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20

PROCEEDINGS ON 20 JUNE 2019

CHAIRPERSON: Good morning Ms September, good morning everybody

ADV VERUSCHKA SEPTEMBER: Good morning Chair.

CHAIRPERSON: I am sorry we could not start at eight o'clock but we will try and cover up. Okay are you ready?

ADV VERUSCHKA SEPTEMBER: Yes I am Chair.

CHAIRPERSON: Okay. Let us proceed.

ADV VERUSCHKA SEPTEMBER: Chair the bundle before you is
10 marked DD6.

CHAIRPERSON: The lever arch file containing the statement of Mr Arson Malola-Phiri will be marked Exhibit DD6.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. That is certainly the file to be used for the evidence today. This particular witness Chair is currently an employee of South African Express. He is currently on a fixed term one year contract and before this he was previously employed during the years of 2007 to 2012. Chair just to orientate the location of this evidence it deals particularly with the focus area as explained at the very outset of the stream to deal with the transactions
20 that occurred in the North West in particular the North West Department of Transport and South African Express in respect of the Pilanesberg and the Mafikeng airports. Chair you will recall that Mr Ngwenya of yesterday gave a background in relation to these particular transactions. This witness however deals with more of a comparative analysis between suites of agreements such being that which has been

concluded between South African Express and Dube Trade Port and to compare that with the transactions that were concluded in the North West. In so doing Chair it raises really the question to this commission and that is were the North West contracts reasonable in its terms or did it actually perhaps form a basis for fraudulent or corrupt activities and that is a question that this commission then would need to consider against the background of the information and evidence to be presented today. Chair there is one preliminary issue and due to the nature of it it is important that we place certain things on record with your leave of

10 course.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: It relates – it relates particularly to confidentiality of the documents to be used by this witness during his witness today. Chair in that regard I would like to place on record that all of the documents that this particular witness attaches to his affidavit in this bundle DD6 has in fact been provided to South African Express. They took issue with 13...

CHAIRPERSON: Have been provided to or by South African Express?

ADV VERUSCHKA SEPTEMBER: No the commission provided a copy

20 of all of the annexures...

CHAIRPERSON: To South African Express?

ADV VERUSCHKA SEPTEMBER: Correct.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: To his statement but not necessarily his statement his affidavit itself just the annexures.

CHAIRPERSON: Hm.

ADV VERUSCHKA SEPTEMBER: It was done in a series of witnesses Mr Phiri being one of them. South African Express took issue in particular with 13 of the 16 annexures. Of the 13 I am informed by our investigators that 4 annexures are already in the public domain. 7 of the annexures constitute agreements that have been concluded with third parties and through the assistance of the secretariat the counter contracting parties to those agreements were contacted yesterday and Dube Trade Port in particular took no issue who raises no objection to those – to the use of the documents and so does Menzies and an agreement was reached with South African Airways and their attorneys in particular on redactions which have since been effected. There were two particular annexures Chair that does not constitute agreements itself but it is more cost data and it is cost data that is relevant to South African Express. Whilst South African Express despite several invitations to bring an application to protect any confidentialities that they may wish to have protected. We are informed that South African Express has no intention to bring such application however it is the considered view of the legal team to not in this particular case deal with the data that is contained and particularly the cost data that is contained in those two annexures. It is specific to this matter and it is specific to the circumstances of this matter. And accordingly redactions have then also been affected. In alignment with those redactions certain costings that is contained in the affidavit itself have similarly been redacted. Chair in that regard with your leave unless

there is any questions can the oath then be administered to the witness?

CHAIRPERSON: Ja. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MR ARSON MALOLA-PHIRI: My name is Arson Malola-Phiri.

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

MR ARSON MALOLA-PHIRI: I have got no objection.

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

MR ARSON MALOLA-PHIRI: 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.

MR ARSON MALOLA-PHIRI: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Chair just for...

CHAIRPERSON: You may proceed.

20 **ADV VERUSCHKA SEPTEMBER**: Thank you Chair. Just for the record we have created a small correspondence bundle in relation to the confidentiality issues. With your permission should you so wish we could hand that up?

CHAIRPERSON: It does not look like I need to have a look at it. You

...

ADV VERUSCHKA SEPTEMBER: As it pleases.

CHAIRPERSON: You have said that relevant parties are aware and they are not bringing any application to protect any confidentiality and in regard to certain documents that you felt may have issues of confidentiality you have taken measures to take care of that.

ADV VERUSCHKA SEPTEMBER: No problem Chair.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: Mr Phiri if I then may take you to page 1 of the bundle before you. Do you recognise this document?

10 **MR ARSON MALOLA-PHIRI:** Yes Ma'am.

ADV VERUSCHKA SEPTEMBER: What is it?

MR ARSON MALOLA-PHIRI: It is my affidavit.

ADV VERUSCHKA SEPTEMBER: Thank you. Can I ask you to turn to page 21 please? Whose signature appears above the word deponent?

MR ARSON MALOLA-PHIRI: It is my signature Chair.

ADV VERUSCHKA SEPTEMBER: So this affidavit was accordingly signed with all annexures on the 5 June 2019 before a commissioner of oaths, is that correct?

MR ARSON MALOLA-PHIRI: Yes.

20 **ADV VERUSCHKA SEPTEMBER:** Okay thank you. If I can then ask you to please provide details of your academic qualifications to the Chair?

MR ARSON MALOLA-PHIRI: Thank you Chair. I must also state that my hearing is a bit impaired because I had my two eardrums burst five years ago.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: And every time I flew.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: It seems to impair the hearing even more.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: So I would like to ask Chair if he ...

