the best of your recollection did that call come through?

**MR PIETER JOHANNES VAN DER MERWE:** After doing some research on the documents itself I would say it can be as early as February not later than March of 2016.

**ADV KATE HOFMEYR:** That timing does have some significance Mr Van Der Merwe because of what you say in the second sentence in that paragraph. You recall: “I do not recall his name” that is the person who called you I have it “but he told me that BNP had been appointed  
20 by SAA to source 15 billion” how certain are you that that is what was conveyed to you?

**MR PIETER JOHANNES VAN DER MERWE:** Chair I am a hundred percent positive that is what was conveyed to me.

**ADV KATE HOFMEYR:** And just to have your evidence it is somewhere in February or March of 2016?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** How did BNP come to contact you?

**MR PIETER JOHANNES VAN DER MERWE:** I had a telephone call and later on there was emails exchanged to me Chair.

**ADV KATE HOFMEYR:** Let me be a little more precise with my question. Were you ever – did you just receive calls from people over time about funding? How did they know to contact Grissag AG about R15 billion?

**MR PIETER JOHANNES VAN DER MERWE:** I cannot answer the  
10 question that how do they know about it but yes it frequently happened that people on a weekly basis do contact us about funding for different projects. So I do not put a lot of effort in in finding how they did come across our contact details and the subject about SAA has been going on for almost a year about the funding so to Grissag it is common knowledge and it was not resolved at that stage as well.

**ADV KATE HOFMEYR:** Okay but let us just place ourselves in about February or March 2016 because as I have it you have been engaged with Seacrest the previous year. Did you know at this stage in year whether Seacrest's bid for that funding tender had been accepted or  
20 declined?

**MR PIETER JOHANNES VAN DER MERWE:** I did now Chair that by January that Seacrest was not in the run for the funding anymore.

**ADV KATE HOFMEYR:** Can we be as clear as possible there? Had you been told that they had not been successful or had you been told that they did not have a result yet in relation to the tender?

**MR PIETER JOHANNES VAN DER MERWE:** I had been told that they did not – they were not successful for this specific tender Chair.

**ADV KATE HOFMEYR:** And then as I have your evidence FDC was an option but they came back to you a few weeks after the end of 2015 and said they cannot loan state entity to state entity and then as I have your evidence in about February or March you get the third potential interface with SAA and that is BNP Capital. Is that a fair summary?

**MR PIETER JOHANNES VAN DER MERWE:** That is a fair summary Chair.

10 **ADV KATE HOFMEYR:** And just to be clear when you were first contacted there was no discussion with the person from BNP whose name you cannot recall about how they came to know to contact you for funding?

**MR PIETER JOHANNES VAN DER MERWE:** No Chair not at all.

**ADV KATE HOFMEYR:** Thank you. You then at paragraph 22 on that page say that you were aware at the time that SAA had published a tender for transaction advisor services. How were you aware of that?

**MR PIETER JOHANNES VAN DER MERWE:** Chair through the media. I was made aware through the media that a tender was published.

20 **ADV KATE HOFMEYR:** We saw in the course of the evidence yesterday that an RFI went out for these transaction advisor services. You say at paragraph 22 a copy of the RFP is attached as VDM4 but Mr Van Der Merwe I have a not that that is a second correction that you want to make because if you go to VDM4 which is at page 18 you will see a document that does not appear to be an RFP is that right?



**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** I am not going to spend longer on the document that does appear at page 18 at the moment because we will come to it in due course. It is actually one of the documents attached to the emails of 22 April 2016. So I will remove it there but we can then just delete that a copy is attached. That is my suggestion for paragraph 22. Let us talk about the interactions that you had with BNP at this point. Did you have meetings in person?

**MR PIETER JOHANNES VAN DER MERWE:** Chair no I never had a  
10 meeting in person with anybody from BNP. I also did not visit their offices I am unaware of their offices and they certainly did not visit my offices Chair.

**ADV KATE HOFMEYR:** Were you always dealing – well I assume you were then dealing telephonically, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** And I assume also some communications via email, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Were you dealing in those interactions with one  
20 or more people?

**MR PIETER JOHANNES VAN DER MERWE:** Definitely more than one person Chair.

**ADV KATE HOFMEYR:** Do you recall the names of the people you were interacting with?

**MR PIETER JOHANNES VAN DER MERWE:** I cannot recall the names

of the people Chair.

**ADV KATE HOFMEYR:** But you were inclined to engage with them about what is now your third attempt to provide funding to SAA, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Would it not have been relevant to engage in a bit more detail and find out a bit more about the entity that you were going to be going into partnership with for this purpose?

**MR PIETER JOHANNES VAN DER MERWE:** Chair at this stage being  
10 my third attempt I was not very confident that this party would also be successful so I did not put a lot of effort and travelling in to discuss so the relevant documents that is why I requested documentation to be sent to me so that we can move forward on that.

**ADV KATE HOFMEYR:** And you say on page 7 at paragraph 24 that the main reason for Grissag's partnership with BNP was because of BNP's BBBEE status and FSP licence holder-ship. That seems to be a common theme of your interactions first with Seacrest, then with FDC and now with BNP, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

20 **ADV KATE HOFMEYR:** Was this discussed with BNP that – did you enquire from them whether they had an FSP licence?

**MR PIETER JOHANNES VAN DER MERWE:** They informed me that they do have a FSP licence Chair.

**CHAIRPERSON:** Why did you not – why did your company not have its own BBBEE components?

**MR PIETER JOHANNES VAN DER MERWE:** Chair because the company was newly formed and the funders of this are all based overseas. They are not based in South Africa.

**CHAIRPERSON:** Oh.

**MR PIETER JOHANNES VAN DER MERWE:** So I was establishing to get the first big transaction.

**CHAIRPERSON:** Yes.

**MR PIETER JOHANNES VAN DER MERWE:** Finalised and then obviously that would follow after that.

10 **CHAIRPERSON:** Yes. Well I was simply asking purely from the point of view that from your line of business it appeared that you would keep on being required to meet this requirement?

**MR PIETER JOHANNES VAN DER MERWE:** Chair that is correct and...

**CHAIRPERSON:** And one would have thought that if that is the case you would rather just have people or – satisfied that requirement for all times and not have to look for ad-hoc arrangements all the time. That is the only perspective from which I was looking at it.

**MR PIETER JOHANNES VAN DER MERWE:** Chair appreciate it. By now I have learnt that Chair.

20 **CHAIRPERSON:** Yes. But – and – but why did you not have the FSP licence if you needed one for your business?

**MR PIETER JOHANNES VAN DER MERWE:** Chair that is a process. Our main business and where we are currently oppering – operating is in Africa and we do not use the South African entity for that. We use the overseas entity for that and the reason for the South African entity

even being registered was the fact that I was told that you need to register entity in South Africa otherwise if there was a possibility that engagements should have been done directly abroad then there would not have even been a South African entity that was registered. Thank you.

**CHAIRPERSON**: So the actual – the money that your company was going to be using to provide funding would come from people overseas?

**MR PIETER JOHANNES VAN DER MERWE**: That is correct Chair it is not based in South Africa.

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

**ADV KATE HOFMEYR**: Well can I just follow up on that Mr Van Der Merwe because you said they told you that there needed to be a locally registered company, who were they?