CHAIRPERSON: Ja that would...

MR ARSON MALOLA-PHIRI: A bit louder.

CHAIRPERSON: Yes no that is fine.

10 **MR ARSON MALOLA-PHIRI**: To [indistinct] my hearing.

CHAIRPERSON: That is fine. Just feel free to tell us if you do not hear.

MR ARSON MALOLA-PHIRI: Okay.

CHAIRPERSON: Thank you.

MR ARSON MALOLA-PHIRI: Alright...

ADV VERUSCHKA SEPTEMBER: Okay. Maybe before we start with your academic qualifications can I quickly take you to page 17, 17?

MR ARSON MALOLA-PHIRI: Page 17.

20 **ADV VERUSCHKA SEPTEMBER**: And in particular paragraph 62. Is it...

CHAIRPERSON: 62?

ADV VERUSCHKA SEPTEMBER: Yes. Is it correct that the year of 2005 ought to have been 2015?

MR ARSON MALOLA-PHIRI: I would like to make a correction there Chair that the April 2005 should be replaced by April 2015 to March

2015.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: Okay.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: If I could then also quickly take you to page 67.

MR ARSON MALOLA-PHIRI: 67?

ADV VERUSCHKA SEPTEMBER: Yes. Sorry, sorry, sorry page 18. Humble apologies it is the next page.

10 **CHAIRPERSON**: Paragraph 67 is at page 18.

ADV VERUSCHKA SEPTEMBER: Yes. Sorry I said page – paragraph 67. Is it also correct that there was – there is a correct that instead of at that sentence to ‘for both airports’ it ought to read ‘for Mafikeng’?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And then lastly can I just take to...

CHAIRPERSON: For Mafikeng airport?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: So it – both should not be there and instead of both there should be Mafikeng and it should be airport not airports.

20 **ADV VERUSCHKA SEPTEMBER**: Yes Chair.

CHAIRPERSON: With capital letter A, is that correct? Can you hear me?

MR ARSON MALOLA-PHIRI: I can hear you now.

CHAIRPERSON: Oh okay.

MR ARSON MALOLA-PHIRI: Ja.

CHAIRPERSON: Paragraph 67 should the last two words be replaced by Mafikeng Airport?

MR ARSON MALOLA-PHIRI: That is correct Chair. It is Mafikeng Airport.

CHAIRPERSON: Mafiking.

MR ARSON MALOLA-PHIRI: Because that is the way it has been defined in the agreement.

CHAIRPERSON: Yes. Oh okay.

MR ARSON MALOLA-PHIRI: It is Mafiking.

10 **CHAIRPERSON**: Mafiking. Okay it has been defined okay.

MR ARSON MALOLA-PHIRI: Mafiking Airport as opposed to Mafikeng.

CHAIRPERSON: Okay thank you.

ADV VERUSCHKA SEPTEMBER: And then lastly if I can quickly take you to page 16, 16 and there is the table that appears on that page.

MR ARSON MALOLA-PHIRI: 16 yes.

CHAIRPERSON: What page is that?

ADV VERUSCHKA SEPTEMBER: 16.

CHAIRPERSON: Hm. Yes.

20 **ADV VERUSCHKA SEPTEMBER**: Is there any corrections that you wish to make to this table?

MR ARSON MALOLA-PHIRI: The correction Chair in the table you have third parties 1, 2, 3 and 4 service providers.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: And the – there are – the last four columns that deals with the airport management, passenger handling,

ramp handling or aircraft handling.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: And route development marketing. Now there are ticks on each of those columns and the – I omitted to tick 1 and 2 specifically for route development and marketing so the last column for 1 and 2 they also have to be ticks.

CHAIRPERSON: The four – so the further ticking should be in regard to 2 and it should be the last column and then the next ticking should be where?

10 **MR ARSON MALOLA-PHIRI**: Chair what I [indistinct] for number 1.

CHAIRPERSON: Ja.

MR ARSON MALOLA-PHIRI: All the columns have to ticked.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: And for number.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: Also all the columns need to be ticked.

CHAIRPERSON: Oh okay.

MR ARSON MALOLA-PHIRI: Or the rows not columns, rows.

CHAIRPERSON: Yes okay thank you.

20 **MR ARSON MALOLA-PHIRI**: Ja.

MR ARSON MALOLA-PHIRI: Thank you.

ADV VERUSCHKA SEPTEMBER: And so apart from those changes you stand by the remaining aspects of your affidavit?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: In that case then can I ask you

please just provide detail of your academic qualifications?

CHAIRPERSON: Before that you remember supply a supplementary affidavit taking care of these corrections.

ADV VERUSCHKA SEPTEMBER: Okay will do Chair.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: Mr Phiri can you please proceed to provide your academic qualifications to the Chair?

MR ARSON MALOLA-PHIRI: I have Masters in Science, MSC in Finance, B.Com majoring in accounting and Diploma in Business
10 Studies.

ADV VERUSCHKA SEPTEMBER: Thank you. From paragraph 3 on page 1 of your affidavit you talk about your employment history at SA Express in particular.

CHAIRPERSON: I am sorry the – the Masters you say Masters in F...

MR ARSON MALOLA-PHIRI: It is a MSC.

CHAIRPERSON: Ja. In Finance?

MR ARSON MALOLA-PHIRI: In Finance.

CHAIRPERSON: Oh thank you.

MR ARSON MALOLA-PHIRI: Chair.

20 **CHAIRPERSON**: Thank you.

MR ARSON MALOLA-PHIRI: And the B.Com

CHAIRPERSON: Ys.