**MR PIETER JOHANNES VAN DER MERWE**: That started off Chair with BN – with Seacrest Investments and once that rules has been laid out to me being BBEE compliant and having a FSP licence and a FSP licence you do not just require it in one month's time there is a procedure I presume that you have to do. Then I presume this is the rules and regulations to which I must apply to Chair.

20 **ADV KATE HOFMEYR**: Mr Van Der Merwe let me be a little bit clearer. I was asking about the registration of the company locally because as I understood your answer to the Chair you were explaining why transactions in South Africa had to have a locally registered company as opposed to the position in the rest of Africa where you use the London Company. So who indicated to you that the – there had to be a

locally registered company in order for you to engage in funding opportunities in South Africa?

**MR PIETER JOHANNES VAN DER MERWE:** Chair that I cannot recall because that establishment was done – the registering I think it was in March of 2015 we can check it from the registrar so I cannot recall at this specific date if I already had meetings with Eskom at that stage because I did have a meeting with them and I also had some other meetings as well with some of the municipalities. So in one of those interactions that topic came to my – to be placed before us and that is  
10 why the decision was made to register a locally company.

**ADV KATE HOFMEYR:** Thank you and then I understand just to summarise. Over time you have told that there are three requirements to engage in funding of this order in South Africa. You must have a locally registered company. You must have an FSP licence and you must have BEE credentials in order to be able to fund and as I understand your evidence you took steps to comply with the first but not the latter two, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** And for the latter two you kept engaging with I  
20 am going to call them intermediaries or middlemen who would then satisfy those requirements insofar as SAA was concerned?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** The consequence of that arrangement Mr Van Der Merwe I would like to put to you is that the ultimate cost that SAA pays is higher than if they had engaged with you directly. Do you

accept that?

**MR PIETER JOHANNES VAN DER MERWE:** I do accept that – to that and I would like to comment. I did make various attempts to contact SAA directly and there was no response from their side so they had the opportunity to interact with us directly. So there is only so much that I can do to start interaction Chair.

**ADV KATE HOFMEYR:** Mr Van Der Merwe when did those attempts – when were those attempts made?

**MR PIETER JOHANNES VAN DER MERWE:** Chair in the beginning of  
10 February – again in the beginning of 2015 I started interacting and so I even wrote letters to the housing Minister at that stage. I wrote a letter to Mr – the Minister at that stage Ms Lynne Brown which was the Enterprise Minister. I did not even get a response from their offices Chair.

**ADV KATE HOFMEYR:** Just to follow up Mr Van Der Merwe I was asking when precisely you made the approaches to SAA and your answer covered ministries and a housing project. So can you recall when you made this approach to SAA directly?

**MR PIETER JOHANNES VAN DER MERWE:** I cannot recall the exact  
20 date on that Chair but it was definitely before my engagement with Seacrest at that time Chair.

**ADV KATE HOFMEYR:** So would it be fair to say somewhere in the period of 2015?

**MR PIETER JOHANNES VAN DER MERWE:** That is fair to say yes Chair.

**ADV KATE HOFMEYR:** Would you have records of that correspondence?

**MR PIETER JOHANNES VAN DER MERWE:** Chair perhaps I would need to go through archives but as this has happened almost four years ago I do not keep records that – of matters that did not materialise that time.

**CHAIRPERSON:** So you might have to look you are not sure if they are still there?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

10 **CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** Chair with your leave we will make a note of that.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And just see if we can follow up.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** It is not an aspect that we were aware of prior to today. If we can then go to page 7 paragraph 25. Because at 25 you talk about an email communication from BNP where they attached their appointment letter and BNP wanted Grissag to provide proof of funds  
20 immediately. Now if we go to your copy of that letter which is VDM5 you will find that at page 19. Chair this letter will be familiar because this is the letter at page 19 that was addressed to BNP Capital dated the 20 March we have already raised a query about that date and it is in fact the letter appointing them to provide transaction advisor services for 2.6 million or thereabouts. Mr Van Der Merwe I would like

to move from 19 to the emails plus their attachments that were included at the end of your bundle because we have actually been able to source the originating email thank you to your endeavours in this regard when these documents were sent to you by BNP and Chair the reason why that was important is because if you go for example to page 42 of the bundle.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: You will see page 42 is a letter - dear Pieter signed it appears by Mr Mahlangu but the letter has no date itself so it  
10 has been in the challenge in the course of the investigation until we engaged with Mr Van Der Merwe to establish precisely when this letter was sent to Mr Van Der Merwe but usefully we now have at page 41 the email that records that it was sent in the evening of April the 22<sup>nd</sup>, 2016. Do you confirm that to be correct Mr Van Der Merwe?

**MR PIETER JOHANNES VAN DER MERWE**: That is correct Chair.

**ADV KATE HOFMEYR**: Thank you. What I am interested in over the page at 42 – well Chair just to signal first of all that date is fairly important because at this stage BNP Capital has not yet been appointed to source funds for SAA. What they have been appointed to  
20 do is give transaction advisor services.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: But of some interest is that we do know that on the 21 December the board of SAA took a decision in principle to extend the scope of a transaction advisor to include the sourcing of funds but no process had yet been followed within SAA.



**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** But interestingly on the 22 April this email from BNP comes to Grissag – you had been dealing with each other at that point, is that correct Mr Van Der Merwe?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** And the letter as I have it – let us go to the first paragraph says:

10                   “Please find attached undercover hereof a mandate  
                      from South African Airways whereby SAA amongst  
                      others mandates BNP Capital to raise and arrange  
                      funding for and on behalf of SAA for the purposes of  
                      consolidation of SAA’s debt of 15 billion.”

Now Mr Van Der Merwe the letter that was attached to that I have it as being the letter that if you go over the page to page 44 is the letter appointing BNP Capital to provide transaction advisor services not to source funds, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

20                   **ADV KATE HOFMEYR:** And this letter was received I think it is a  
                      minute or so later on the evening of 22 April that appears from page 43,  
                      is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** So let us just understand what is happening on the 2 April 2016. You receive a letter from BNP Capital announcing that they have been awarded the opportunity to arrange funding for 15 billion for SAA but the letter that they suggest confirms that does not,

is that correct?

**MR PIETER JOHANNES VAN DER MERWE**: That is correct Chair.

**ADV KATE HOFMEYR**: Did you note that at the time?

**MR PIETER JOHANNES VAN DER MERWE**: No Chair I do not have the knowledge what the difference was between an advisory and the sourcing of funds. I honestly believed that that was in the scope of their appointment. So I was not aware at the point of time that there was a difference Chair.

**ADV KATE HOFMEYR**: And then if we go to the bottom of that letter to  
10 yourself. They are talking about the conclusion of a memorandum of understanding plus their mandate and then they say:

“We request that Grissag AG provides us with proof of funds in writing a step necessary for the parties to finalise the term sheet that will form the basis of the transaction. We request that proof of funds be sent to us no later than close of business on 26 April 2016.”

Chair that is at least an indicator that this letter had to have proceeded the 26 April 2016.

20 **CHAIRPERSON**: I have lost the page of that letter.

**ADV KATE HOFMEYR**: Apologies Chair.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR**: Apologies Chair. We are at page 42.

**CHAIRPERSON**: Oh I am from – I thought I was there. Oh okay.

**ADV KATE HOFMEYR**: So this is the letter to which the award letter is

attached. We have dealt with the fact that it was only an appointment for transaction advisor services but you have explained why that did not raise a red flag for you. And then I was just focussing on the last paragraph on this page because what I understand BNP to be asking for here is a proof of funds so that you can move forward in the transaction with SAA and a request that that reach them by close of business on the 26 April and it concludes with:

“At the outset we request proof of funds in an amount of between 3 billion and 7 billion.”

10 What was your response to this?

**MR PIETER JOHANNES VAN DER MERWE:** Chair my response was that proof of funds cannot be done up front and we first need at least a term sheet signed that commits SAA to the terms and conditions and after that an agreement must be signed – a formal agreement which we call a funding agreement and the steps inside that funding agreement states exactly what happens at what specific time. We do verification by the Swift system and in that document all the banking details are put – available so that – and the banking officers and so forth. So that was what was still need to follow before the proof of funds will actually have  
20 been done at that stage Chair.

**ADV KATE HOFMEYR:** And Mr Van Der Merwe I understand that to be the consistent position that you adopted even in relation to the Seacrest arrangement, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** So if we go to the bottom of page 7 of your

statement paragraph 26 you say there in order to move matters forward Grissag's term sheet needed to be signed by SAA. And then you go into the engagements around the term sheet that was signed. That term sheet appears as annexure 6 which you will find at page 21.

**MR PIETER JOHANNES VAN DER MERWE:** That is correct.

**ADV KATE HOFMEYR:** And we need to spend a bit of time on this because I understand that there is a further correction in your statement that needs to be made here. Because at paragraph 26 you talk about the circumstances in which this came to be signed. But  
10 amongst the things you say is that you attended a meeting at which you signed the term sheet and I understand that to be incorrect. So please take us through those facts. What happened on the 8 June 2016?

**MR PIETER JOHANNES VAN DER MERWE:** On the 8 June I travelled to SAA's head offices at the airport. I – it was my first and my only visit ever to SAA's offices. I was shown to a boardroom. There were a few people seated at that boardroom and Ms Nhantsi came in. She signed the term sheet before me and left. That total time spent there was not more than ten minutes and then I left.

**ADV KATE HOFMEYR:** If I can ask a few follow up questions. Who  
20 told you to go to SAA on that day?

**MR PIETER JOHANNES VAN DER MERWE:** It was set up by BNP Capital Chair.

**ADV KATE HOFMEYR:** And let us go to page 25 which is the signature page.

**CHAIRPERSON:** And when they told you what did they say the purpose

was going to be of you going to SAA?

**MR PIETER JOHANNES VAN DER MERWE**: Chair it is for signing the term sheet itself.

**CHAIRPERSON**: Ja.

**MR PIETER JOHANNES VAN DER MERWE**: I do not want to jump ahead about questions but there was another term sheet – the same term sheet that was being signed by Ms Nhantsi prior to that and it – and that term sheet had – it basically meant nothing. It was non-binding and such and I said to them I cannot accept this.

10 **CHAIRPERSON**: Hm.

**MR PIETER JOHANNES VAN DER MERWE**: It needs to be a binding term sheet and she needs to sign that I know I have got an original with me.

**CHAIRPERSON**: Oh okay.

**MR PIETER JOHANNES VAN DER MERWE**: So [indistinct].

**CHAIRPERSON**: No I just wanted to understand why you were called to go to...

**MR PIETER JOHANNES VAN DER MERWE**: Both those term sheets are in the affidavit Chair.

20 **CHAIRPERSON**: Ja okay.

**ADV KATE HOFMEYR**: Well Mr Van Der Merwe let us go to the earlier term sheet that you made reference to. That you will find in Ms Stimpel's evidence bundle B and you will find it at page 520 which is under Tab 52. We are at page 520 in bundle B. Is this the earlier term sheet to which you referred Mr Van Der Merwe?

**MR PIETER JOHANNES VAN DER MERWE:** Chair that is correct I see it is dated the 2 June by Ms Nhantsi that is correct.

**ADV KATE HOFMEYR:** And you said this was non-binding. Certainly at page 524 that is what the capital lettering seems to indicate. It has also been crossed out – the words by our signature we hereby accept in principle the terms of this term sheet – that is crossed out and at the bottom of the page there is handwritten draft for discussion purposes only non-binding and subject to SAA board approval, do you see that?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct. That is  
10 the reason why it was not acceptable to me.

**ADV KATE HOFMEYR:** And when were you sent this?

**MR PIETER JOHANNES VAN DER MERWE:** I cannot remember the date but obviously I presume it was on the same date because normally they moved with this very fast. So it should be the 2<sup>nd</sup> or the 3<sup>rd</sup> June as I see the signature is the 2<sup>nd</sup> June.

**ADV KATE HOFMEYR:** And just clarify for us, what was your attitude when you received it?

**MR PIETER JOHANNES VAN DER MERWE:** My attitude is that this is not acceptable to Grissag as we need a binding term sheet to move  
20 forward.

**ADV KATE HOFMEYR:** And did you communicate that to BNP?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Because as I understand your evidence you are only interacting at this point through BNP, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** There are no interactions directly between you and SAA representatives, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** That is an aspect that we will pick up in relation to your earlier statement because I understand there to have been averments there that are – that do not reflect that.

**PIETER JOHANNES VAN DER MERWE:** That is correct.

**ADV KATE HOFMEYR:** So we will go to that in due course but let us look at page 25 then back in your sworn statement because that seems  
10 to be a document – apologies Chair.

**CHAIRPERSON:** Before that – excuse me – the signature just above the name of Mr Pokusaev was that your signature or his signature or somebody else's signature?

**PIETER JOHANNES VAN DER MERWE:** Chair that is electronic signature of Mr Pokusaev.

**CHAIRPERSON:** Oh, okay. Thank you.

**ADV KATE HOFMEYR:** Chair it is actually a point of some significance. The question you have raised because when we go to page 25 back in Mr van der Merwe's statement you will see that same signature appears  
20 for Mr Pokusaev and it is the point that I needed to take up with Mr van der Merwe because Mr van der Merwe's statement says he attended the meeting at – on 8 June and he signed the term sheet but Mr van der Merwe I have you to indicate that you did not sign the term sheet on 8 June. Is that right?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** So how did the signing take place?

**PIETER JOHANNES VAN DER MERWE:** The signing was only done by Ms Nhantsi and I actually got an original of this document with me.

**ADV KATE HOFMEYR:** But does that mean that the document she was signing had already had on it the electronic signature of Mr Pokusaev?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** So we ...

**CHAIRPERSON:** How had that come about? Did you come with the page which had – which had his electronic signature or did somebody  
10 else secure his electronic signature?

**PIETER JOHANNES VAN DER MERWE:** I sent this document - even Chair when you look at the previous one of 2 June which is basically the same it has got the same signature on that as well. So I – I made this document available with the electronic signature and then I wanted each page – page to stamped and signed by the – then the Acting CFO of SAA.