MR ARSON MALOLA-PHIRI: Majors in accounting.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. From paragraph 3

you talk about your employment at SA Express in particular. Can I ask you though to just give detail of your employment history to the extent that it extends beyond your employment in SA Express to get a better feel and understanding of how long you have worked within the aviation industry?

MR ARSON MALOLA-PHIRI: Thank you Chair. My career started in 1994 to 1995 with Nedbank the then Nedcor and I joined SAA in 1995 to 1997 as a finance manager. And from 1997 to 2000 still with SAA I was promoted to a sales marketing and business development role. I left
10 SAA in 2001 and joined Standard Bank then it was called Standard Bank Corporate and Merchant Bank SCMB from 2001 to 2003. I left to join Barclays Bank between 2003 and 2006 as the Director for Corporate and Investment banking. I left in 2006 and in 2007 to 2012 I was working for SA Express ...

ADV VERUSCHKA SEPTEMBER: If we can just...

MR ARSON MALOLA-PHIRI: But in two different roles. So from 2007 to 2010 I was General Manager responsible for commercial and between 2010 and 2012 I was the General Manager Regional Expansion basically responsible for the implementation of the expansion and
20 strategy into the rest of the region. I then left I joined...

ADV VERUSCHKA SEPTEMBER: Before you leave – before you leave Mr Phiri – is it correct that as a consequence of the roles that you had in SA Express at that time you were also a member of the Executive Committee?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Thank you. Please proceed?

MR ARSON MALOLA-PHIRI: In 2012 end of August I left SA Express to join SAA Technical SOC Limited. SAA Technical is 100% subsidiary of SAA group independent and with its own board and the executive management. I was also part of the executive management at the SAA Technical. I left them in ...

ADV VERUSCHKA SEPTEMBER: Before you leave SAA Technical can we just talk a little bit about the roles that you had at SAA Technical? What was the role that you held when you joined SAA Technical in Sep
10 – 2012 – you said September 2012 if I heard correctly?

MR ARSON MALOLA-PHIRI: Chair I took the role of General Manager Commercial at the SAA Technical and that was between 2012 and the 2015 and the subsequent to that I was promoted to an acting role as CEO of SAA Technical and I was also a member of Group ExCo the SAA Group ExCo. So over and above being an ExCo member for SAA Technical I was also a member of the Group ExCo for SAA. That was between 2015 and the late 2016 and the – I resigned took or most what I [indistinct] early retirement. I just wanted to take a break.

ADV VERUSCHKA SEPTEMBER: But before you take that break Mr
20 Phiri who was the chairperson at SAA at that time?

MR ARSON MALOLA-PHIRI: It was Dudu Meyene.

ADV VERUSCHKA SEPTEMBER: Okay and now you talk about your resignation. What actually happened during May of 2016 during your stay at SAA Technical?

MR ARSON MALOLA-PHIRI: In May 2016 that is when I tendered my

first resignation from SAA Technical.

ADV VERUSCHKA SEPTEMBER: And why did you tender your first resignation as you put it?

MR ARSON MALOLA-PHIRI: At the time Chair SAA as a group it was going through very trying times in terms of corporate governance and the IO say that he [indistinct] is ethics and for [indistinct] to that is the integrity. Now if your ethics and integrity are being questioned then it tends to erode your role as a leader. Now at that point in time it was actually quite clear that there was breakdown in corporate governance
10 and once you have – break down corporate governance then the issues around ethics and integrity also get questioned and if that is the currency of a leader then I thought to myself that it is time for me to leave SAA because also bearing in mind that the integrity and the ethics it is not something that is tangible it is either you have it or you do not have it. And the only way you know that those two are being questioned is where the corporate governance is under threat. That is the only time that you know that your integrity as a leader and your ethical standards are being questioned. During that time also I mean just to give that in context the time when a number of executives had
20 resigned. A few of them were under investigation because at the time when if an executives questioned some of the decisions the likelihood would be that either you go – you be charged and undergo disciplinary or you would be dismissed. So the environment at that point in time was quite difficult an environment for anybody to survive. So I took a few months of that and I decided that given the fact that the

organisation is going through turbulent times in terms corporate governance it was an opportune moment for me to leave.

ADV VERUSCHKA SEPTEMBER: When you talk about ...

CHAIRPERSON: This – I am sorry this was which year? Which year was this?

MR ARSON MALOLA-PHIRI: It was in 2016.

CHAIRPERSON: 2016?

MR ARSON MALOLA-PHIRI: In May.

CHAIRPERSON: 2016 in May?

10 **MR ARSON MALOLA-PHIRI:** In May.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: When you talk about turbulent times within the organisation on corporate governance issues which organisation do you speak about? Because at the time you were in South African – SAA Technical notwithstanding that the fact you also had a seat at Group ExCo level.

MR ARSON MALOLA-PHIRI: Chair it was basically on both sides. The Group ExCo level and of course I mean ExCo will report to the board but also at the SAA Technical. And it also allowed me Chair to put that
20 also into context in terms of the actual structure of the two entities.

CHAIRPERSON: Yes, ja I was about to say let us the group you know

ja **MR ARSON MALOLA-PHIRI:** Ja. As I said SAA Group and SA Technical 100% but the SA Technical is an independent entity with its own board as well as its own ExCo. But also I must mention that the composition of the board was from the SA Group. So in other words the

Group board members would ordinarily be also the board members for SA Technical. So there was not in a sense of independence. Bearing in mind that the PFMA provides that a typical SAA – SOE should have at least three board members of which the majority should be independent. Now by virtue of having board members who are sitting at the SAA Group and the same board members also sitting at the SA Technical it just compromises the sense of independence. That is one part of it.