**CHAIRPERSON:** So had Mr Pokusaev actually signed this page?

**PIETER JOHANNES VAN DER MERWE:** No Chair.

**CHAIRPERSON:** He had not signed it?

20 **PIETER JOHANNES VAN DER MERWE:** No.

**CHAIRPERSON:** Did you keep a kind of standard electronic signature of – of his?

**PIETER JOHANNES VAN DER MERWE:** Yes. All documentation is sent to him for approval ...

**CHAIRPERSON:** *Ja.*



**PIETER JOHANNES VAN DER MERWE:** And then I add on then only after he has approved a specific project or a specific document to be issued.

**CHAIRPERSON:** Oh. The document where he needs to sign you would send the document to him electronically?

**PIETER JOHANNES VAN DER MERWE:** Correct and he put the signature on that and send it back to me.

**CHAIRPERSON:** And then send it back and this is what had happened here as well?

10 **PIETER JOHANNES VAN DER MERWE:** Correct.

**CHAIRPERSON:** Okay. So – so on this particular occasion when you went to SAA you were not going to do the signing yourself?

**PIETER JOHANNES VAN DER MERWE:** No Chair. The term sheet ...

**CHAIRPERSON:** *Ja.*

**PIETER JOHANNES VAN DER MERWE:** Is not the main document for us.

**CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** The – the document is the contract that needed to follow ...

20 **CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** And – and that – that contract at that stage would have been signed by – by Mr Pokusaev if he would fly in. Just for the record Mr Pokusaev has travelled about six times to South Africa ...

**CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** Where – where certain projects were supposed to be finalised ...

**CHAIRPERSON:** (Intervenes).

**PIETER JOHANNES VAN DER MERWE:** And it was not finalised.

**CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** So – so the moment that SAA went ahead and the – the contract was available for signing as such then he would have flown in because even our banks require only original documents no copies of – of that. Needs to present it to the –  
10 to the banks as well for their due diligence purposes Chair.

**CHAIRPERSON:** But the – the term sheet that was to be signed on that particular day at SAA Offices did you sign it yourself?

**PIETER JOHANNES VAN DER MERWE:** No I did not sign it Chair.

**CHAIRPERSON:** Oh.

**ADV KATE HOFMEYR:** So you despite what was indicated in your statement Mr van der Merwe I understand you to say that SAA was in possession of a version of this bearing the electronic signature of Mr Pokusaev. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

20 **ADV KATE HOFMEYR:** And when you arrived for that meeting you at no point picked up a pen to sign. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** I just initialled it.

**ADV KATE HOFMEYR:** You initialled. You did not sign on the last page?

**PIETER JOHANNES VAN DER MERWE:** That is correct.

**ADV KATE HOFMEYR:** But Nhantsi signed?

**PIETER JOHANNES VAN DER MERWE:** That is correct.

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

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**CHAIRPERSON:** But when you departed from wherever you departed from to go to SAA was your understanding that you were going to actually sign or was your understanding that you did not – you would not need to sign because Mr Pokusaev's signature would be provided?

**PIETER JOHANNES VAN DER MERWE:** Chair my – my main purpose  
10 was getting an original signature and a stamp from ...

**CHAIRPERSON:** Ms Nhantsi?

**PIETER JOHANNES VAN DER MERWE:** The authorised person at SAA because this had been dodged all the time to us. We never get any documentation where there was any commitment even with terms and conditions addressed to us directly ...

**CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** And the previous term sheet it was signed and sent to us with ...

**CHAIRPERSON:** (Intervenues).

20 **PIETER JOHANNES VAN DER MERWE:** This is open for discussion and it is non-binding ...

**CHAIRPERSON:** Yes.

**PIETER JOHANNES VAN DER MERWE:** And so that was the – the reply that that is not acceptable. We need something that is – that is at least acceptable and binding and we then can formulae the finance

contract itself and move on with that Chair.

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

**ADV KATE HOFMEYR:** Thank you Chair. I would like to go back a little bit in that week preceding 8 June. Mr van der Merwe you live in the Free State is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct, *ja*.

**ADV KATE HOFMEYR:** Were you located in the Free State in the period to 8 June?

**PIETER JOHANNES VAN DER MERWE:** Yes Chair.

10 **ADV KATE HOFMEYR:** And I assume from that then you would have needed to make travel arrangements to come up to Johannesburg for the purposes of the meeting on the 8<sup>th</sup>. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct.

**ADV KATE HOFMEYR:** Do you recall how long in advance of 8 June you were requested to come up?

**PIETER JOHANNES VAN DER MERWE:** I cannot recall but it could be a few days but I - I really cannot recall what that timeframe was Chair.

**ADV KATE HOFMEYR:** But for our purposes it would be relevant to know whether you were told at any point prior to 8 June that you  
20 needed to be there on 8 June. Can I take it that you told at some point prior to 8 June?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** And do you remember how long in advance you travelled up?

**PIETER JOHANNES VAN DER MERWE:** No. I travelled the same day

and I returned the same day. I hardly ever spend time in - in Gauteng. I always arrange my meetings coming up early in the morning and going back the same day.

**ADV KATE HOFMEYR:** But just to be clear you can confirm that you were told before 8 June that you would be required on 8 June?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Who communicated that to you?

**PIETER JOHANNES VAN DER MERWE:** BNP Capital Chair.

**ADV KATE HOFMEYR:** Would you have any records of that?

10 **PIETER JOHANNES VAN DER MERWE:** That should have been communicated I think by email and like I have said previously I lost of data on - on my emails. It cleans itself after a certain time. So if – if it was not printed then I would not have a copy of – of the specific document.

**ADV KATE HOFMEYR:** Thank you. So you come up on 8 June. Ms Nhantsi signs it. You get it stamped on the various pages. You initial and you take this away with you. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct.

**ADV KATE HOFMEYR:** Were there further interactions?

20 **PIETER JOHANNES VAN DER MERWE:** No Chair.

**ADV KATE HOFMEYR:** I would then like to look at the terms of this term sheet that was signed on 8 June – if we may. Let us look first at page 22. Chair the significance of these terms will become relevant later when we are looking at some of the correspondence. What I would like to focus on – on 22 is that insofar as the facility description

is concerned it is recorded there that:

“Grissag AG will make available 15 billion to SAA subject to terms and conditions agreed by both parties and captured in an agreement.”

So would it be fair to say that as at 8 June there is understanding between SAA and Grissag AG that Grissag AG will make available the full 156 billion that it was interested in securing?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair completion after agreement yes.

10 **ADV KATE HOFMEYR:** Thank you and then if we go over the page to 23 you will see there an interest rate which is now at 3.5 percent. It seems that with each successive term sheet it drops by half a percent. Can you tell us about why you arrived at 3.5 percent by this stage?

**PIETER JOHANNES VAN DER MERWE:** Chair as this was the third attempt of doing the funding I once again went back to the funders. I have asked them for a better rate and this is the rate that was approved by them.

**ADV KATE HOFMEYR:** Well maybe I should not have been so quick because I see the rate had dropped by this - to 3.5. That is right  
20 insofar as we talking about the fixed interest rate because the previous fixed interest rate on the term sheet with the FDC was at 4 percent. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct.