ADV VERUSCHKA SEPTEMBER: And who if I could who were those
10 board – who were the board members at the time?

MR ARSON MALOLA-PHIRI: At the time there four board members one of whom had resigned after a few months of appointment. So we had at the time when I was acting CEO of SA Technical we had three board members. It was Dudu Meyene, Yakhe Kwenana and Doctor John Thandi.

CHAIRPERSON: Those were board members for SA Technical?

MR ARSON MALOLA-PHIRI: Those board members were for the SAA Group.

CHAIRPERSON: Oh for the SAA Group.

20 **MR ARSON MALOLA-PHIRI:** SAA Group.

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: Of which two of those were board members for SA Technical. So at the SA Technical.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: We had the chairlady Yakhe Kwenana and

the John Thandi as a board member. So we had two of three looking after SA Technical.

CHAIRPERSON: So what the third board member at SA Technical?

Were there three board members at SA Technical?

MR ARSON MALOLA-PHIRI: There are three at SAA Group. Dudu Meyene.

CHAIRPERSON: Three at a group?

MR ARSON MALOLA-PHIRI: At the group level.

CHAIRPERSON: Yes, yes.

10 **MR ARSON MALOLA-PHIRI**: Two of whom were board members for SA Technical.

CHAIRPERSON: Oh so SA Technical had only two members?

MR ARSON MALOLA-PHIRI: Had only two perceived non-executive and independent.

CHAIRPERSON: Oh but the whole board;.

MR ARSON MALOLA-PHIRI: Ja.

CHAIRPERSON: Of SA Technical consisted of how many people?

MR ARSON MALOLA-PHIRI: Four. The two non-executive and the CEO and the CFO as executive members.

20 **CHAIRPERSON**: Oh. So SA Technical had four board members

MR ARSON MALOLA-PHIRI: Correct.

CHAIRPERSON: Two being the CEO or the acting CEO during yhour time.

MR ARSON MALOLA-PHIRI: Ja.

CHAIRPERSON: And the CFO those were executive board members.

MR ARSON MALOLA-PHIRI: That is correct.

CHAIRPERSON: And then there were two non-executive board members but those two non-executive board members were also board members at Group level and that was Mr Dudu Meyene and Yakhe Kwenana?

MR ARSON MALOLA-PHIRI: Yakhe Kwenana.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: Yes Chair.

CHAIRPERSON: So part of the point you make about issues of
10 governance is that whereas the requirement of proper good governance was that two or the majority of the board members at SA Technical level – Technical should be non-executive while it was true that they were non-executive at SA Technical but they were members of the board at group level and therefore issues of independence arose.

MR ARSON MALOLA-PHIRI: That is correct Char.

CHAIRPERSON: Is that part of the point you were making?

MR ARSON MALOLA-PHIRI: That is correct Chair.

CHAIRPERSON: Yes okay thank ou.

MR ARSON MALOLA-PHIRI: Ja that is correct Chair.

20 **ADV VERUSCHKA SEPTEMBER**: But maybe just to amplify on your point Chair. You talk specifically about the turbulence of corporate governance within the organisation in order for us to appreciate what turbulence you refer to can you give us examples of corporate governance issues that caused you to consider leaving the organisatioin?

MR ARSON MALOLA-PHIRI: Chair firstly I am not [indistinct] that the as I said already that the – a lot of executives left during my time when I was the acting CEO of SA Technical and one of them was the Chief Procurement Officer who left.

ADV VERUSCHKA SEPTEMBER: And who was that?

MR ARSON MALOLA-PHIRI: Sorry?

ADV VERUSCHKA SEPTEMBER: Who was that at the time?

MR ARSON MALOLA-PHIRI: I cannot actually recall the name.

ADV VERUSCHKA SEPTEMBER: No problem.

10 **MR ARSON MALOLA-PHIRI:** Was he or she the Chief Procurement Officer for SA Technical?

MR ARSON MALOLA-PHIRI: For SA Group.

CHAIRPERSON: Oh SA Group.

MR ARSON MALOLA-PHIRI: For SA Group.

CHAIRPERSON: Oh okay.

MR ARSON MALOLA-PHIRI: At that stage. But also bear in mind that the procurement officer for SA Group would also have an impact on the subsidiaries.

CHAIRPERSON: Okay.

20 **MR ARSON MALOLA-PHIRI:** In this case the SAT because SA Group was the [indistinct] so to speak and the SAT as a subsidiary had to make sure that its policies were aligned to the group as to opposed to operating independently.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: Which then brings to me the issue about

the independence that was actually making me uncomfortable. But during that time the Chief Procurement Officer had been charged and he – then he resigned before disciplinary...

CHAIRPERSON: And that is charged in disciplinary sense not in a criminal sense

MR ARSON MALOLA-PHIRI: Sorry Chair?

CHAIRPERSON: He was charged with disciplinary – it was disciplinary charges what you are talking about?

MR ARSON MALOLA-PHIRI: It – it ...

10 **CHAIRPERSON**: Not – not criminal charges?

MR ARSON MALOLA-PHIRI: Not criminal charges.

CHAIRPERSON: *Ja.*

MR ARSON MALOLA-PHIRI: These were charges relating to the procurement policies ...

CHAIRPERSON: Yes, okay.

MR ARSON MALOLA-PHIRI: It was the disagreement there between the then Chair – Dudu Myeni – and himself – but what I wanted to say is that he – it was actually clear in my mind that the procurement processes were being eroded in a way.

20 So there is a complete – not a complete breakdown but - you know - a breakdown in compliance but he secondly talking to SAT specifically there one or two transactions where I believed that the – the Board could have applied its mind better and the (indistinct) of the processes and the awarding of that tender but because we are the only two independent and Executive and specific to be independent I believe

that the – there was not much of application of mind in making certain decisions because of lack of vigorous debate but also I must also state that the - going back to the issue about the integrity and the ethics because these things cannot be legislated.

It is something that you feel in your gut or the voice that talks to you between your ears. My gut was just telling me that fundamentally there is something wrong. Without having to point out specifically to an activity or wrongdoing but it just was not sitting well with me.

10 My gut was telling me that there was just something wrong as far as corporate governance is concerned and more specifically the procurement processes and the decision that the – were being made. So Chair it is quite difficult for me at this stage to make specific examples ...

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: But that is how I felt ...

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: At that point in time.

CHAIRPERSON: Yes.

20 **MR ARSON MALOLA-PHIRI:** *Ja.*

CHAIRPERSON: Okay, thank you.

ADV VERUSCHKA SEPTEMBER: And on that point Mr Phiri was there any interference in the procurement at SA Technical?

MR ARSON MALOLA-PHIRI: As I said Chair I think that would possibly require me to be a bit more specific because otherwise I do not want to

generalise ...

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: Specific instances.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: If need be ...

CHAIRPERSON: Huh-uh.

MR ARSON MALOLA-PHIRI: I think it would be a matter of a different testimony.

CHAIRPERSON: I – I understand you to want to limit your – your
10 evidence in regard to the issues of procurement and ethics and so on at
that time to saying certain things were happening which made you
believe that ethics was – was being eroded and that there were
challenges with regard to procurement - following procurement
processes - but you want to leave it at that. Is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

CHAIRPERSON: Yes, okay.

MR ARSON MALOLA-PHIRI: That is correct Chair.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: Mr Phiri so when did you resign from
20 SA Technical?

MR ARSON MALOLA-PHIRI: I resigned in May for the reason that I
have just stated and the – a week later I did get a call from the
Chairlady who was then Yakhe Kwinana to say that the – my departure
left a vacuum and given the fact that SA Technical is a highly regulated
institution and compliance was key.

So without a CEO it does question the – the licence of the organisation. So she asked me to go back at least for a month or two in order to close the gap. The thinking was that within that time they would have secured the services of a substantive CEO. In fact at that stage the CEO of SAT before I got the acting role was Musa Zwane who was then asked to act the SA Group and basically I took over his CEO role at the SA Technical.

So at the time when Yakhe was asking – the (indistinct) was asking me to go back for two months at that point in time the thinking
10 was that they would have been able to finalise the recruitment of a Group Exco in which case then Musa Zwane would then go back to his old role of CEO Technical. So I agreed after careful consideration and I was there for one and a half months and I left end of August.

During that time when I went back it is a time when Yakhe Kwinana resigned as a Board Member who kindly had shared with me why he had resigned and one of the issues that he – she had raised was that the – the corporate governance issues are being compromised.

So she decided to leave which meant that the – there were
20 only two Board Members left which is the threshold required by PFMA but subsequent to that there was an appointment of two additional Board Members but the – for me I think the second departure was informed by the fact that even out Chairlady had to resign citing the very same issues that were making me uncomfortable which basically I confirmed like that and the voice that was talking to me.

So that for me was the indication that indeed what I thought was the – my gut feeling is actually real.

CHAIRPERSON: Who was the Chairlady who you are talking about now?

MR ARSON MALOLA-PHIRI: Sorry.

CHAIRPERSON: Who was the Chairlady who you are talking about? I think you said the Chairlady resigned. Is that right?

MR ARSON MALOLA-PHIRI: Ms Yakhe Kwinana.

CHAIRPERSON: Oh she was the Chairlady?

10 **MR ARSON MALOLA-PHIRI:** She was the Chairlady.

CHAIRPERSON: Oh, oh okay alright.

MR ARSON MALOLA-PHIRI: For SA Technical.

CHAIRPERSON: Yes. Earlier on Ms September asked you specific instances of challenges with procurement ...

MR ARSON MALOLA-PHIRI: *Ja.*

CHAIRPERSON: And – and I understood you to – to say you wanted to leave it at simply saying it was your feeling or perception that they were issues in regard to procurement challenges and ethics. I just want to say that it is not because we are not interested in instances of
20 challenges and procurement and so on but it is simply because I have read your statement.

I know that it does not cover those issues and certainly subsequent to this if the legal team talks to you and it appears that you do have knowledge of instances relating to procurement that may be important for Commission then they can take a statement that covers

those issues.

I just – I do not want anybody to think we are not interested in issues of procurement that you might know about.

MR ARSON MALOLA-PHIRI: Thank you Chair.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: As it pleases Chair. So you left the organisation in or rather SA Technical in September 2016. Is that correct?

MR ARSON MALOLA-PHIRI: That is correct.

10 **ADV VERUSCHKA SEPTEMBER**: And that at that particular time you took the decision to retire. You then ventured out of the aviation industry but you returned to the aviation industry on 21 November 2018. Is that correct?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Where – can you just clarify in fact – sorry? Is it correct then that you joined SA Express on 21 November 2018?

MR ARSON MALOLA-PHIRI: That is correct Chair. I – as I said that I took a break. I call it semi-retirement and the – roundabout
20 August/September I was offered a job at SA Express as the General Manager for Commercial. Basically my old job at SA Express.

ADV VERUSCHKA SEPTEMBER: Is that August September 2018?

MR ARSON MALOLA-PHIRI: 21 September 2018 ...