**ADV KATE HOFMEYR:** But unlike in the case of FDC there is now another fee added in this term sheet. In this term sheet there is

another fee which is:

“A 1 percent fee will be payable by SAA to Grissag AG on each drawdown amount received.”

Do you see that?

**PIETER JOHANNES VAN DER MERWE**: The 1 percent, yes Chair.

**ADV KATE HOFMEYR**: So would it be fair to say the combined effect of that is 4.5 percent?

**PIETER JOHANNES VAN DER MERWE**: No that is incorrect Chair.

**ADV KATE HOFMEYR**: Tell us why.

10 **PIETER JOHANNES VAN DER MERWE**: As the 1 percent is a once off payment as they receive the money and it – it has been calculated over the 15 year period. So should you do that then it is like 0.1 or zero point - even less than that – 0.075 percent.

**ADV KATE HOFMEYR**: As an interest rate?

**PIETER JOHANNES VAN DER MERWE**: As an interest rate. So it is not correct to say it is 4.5. It is rather like 3.6.

**ADV KATE HOFMEYR**: Right and just talk to us about the one point – the 1 percent fee there. How was that to work?

20 **PIETER JOHANNES VAN DER MERWE**: The 1 percent fee would be paid ...

**ADV KATE HOFMEYR**: Mr van der Merwe you have just turned off your – yes – microphone thank you.

**PIETER JOHANNES VAN DER MERWE**: Sorry Chair. The 1 percent fee was to be distributed by – for the offices – for Grissag in South Africa 0.5 and 0.5 I would pay to BNP Capital for their part of using

their FSP licence and their BEE component. That was arranged between us.

**ADV KATE HOFMEYR:** Can we ...?

**CHAIRPERSON:** I am sorry. Can you just repeat that?

**PIETER JOHANNES VAN DER MERWE:** The 1 percent – the arrangement with Grissag and BNP Capital is to split it 50/50. 0.5 percent paid towards them and 0.5 percent towards Grissag.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Can we just talk about some numbers? A 1  
10 percent fee on each drawdown – let us just assume over the full funding exposure of 15 billion whether it was paid over time or in one drawdown. The total that SAA would pay is 150 million. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct *ja*.

**ADV KATE HOFMEYR:** Right. So there is 150 million that is going to be paid at each drawdown broken up if necessary if the drawdowns are for amounts less than the full 15 and then as I understand it you are going to share that 150 million in equal parts between yourselves and BNP Capital. Is that correct?

20 **PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** So out of the total 150 million Grissag AG would take 75 million and BNP Capital would take 75 million. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct.

**ADV KATE HOFMEYR:** Why is that not reflected here - that



arrangement – the split of the 50/50?

**PIETER JOHANNES VAN DER MERWE:** That is an arrangement what – what Grissag has with BNP. It is not an arrangement that we have with SAA Chair.

**ADV KATE HOFMEYR:** And I understand you to say that that was because you shared that with BNP because of the roll that BNPs FSP licence and its BBEE status was playing in the conclusion of this whole transaction. Is that right?

**PIETER JOHANNES VAN DER MERWE:** That is correct.

10 **ADV KATE HOFMEYR:** Were you aware that they were going to be paid 256 million for having found you?

**PIETER JOHANNES VAN DER MERWE:** I am totally unaware of that Chair. I have only read that in the media and that came as a shock to me because the fact that BNP did not find me. I was already – Grissag was already known to various companies at that stage. So it is definitely not a finder's fee. So I am totally unaware of that payment. I can put that on record Chair.

**ADV KATE HOFMEYR:** But you will accept that if this had all gone through BNP would have earned even more than the 256 million that it  
20 had agreed SAA would pay it as a source of funds. It would also have received a further 75 million on top of that 256 million. Is that correct?

**PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Thank you. Mr van der Merwe I would like to then go back to your affidavit – if we may. Is that agreement that you refer to - the 50/50 split - recorded in writing anywhere?

**PIETER JOHANNES VAN DER MERWE:** Chair no.

**ADV KATE HOFMEYR:** So when did you come to agree those terms?

**PIETER JOHANNES VAN DER MERWE:** Chair we came to agree the terms once I had been informed that BNP Capital has been appointed as a transaction advisor which I thought at the time was also their job to look for funders itself and obviously they asked me what their share is.

**ADV KATE HOFMEYR:** I am interested in that. When about would that have occurred because let us just orientate ourselves in time. You got  
10 the email on 22 April 2016 where they told you they had been appointed as the source of the funds and they produced the letter albeit that it related only to transaction advisor services. So was the agreement on this 1 percent fee split around that time or – or later in your engagements?

**PIETER JOHANNES VAN DER MERWE:** I would – Chair, I would say it can be either in April or May. I am not certain about the specific time at that stage.

**ADV KATE HOFMEYR:** But would you be comfortable with saying fairly shortly after 22 April?

20 **PIETER JOHANNES VAN DER MERWE:** Very comfortable yes Chair.

**ADV KATE HOFMEYR:** Thank you. Those dates will become fairly important in due course in the later evidence Chair. I would then like to go to your previous statement Mr van der Merwe because there are a number of corrections which I understand you want to make to that statement and that statement commences at page 36.

**CHAIRPERSON:** Maybe this might be a convenient time for a short break.

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

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

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes, we may proceed.

10 **ADV KATE HOFMEYR:** Thank you Chair. Mr van der Merwe we were at page 38 of your bundle which is the third page of your previous statement under oath that was provided to the Commission is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** And I understand that the corrections you want to make begin at paragraph 10, because at paragraph 10 you say there I was therefore contacted by SAA Officials during February 2016 and they informed that Grissag's term sheet incorporating its terms and conditions were acceptable to SAA, is that correct Mr van der Merwe?

20 **MR PIETER JOHANNES VAN DER MERWE:** No chair I was not, I was never informed directly by SAA or any of their officials.

**ADV KATE HOFMEYR:** Which term sheet would you have been referring to here though?

**CHAIRPERSON:** Well before that if that – if you were not informed by S A Officials how did it come about that you signed a statement that

said you were informed by them?

**MR PIETER JOHANNES VAN DER MERWE:** Chair this initial statement when I was contacted by the investigators itself I sit down and I drafted it without doing a lot of attention on dates as such, I just explained in this affidavit, it's quite short, what happened without looking at specific documentation and only afterwards I'm getting more information from the investigators itself I was able to then construct and sign a new affidavit, with the necessary documents that can prove what happened at what specific date, what was clear at that point in  
10 time.

**CHAIRPERSON:** Are you saying that you are not saying that you didn't read it, you are saying that at the time of signing it you thought that was correct but later on there were documents or other information that indicated that that was not correct.

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair, that was human error on my part.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And just to be clear you met with the investigators as I have your evidence and then you sat down and put  
20 this document together, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct.

**ADV KATE HOFMEYR:** And as you've described to the Chair you referenced being contacted by SAA officials that you with greater reflection can confirm is not correct, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct ja.

**ADV KATE HOFMEYR:** And insofar as what was happening in 2016 is concerned and which term sheet, have you got clarity on that?