ADV VERUSCHKA SEPTEMBER: Thank you.

MR ARSON MALOLA-PHIRI: For a one year contract that expires on

20 November this year – 2019.

ADV VERUSCHKA SEPTEMBER: Thank you Mr Phiri. So according to my calculations you have experience of approximately 15 years within the aviation industry. Is my calculation correct?

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: Would it be fair to say that you are in fact well versed in contracting arrangements within the aviation industry based on your experience within the industry?

MR ARSON MALOLA-PHIRI: That is correct Chair.

10 **ADV VERUSCHKA SEPTEMBER:** So if you can then turn to page 2 of your statement and paragraph 6 talks specifically to the focus of your evidence today which we will – we will now focus on. You have been request by the Commission to do a comparative analysis between suites of agreements and as outlined in – on page 2 paragraph 6 please just describe the core point of focus for your evidence today.

MR ARSON MALOLA-PHIRI: Thank you Chair. The core purpose of today is to look at the contract that the - or arrangement that the SA Express had entered with the Dube Trading Port. The Dube TradePort being Schedule 3C of the PFMA. Schedule 3 and Government entities
20 basically have got dual mandates. The one is a commercial mandate. The other is a developmental mandate.

In terms of the commercial mandate these entities are expected to be profitable and sustainable but we focus on economic growth as well as the sparing employment as well and the Dube Trading Port was such an entity. This was enacted by the – I was just about to

say North West – by the KwaZulu-Natal Provincial Government as part of the Department of Economic Development.

The objective of – for this Dube Trading Port was specifically to look at the creation of one metropolis within KwaZulu-Natal Province and in this case it was in Durban specifically and the focus was going to be logistics. Whether it is by air or by sea but over and above that they are also looking at the possibility of developing it into an investment. So a special economic zone which would ideally attract investments of various nature.

10 **ADV VERUSCHKA SEPTEMBER:** Okay. So on the one hand you looked at contract – contractual suites of agreements relating transactions between SA Express and Dube TradePort. Is that right?

MR ARSON MALOLA-PHIRI: Yes.

ADV VERUSCHKA SEPTEMBER: And then as compared to that you have also looked at another suite of agreements which has been provided to you by the investigators of this Commission. We talk specifically to the transactions between the North West Department of Transport and SA Express. Is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

20 **ADV VERUSCHKA SEPTEMBER:** The common denominator or at least the primary common denominators of these two suites of agreements is that SA Express is a common contracting party. Is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And that both these suites of agreements relates to the development of new routes?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: In particular the Dube TradePort Suite of Agreements - if we could that – talks to the development of routes between Kinshasa – King Shaka International Airport Durban and Lusaka on the one hand and Harare on the other?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Whereas the North West Suite of Agreements talks to the development of new routes in relation to the Pilanesberg and the Mafikeng Airports relative to other airports?

10 **MR ARSON MALOLA-PHIRI:** That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Thank you. Were you personally involved in the – or rather let me first ask you how did Sout African Express become involved in the Dube TradePort Project?

MR ARSON MALOLA-PHIRI: Chair as part of my responsibility as the General Manager for Regional Expansion was to look at opportunities within the (indistinct) region with a view not only to provide air transport to passengers to fly from Southern Africa destination to South Africa but it would also ensure that we promote trade but we do so responsibly and I will explain possibly as I go along in my testimony
20 why I am talking about the sustainability.

Now in 2010/2011 we were approached by the Dube TradePort to basically request or encourage SA Express to set up a hub out of Durban as part of the Dube TradePort objectives in driving economic growth and therefore employment in the – in the province with a view that the SA Express would then operate into key destination

in Southern Africa of which Lusaka in Zambia and Harare in Zimbabwe were on the top five on the list of opportunities.

This arose from a study that was done by CBRE Consulting. At that point in time they were contracted to Dube Trade Point. So they had done a whole analysis in terms of opportunities in Southern Africa and they were privatised accordingly. Their approach was timely in the sense that it was at the time when SA Express was indeed desiring to expand into the rest – the rest of the continent.

10 So the ideas definitely dovetailed. SA Express then responded positively but obviously in any business when you are starting a new route you tend to make losses in the first one or two years which in (indistinct) terms we call it an investment in order for you to operate on those routes.

So it takes that long to get to a point where you are profitable on those new routes. Now it was actually clear to us that for the routes that were earmarked by CBRE out of Durban it could actually take longer to do so. So Dube TradePort came up with an incentive program to encourage airlines to operate out of the hub and the – this incentives came in the form of subsidies.

20 **ADV VERUSCHKA SEPTEMBER:** And so if I may then following on from your evidence another very critical common denominator between the agreements in the Dube TradePort Precinct and the – and the agreements in the North West Precinct is that both suites or agreements concerned some form of compensation or incentivisation payable to South African Express. Is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay. Who owns the King Shaka International Airport?

MR ARSON MALOLA-PHIRI: ACSA owns and manages King Shaka Airport Chair.

ADV VERUSCHKA SEPTEMBER: So notwithstanding that the contracts we are now going to interrogate was concluded with Dube TradePort was ACSA involved in these negotiations at all?

MR ARSON MALOLA-PHIRI: Not at all Chair.

10 **ADV VERUSCHKA SEPTEMBER:** Were you involved in the negotiations with Dube TradePort?

MR ARSON MALOLA-PHIRI: I was actively involved in the negotiations culminating to the signing of the MOU and the subsequently of the MOA – the Memorandum of Agreement.

ADV VERUSCHKA SEPTEMBER: And is – so your involvement ended after the Memorandum of Agreement that was concluded between Dube TradePort and South African Express?