**MR PIETER JOHANNES VAN DER MERWE:** Yes the date on February must be wrong, because after dealing with the FDC which was at this stage definitely told – I was told at that stage it was a no-go, the only entity that I then engaged with was BnP Capital Chair.

**ADV KATE HOFMEYR:** Okay if we go to paragraph 11 there's another error, as I understand it from you, you said the intended funding agreement between SAA and Grissag did not materialise because  
10 Grissag was not BEE compliant. That sentence seems to suggest that at some point you thought that there was going to be an agreement between SAA and Grissag directly, notwithstanding the absence of BEE compliance, is that right or wrong?

**MR PIETER JOHANNES VAN DER MERWE:** No the paragraph is wrong, I simply needed to say that I was informed by Seacrest that in participating I need to be BEE compliant, to participate in a tender as we previously discussed it Chair.

**ADV KATE HOFMEYR:** And I understand the next sentence also is erroneous, you said the SAA subsequently informed me that it had  
20 appointed a certain BEE entity called BnP Capital, a service provider that according to SAA was 100% BEE compliant. That is not correct, is it?

**MR PIETER JOHANNES VAN DER MERWE:** No that is not correct.

**ADV KATE HOFMEYR:** In what respect is it not correct?

**MR PIETER JOHANNES VAN DER MERWE:** It's not correct that SAA

did not contact me, I did not have any engagement with SAA.

**ADV KATE HOFMEYR:** And as I understand.

**CHAIRPERSON:** Okay, you had two negatives there, you actually mean you had no contact with SAA?

**MR PIETER JOHANNES VAN DER MERWE:** Chair the bottom line is I was like I stated earlier I did try to communicate with them, there was no communication back and the only means of community was via intermediate and that is the facts Chair.

**CHAIRPERSON:** Okay.

10 **ADV KATE HOFMEYR:** And then if we go to thirteen on that page there's a further error there as I understand it, there you're referring to the term sheet that we have been spending some time on, and you say in that paragraph Grissag agreed to the mooted JV, that's in your previous paragraph, a JV that you said you were going to form with BnP Capital, as per the attached term sheet dated May 2016. In paragraph 6 of the term sheet which deals with fees it was recorded that once the funds had been received by SAA 1% once off fee would be payable by SAA to BnP Capital. Now we're looked at that term sheet, it doesn't refer to BnP Capital, is that correct?

20 **MR PIETER JOHANNES VAN DER MERWE:** That's correct it's to Grissag.

**ADV KATE HOFMEYR:** To Grissag, and you've clarified what ancillary arrangement was between yourself and BnP in relation to the split of that 1%, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct yes.

**ADV KATE HOFMEYR:** So this is an incorrect reflection of the 1% being paid from SAA to BnP, just so that I have it correctly, it's the 1% to be paid to Grissag which you then had an agreement with BnP you'd share 50/50, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** Mr van der Merwe those are my notes as to the changes or corrections you need to make on your first statement. Are there any that I have omitted?

**MR PIETER JOHANNES VAN DER MERWE:** Sorry just repeat that?

10 **ADV KATE HOFMEYR:** I'm seeking just to understand from you whether there are any corrections over and above the ones that we've discussed relating to paragraphs 10, 11 and 13 that you want to make to that statement?

**MR PIETER JOHANNES VAN DER MERWE:** Not that I'm aware of at this point in time Chair.

**ADV KATE HOFMEYR:** If we can then go back to your later statement, the June statement that you provided to the Commission, and Chair this is – will be the last aspect of the evidence that I propose to traverse with Mr van der Merwe, Mr van der Merwe it arises at – well let's start  
20 on page 8 at paragraph 29 on page 8, you talk about one previous interaction you had with Ms Nhantsi, can you please tell the Chair about that?

**MR PIETER JOHANNES VAN DER MERWE:** Chair Mr Pokusaev was in the country at that point in time and we were at Standard Bank opening a bank account and we went for coffee, and I also had a

meeting with Mr Shepherd Moyo at that specific day, sometimes we met with the Board which they have meetings near the Gautrain Station and as we were just drinking coffee at that stage Mr Moyo stood up and he went to greet a lady that entered and then he came back and he said to us that this is the new acting CFO of SAA, Ms Nhantsi, and then he introduced us, myself and Mr Pokusaev to her, then we carried on with our own business. That was the only interaction I had directly with Ms Nhantsi except for the day with my visit to the SAA building where the term sheet was signed by her in person in front of me Chair.

- 10 **CHAIRPERSON**: Was it Mr or Ms Nhantsi, the way you put it it's like Nyati and Nyati is a different surname altogether from Nhantsi, Do you have any idea?

**MR PIETER JOHANNES VAN DER MERWE**: My apologies Chair, Ms Phumela Nhantsi.

**CHAIRPERSON**: Oh, you know the spelling.

**MR PIETER JOHANNES VAN DER MERWE**: Ja, I know the spelling..

**CHAIRPERSON**: Nh, with Nha.

**MR PIETER JOHANNES VAN DER MERWE**: Nha that's correct ja.

**CHAIRPERSON**: Okay, alright.

- 20 **MR PIETER JOHANNES VAN DER MERWE**: I can just perhaps just add Mr Moyo at that stage said that he and Ms Nhantsi has previously studied somewhere, but they were acquaintances of somewhere in the past. So that's the only information I had Chair.

**CHAIRPERSON**: Okay, okay.

**ADV KATE HOFMEYR**: Thank you Mr van der Merwe and if you go



over to page 9 you record at paragraph 30 of your sworn statement that you don't recall having had any meetings with a Mr Mashodsa Mugadi of Nedbank but you don't have clarity do you as to who the people were that you were interacting with from BnP, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** Chair that is correct.

**ADV KATE HOFMEYR:** So is it possible that you were engaging with Mr Mugadi in some of those interactions?

**MR PIETER JOHANNES VAN DER MERWE:** Chair it is possible, I cannot recall that he was introduced to me as in my affidavit, especially  
10 as an employee of Nedbank because it's competition to us, so definitely I was not aware if I had an interactions with Mr Mugadi Chair.

**ADV KATE HOFMEYR:** Thank you. Let us then go to paragraph 31, because these are three, you reference three letters in paragraphs 31 that I would like to take you through, they are letters that begin at VDM8 which you will find at page 31 of your bundle. Chair with your leave I would like to deal with these three letters in the order of Annexure 8, 10, 9, just because that will follow the chronological sequence.

**CHAIRPERSON:** Ja, that's fine.

20 **ADV KATE HOFMEYR:** And what's relevant here Mr van der Merwe, so that I have it correct, these are not letters as I understand it that you were aware of at the time that they were being submitted between BnP and SAA, is that right?

**MR PIETER JOHANNES VAN DER MERWE:** Chair I have never seen this letter, letters, before it was introduced to me by the Commission

itself.

**CHAIRPERSON:** Is that 31, 32, 33?

**ADV KATE HOFMEYR:** Yes Chair so – indeed, indeed, so all three, there are three letters there.

**CHAIRPERSON:** Mmm.

**ADV KATE HOFMEYR:** All appear to be from BnP Capital to SAA and Mr van der Merwe what I have you confirm is that you – the first time you saw these letters was when they were shown to you by the Commission's investigators, is that right?

10 **MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Mr van der Merwe I suggest that's somewhat curious because they say a lot about Grissag AG in these letters, but you confirm you never saw them at the relevant time?

**MR PIETER JOHANNES VAN DER MERWE:** I hundred hundred percent state place on record I have never seen these documents before it was introduced by the Commission to me.

**ADV KATE HOFMEYR:** Right if we can start with the one at page 31, you will see Mr van der Merwe it's dated 31 May 2015, it's from Mr Mhlongo, the CEO of BnP Capital and it's addressed to South African  
20 Airways, do you see that?

**MR PIETER JOHANNES VAN DER MERWE:** I see that Chair.

**ADV KATE HOFMEYR:** This is a letter which is motivating for a 50% cancellation fee, to be paid to BnP Capital in the event of the termination of their mandate as a sourcer of funds, and what we will see through these letters is that with increasing levels of detail I would

suggest BnP Capital is persisting in its motivations to SAA for why that initially 50% cancellation fee should be paid and in the end it ends up being a cancellation fee of 49.9million. What I am interested in Mr van der Merwe is that a great deal is said in these letters about all sorts of costs that Grissag AG has incurred, that Grissag AG is threatening to look to BnP for and I want to have your evidence in relation to whether any of those statements are in fact correct, so we will go through them if we may.

Page 31 the second paragraph there, it says BnP Capital is  
10 incurring costs for amongst others sourcing in conjunction with its partners the funding globally for and on behalf of SAA, including from our Chinese, Abu Dhabi, European, and Brazilian funding partners. Do any of those cover you?

**MR PIETER JOHANNES VAN DER MERWE:** Ten, not at all.

**ADV KATE HOFMEYR:** If we go to ...(intervention)

**CHAIRPERSON:** Sorry, what was the answer?

**MR PIETER JOHANNES VAN DER MERWE:** No Chair, none of that is applicable to Grissag.

**CHAIRPERSON:** Yes okay.

20 **ADV KATE HOFMEYR:** Because you weren't incurring costs at that stage were you?

**MR PIETER JOHANNES VAN DER MERWE:** Definitely not Chair.

**ADV KATE HOFMEYR:** Right.

**CHAIRPERSON:** Were you aware of any Chinese partners, partners in Abu Dhabi, I don't know about the Europeans, but they say European

and Brazilian that were going to be involved in this project in which you were involved?

**MR PIETER JOHANNES VAN DER MERWE:** Chair definitely not, our funders has never been disclosed to anybody.

**CHAIRPERSON:** Yes.

**MR PIETER JOHANNES VAN DER MERWE:** So it's definitely not Chinese and it's definitely not anybody of Abu Dhabi and definitely not Brazilian, but there is some of them that is in the European Union.

**CHAIRPERSON:** Yes, but the author of this letter didn't know that as  
10 far as your (indistinct) is concerned.

**MR PIETER JOHANNES VAN DER MERWE:** No Chair.

**CHAIRPERSON:** So he could not have been talking about your partners who are in Europe?

**MR PIETER JOHANNES VAN DER MERWE:** Definitely not Chair.

**CHAIRPERSON:** Yes, okay, alright.

**ADV KATE HOFMEYR:** If we go to the paragraph below that mid-way through that paragraph there's another assertion that BnP Capitals partners or stakeholders have a cancellation fee in US Dollars against BnP due to the costs incurred of flying around the world to source  
20 funding for and on behalf of SAA. Let's stop there, did you have a cancellation fee in US Dollars agreed with BnP?

**MR PIETER JOHANNES VAN DER MERWE:** Chair Grissag has got no cancellation fee of any of their documents whatsoever and I think throughout the evidence it is very clear that there's no insertion of any cancellation fee whatsoever.

**ADV KATE HOFMEYR:** So when they go in the last sentence to say that the 50% of the fees that we asked for that's a reference to the 50% of the total fees that they were trying to have SAA agree to equate to BnP's actual cancellation costs that couldn't have been relating to Grissag could it?

**MR PIETER JOHANNES VAN DER MERWE:** Definitely not Chair.

**ADV KATE HOFMEYR:** If we can then go to the next letter, this is – well the next one I would like to go to is actually Annexure 10 which you will find at page 33 because that is the next one in chronological  
10 sequence, it's a letter dated the 14<sup>th</sup> of June 2016, do you see that Mr van der Merwe?

**MR PIETER JOHANNES VAN DER MERWE:** Yes Chair.

**ADV KATE HOFMEYR:** Now you will have realised in the course of the evidence the dates are fairly important, certainly to me, as we piece this story together, on 14<sup>th</sup> of June 2016 that term sheet had already been signed, hadn't it, by Mr Nhantsi?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct, it was signed on the 8<sup>th</sup> of June.

**ADV KATE HOFMEYR:** And that was going to secure the full 15billion  
20 worth of funding from Grissag is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's correct, but in addition to a signed contract, that first meeting to happen.

**ADV KATE HOFMEYR:** Indeed. My point of significance is simply that the full amount of the debt consolidation that SAA was embarking upon was now going to be funded by a single entity, Grissag AG, is that

correct?

**MR PIETER JOHANNES VAN DER MERWE:** That is correct Chair.

**ADV KATE HOFMEYR:** Assuming the agreements had been concluded.

**MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** And Chair this is a letter we've actually looked at before with Ms Stimpel, it's the one that talks about the events that happened at a National Treasury meeting, Ms Stimpel has raised concerns about how it was that BnP Capital would have that information. What I'm interested in though is over the page at 34,  
10 there's a whole section of this letter that's devoted to facts about Grissag AG, I would like to take you through a few of them.

The first says in the middle of the page Grissag AG has been chosen and tasked to find a total of 15billion from its various long-term investments around the Globe because of their efficient funding terms as listed below. Two says this entails breaking up those investments and consequently the incurring of breakage costs to achieve this fundraising of 15billion. Is that correct Mr van der Merwe?

**MR PIETER JOHANNES VAN DER MERWE:** That's totally incorrect Chair.

20 **ADV KATE HOFMEYR:** There were no breakage costs?

**MR PIETER JOHANNES VAN DER MERWE:** There's no breakage costs Chair.

**ADV KATE HOFMEYR:** Chair you will recall in the motivation that went to the Board to approve the cancellation fee one of the four items as I recall it which were the basis for justifying that cancellation fee were

these breakage costs that were allegedly to be – have been incurred but I understand your evidence Mr van der Merwe to be that no such costs were incurred by Grissag?

**MR PIETER JOHANNES VAN DER MERWE:** No, none whatsoever Chair.

**ADV KATE HOFMEYR:** Let's move down to point four on that page if we may, because now we get a whole lot of detail about directors that are being flown around the world, let's go to four, following the written request from SAA of a Term Sheet that required proof of our ability first  
10 to raise this funding and secondly to provide the terms attached to the funding raised four directors were dispatched to Paris, France on the 1<sup>st</sup> of June 2016, these directors come from amongst other countries Brazil, Canada and Russia.

Let's stop there. Are there four directors of Grissag AG?