MR ARSON MALOLA-PHIRI: Sorry. Can you say that again?

ADV VERUSCHKA SEPTEMBER: Your involvement ...

20 **MR ARSON MALOLA-PHIRI:** *Ja.*

ADV VERUSCHKA SEPTEMBER: Ended after the Memorandum of Agreement was concluded?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay. Now in order ...

CHAIRPERSON: The involvement that ended would be involvement in

what?

MR ARSON MALOLA-PHIRI: The negotiations ...

CHAIRPERSON: Huh-uh.

MR ARSON MALOLA-PHIRI: And the – the signing of the Memorandum of Understanding – MOU ...

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: And the – the signing of Memorandum of Agreement. That was the extent of my involvement because the MOA was signed in 2012 in the very same year that I had left for SA
10 Technical.

CHAIRPERSON: So does it mean that after the signing of the Memorandum of Agreement you had no particular interactions with Dube TradePort?

MR ARSON MALOLA-PHIRI: No not at all Chair.

CHAIRPERSON: You did not or you did? You had no involvement whatsoever or you still had some other involvement with them?

MR ARSON MALOLA-PHIRI: No any other involvement.

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: Especially in light of the fact Chair ...

20 **CHAIRPERSON:** Yes.

MR ARSON MALOLA-PHIRI: That the – the Memorandum of Agreement had made provision ...

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: That the – the two sets of agreements would provide the general framework ...

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: And that at any given point in time should a route be identified for execution.

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: There should be a separate addendum ...

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: That talks to a specific route ...

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: That has to be executed. So I provided
10 and signed for the general framework ...

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: But the actual execution was going to be in accordance with the – an addendum which was to still be concluded ...

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: By – by both parties. So I left at the – the stage where the framework was agreed ...

CHAIRPERSON: Had been put in place.

MR ARSON MALOLA-PHIRI: And – and signed for ...

20 **CHAIRPERSON:** Okay.

MR ARSON MALOLA-PHIRI: And I had no further involvement in terms of the actual execution.

CHAIRPERSON: Okay. I think that is what I was looking for. Whether in regard to execution you had no involvement. That is fine.

MR ARSON MALOLA-PHIRI: That is correct Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: And the reason for you then not being involved any longer to follow on from your evidence earlier is that at the time that or shortly after the MOA was in fact signed you left SA Express during 2012. Is that right?

MR ARSON MALOLA-PHIRI: That is correct. When both the MOU and the MOA were signed that is when I left.

ADV VERUSCHKA SEPTEMBER: Okay. So in order to do what I could possibly call an apple with apple comparative analysis let us just
10 consolidate what exactly the type of agreements were that constituted what we call the Dube TradePort Agreements as compared to the North West Agreements.

Is it right that the Dube TradePort Agreements consists of a series of agreements? Such being the Memorandum of Understanding, the Memorandum of Agreement and certain addenda.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And parking that to one side. If one were to then consider the agreements concluded in the North West you would look at the – or rather you have considered the main agreement
20 that was concluded between the North West Department of Transport and South African Express together with four ground handling contracts. Is that correct?

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: So to do the comparative analysis can I ask you first to turn to page 23 please?

MR ARSON MALOLA-PHIRI: 23.

ADV VERUSCHKA SEPTEMBER: Is this the Memorandum of Understanding that was part of the evidence you have just given?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And this Memorandum of Understanding was concluded between Dube TradePort and South African Express Airways?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Can I ask you then to turn to page
10 26?

MR ARSON MALOLA-PHIRI: 26?

ADV VERUSCHKA SEPTEMBER: Oops – sorry, sorry – to 35. Humble apologies. Is it correct that this agreement was signed on the – during September 2011?

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: Whose signature appears on behalf of South African Express?

MR ARSON MALOLA-PHIRI: It is my signature.

ADV VERUSCHKA SEPTEMBER: Thank you and now to just look at
20 some of the key provisions.

CHAIRPERSON: I am sorry. Are you looking at the signatures at page 35?

ADV VERUSCHKA SEPTEMBER: Page 35 Chair.

CHAIRPERSON: Yes. Excuse me. Is SAX – does SAX stand for South African Express?

MR ARSON MALOLA-PHIRI: (No audible reply).

CHAIRPERSON: Does SAX stand for South African Express?

MR ARSON MALOLA-PHIRI: Yes.

CHAIRPERSON: Oh.

MR ARSON MALOLA-PHIRI: Yes Chair.

CHAIRPERSON: So that is your signature there?

MR ARSON MALOLA-PHIRI: Yes sir.

CHAIRPERSON: Okay, alright. Thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. Paragraph 1.1.2 on
10 page 25 defines SAX to mean the SA Express. I ought to have taken
you there Chair – sorry. If we can then turn to page 26 and paragraph
3 specifically talks to the duration of the agreement and 3.1.1 informs
that:

“The agreement would then be term...”

Or rather 3.1.1 read together with the balance of sub paragraphs
informs that:

“The agreement would terminate by this agreement
being conclude ...”

Sorry.

20 “...by being replaced by more substantive
agreements, by mutual agreement to not proceed or
after 12 months from signature date.”

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And it is therefore correct that there
was in fact a subsequent agreement that was signed which was the

Memorandum of Agreement that you were also involved in?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: If I can then ask you to turn to page 25 paragraph 2.3 sets out the scope of this agreement and in particular it reads with your leave Chair that:

“The parties have agreed to cooperate with one another to develop potential partnerships for their mutual benefit and in order to develop strategic partnerships for ...”

10 To name but three of them. 2.3.1 informs:

“Regional route development from King Shaka International Airport.”