**MR PIETER JOHANNES VAN DER MERWE:** Chair no, there is only at that point in time there's only two directors, myself and Mr P Pokusaev.

**ADV KATE HOFMEYR:** So it is false insofar as the letter records that any four directors of Grissag were dispatched to Paris, France on the 1<sup>st</sup> of June, is that right?

20 **MR PIETER JOHANNES VAN DER MERWE:** That's correct Chair.

**ADV KATE HOFMEYR:** Insofar as the two directors that do exist in Grissag AG were you dispatched to Paris, France on the 1<sup>st</sup> of June 2016?

**MR PIETER JOHANNES VAN DER MERWE:** Chair no, I was present in South Africa, I did not travel anywhere.

**ADV KATE HOFMEYR:** And to your knowledge was Mr Pokusaev dispatched on the 1<sup>st</sup> of June to Paris, France?

**MR PIETER JOHANNES VAN DER MERWE:** Chair definitely not.

**ADV KATE HOFMEYR:** Well the letter goes on ...(intervention)

**CHAIRPERSON:** And if he had you would have known?

**MR PIETER JOHANNES VAN DER MERWE:** I would definitely have known because I manage his itinerary for all his travel and anyway the way that the letter has been constructed is this is not our procedure how it works, because this letter is explaining we are now only looking  
10 for funds and ...(intervention)

**CHAIRPERSON:** Yes, yes, that's not how you work.

**MR PIETER JOHANNES VAN DER MERWE:** We do not operate like that, we first get approval from funders and with that mandate we approach our clients, so there's no necessity even after the contract would have been signed that we will fly around seeking money suddenly from different investors at any point of time.

**CHAIRPERSON:** Mmm, okay.

**ADV KATE HOFMEYR:** Let's go over the page to 35 if we may, you will see at point five there we get even more detail about this elusive trip to  
20 Paris because in the second sentence under five it records:

“Grissag AG has had to keep these directors those four that we were talking about in the previous paragraph, in Paris from the 1<sup>st</sup> to the 8<sup>th</sup> of June 2016 whilst waiting for the receipt of SAA's preferred option, in the process incurring flights and accommodation costs, amongst others in Euro Dollar to



execute the sourcing of required funds.”

Again Mr van der Merwe were you being kept in Paris waiting expectantly between the 1<sup>st</sup> and the 8<sup>th</sup> of June?

**MR PIETER JOHANNES VAN DER MERWE:** Chair again 100% not true.

**ADV KATE HOFMEYR:** And then finally at paragraph 7 there's a reference there to mitigate Grissag AG's losses in the event of SAA cancelling BnP Capital's mandate as above Grissag AG will invoice BnP Capital with the cancellation charges in US Dollar amount of five million to recover, compensate for its costs and the work involved in its  
10 fund raising execution, including the breakage costs of the amounts as above.

Well let's break that down, had you indicated to BnP Capital that you were going to charge them five million US Dollars if this deal did not come to fruition?

**MR PIETER JOHANNES VAN DER MERWE:** Chair no money was sought to be paid, there is not in any of our documentation any cancellation fee or even fees that needs to be paid as cancellation of a specific contract, so in all three that instances there was no intention from Grissag to sought any financial relief from BnP Capital.

20 **ADV KATE HOFMEYR:** So Mr van der Merwe just insofar as that letter is concerned would it be a fair summation to say those facts related to Grissag AG that I've taken you to today are false?

**MR PIETER JOHANNES VAN DER MERWE:** Chair I put on record that is totally false.

**ADV KATE HOFMEYR:** If we can then go to the final letter in the

sequence which is at page 32, by sequence I mean chronological sequence, because this is a letter dated the 4<sup>th</sup> of July 2016, you will see that this letter is a letter that marks Chair that reduction from the 50% of the cancellation fees now to the lesser amount of 49.9million. What I am interested in is the second paragraph but let's look at the introduction.

Our previous letter – so this is Mr Mhlango of BnP Capital writing to the CFO of South African Airways, it says:

10           “Our previous letter that required a cancellation fee of 50% of our total fees in the event that our fundraising mandate is cancelled by SAA for reasons beyond BnP Capital refers.”

And then the second paragraph:

“Following concerns by SAA that the cancellation fee we request is high we've now consulted with Grissag AG and the issue is the substantial cost of their penalty to us if we cancel. So to ease the process of finding common ground between the parties we propose that the cancellation fee be 49.9million exclusive of VAT.”

Had they consulted with you Mr van der Merwe?

20    **MR PIETER JOHANNES VAN DER MERWE:** Chair nobody consulted with me about any negotiations with SAA for paying any fees for any amount.

**ADV KATE HOFMEYR:** And so the suggestion that you were going to slap them with a penalty if there was a cancellation I take it would also be false?

**MR PIETER JOHANNES VAN DER MERWE:** Chair it is definitely false because to do that you need to have a contract in place and there is not existence of such a contract.

**ADV KATE HOFMEYR:** Chair those conclude the questions that we have for Mr van der Merwe. Oh, apologies Chair I have seen a note that I made, could I just be permitted ...(intervention)

**CHAIRPERSON:** Yes, okay.

**ADV KATE HOFMEYR:** ...one further question. Mr van der Merwe there has been some media reporting in relation to Grissag previously  
10 and amongst that reporting I understand there to be allegations that your company was engaged with the Guptas, is that correct?

**MR PIETER JOHANNES VAN DER MERWE:** That's totally false.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** Just as a matter of interest the name of your company does it have any particular meaning, it's an unusual name?

**MR PIETER JOHANNES VAN DER MERWE:** Chair I – that name was, it originates out of Switzerland, it was a name chosen by Mr Pokusaev so ...(intervention)

**CHAIRPERSON:** You have no idea whether ...(intervention)

20 **MR PIETER JOHANNES VAN DER MERWE:** I don't know if it's got some Russian name ...(intervention)

**CHAIRPERSON:** Connotations.

**MR PIETER JOHANNES VAN DER MERWE:** Or connotation as such, can I just add about the Guptas as such?

**CHAIRPERSON:** Mmm.

**MR PIETER JOHANNES VAN DER MERWE:** The fact that my surname is van der Merwe, I have been confronted by various individuals because apparently the Guptas attorney of law is Van der Merwe and I believe even his brother has got the same first name as myself so these questions have been put to me various times and I can say on record that we are not even remotely related whatsoever.

**CHAIRPERSON:** Thank you.

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

**CHAIRPERSON:** You are done?

10 **ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Okay alright, thank you very much Mr van der Merwe, you are excused.

**MR PIETER JOHANNES VAN DER MERWE:** Thank you Chair.

**CHAIRPERSON:** Thank you. It's been a longish day.

**ADV KATE HOFMEYR:** It has Chair indeed.

**CHAIRPERSON:** On Tuesday what time do you think we should start?

**ADV KATE HOFMEYR:** Chair may I propose nine thirty, we are envisaging two witnesses on the day and it will help the movement for the course of next week if we could start a bit early.

20 **CHAIRPERSON:** Yes okay, okay, we will adjourn the proceedings for the day, and on Tuesday we will start at nine thirty. We adjourn.

**INQUIRY ADJOURNS TO 18 JUNE 2019**