2.3.2 talks about the:

“Formation of a joint marketing plan and the joint implementation of that marketing plan for areas of common interest.”

If we turn the page sub paragraph 2.3.5 also talks to the:

20 “Repair overall and maintenance of the SA Express aircraft and air fleet at King Shaka International Airport.”

If I can then ask you to turn to page 28 please. At paragraph 5.2 the parties also agree that:

“The Dube TradePort will provide marketing support for a period of one year in respect of each of the routes referred to in Annexure A.”

And Annexure A can be found on page 36 of the bundle.

CHAIRPERSON: Did you say 36?

ADV VERUSCHKA SEPTEMBER: 36 Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Mr Phiri the routes that are identified at page 36 which two routes did S A Express show a particular interest in?

MR ARSON MALOLA-PHIRI: S A Express Chair showed interest on the Zambia and the Zimbabwe so it was country number one and
10 country number eight in the table.

ADV VERUSCHKA SEPTEMBER: Thank you. And then in line with your evidence of earlier which spoke about incentivisation offerings can I ask you to turn to page 30 please. Paragraph 11 talks particularly to the Preliminary Activities Fund, 11.1 speaks specifically to the fact that Dube Tradeport will advance an amount of 5million rand to be utilise for the Planning Development Marketing and Operations of the joint activities contemplated by the memorandum of understanding to be split between passenger and cargo activities. Can you just explain it a little bit more detail exactly what this Preliminary Development Fund was
20 and how was it contemplated at the time to operate?

MR ARSON MALOLA-PHIRI: Chair at the time the thinking was that due to the fact that it takes a bit of time to develop a route the incentive there from Dube Tradeport that they would assist us our S A Express in ensuring that the route was a success and in that regard they had formulated what they called incentives and these incentives

came in a form of rebates but the rebates were defined in two ways. One was the market development the other was the assistance in operational costs. Now in terms of the marketing costs it was clearly defined that these would be the costs that would be incurred by S A Express prior to the commencement of the route. Ordinarily in the aviation industry that before your first flight you need to secure a opening of a flight in the system if I can put it that way, you open a flight in the system and allow it time to sell and that ordinarily would be, for regional routes would be about three months. So you open the

10 flight on the system, you go out to the market, sell it and of course passengers would book on it with a view to fly in three months' time and you continue that exercise until your first flight. The reason of doing that is we always want to ensure that your first flight is a success otherwise if you only allow a few days then you would be heading for a disaster on your first flight. So Dube Tradeport was happy to assist with the – those costs of marketing but also over and above that, they were also happy to incentivise S A Express by ensuring that they are giving us a rebate on the operating costs but bear in mind that those were only applicable for a period of one year, save for this three month

20 period before we start a flight but the way it was structured was that S A Express as an airline was to incur these costs and then claim from Dube Tradeport.

ADV VERUSCHKA SEPTEMBER: Before we talk about the incurring and claiming methodologies which is neatly captured in the memorandum of agreement can we perhaps then go there, just to set

the context for what you're about to inform?

CHAIRPERSON: Well let me just get the last point that you were making. You were saying that S A Express would incur certain costs and claim those costs from Dube Tradeport and those costs would be covered under the Preliminary Activities Fund is that correct?

MR ARSON MALOLA-PHIRI: That's correct.

CHAIRPERSON: Alright.

MR ARSON MALOLA-PHIRI: That's correct, so Chair the extent of the claim was estimated to be around 5million for both the route
10 development as well as operations so it was capped at 5million.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: Can I then ask you to please turn to page 38 of the bundle, 38. Is that the memorandum of agreement concluded between Dube Tradeport and South African Express Airways following the memorandum of understanding?

MR ARSON MALOLA-PHIRI: That's correct Chair.

ADV VERUSCHKA SEPTEMBER: Can I ask you to please turn to page 52 of the bundle. Noting from this page that this agreement was signed during May of 2012 whose signature appears on this page on
20 behalf of South African Express?

MR ARSON MALOLA-PHIRI: It's my signature Chair.

ADV VERUSCHKA SEPTEMBER: Thank you. On page 43 of the agreement, or sorry 43 of the bundle mention is made that this agreement is concluded for 12 months at paragraph 4 and in particular to the information that you were sharing with the Chair on the

entitlement to claim and claim methodology I'd like us to look at paragraph – clause 5. So clause 5 talks specifically to the regional route development and can I ask you to read into the record clause 5.2 please.

MR ARSON MALOLA-PHIRI: Thank you Chair paragraph 5.2 on page 43 of the bundle, I quote,

10 “For a period of 12 months, after signature date and in respect of routes identified in Annexure A, which we have looked at DTP will contribute – DTP meaning Dube Tradeport will contribute to S A Express navigation costs for aircraft flying into King Shaka International Airport on each route and also for the landing charges, parking costs and the aircraft handling charges incurred by S A Express, aircraft operating the routes specified in Annexure A again. DTP’s contribution will take the form of financial rebates per specified aircraft flying the specified routes and will be limited to the actual costs referred to above for each aircraft landing at King Shaka International Airport calculated in accordance with the clause 5.3(b) of the agreement below”,

20 Then it states what those would be.

ADV VERUSCHKA SEPTEMBER: And if I could then ask you to turn to page 44 in continuance of clause 5.3 paragraph 5.3 (b) 1, 2 and 3 outlines very clear defined amounts that are claimable in respect of particular types of aircraft, is that correct?

MR ARSON MALOLA-PHIRI: That’s correct Chair.

ADV VERUSCHKA SEPTEMBER: Then could I ask you to read paragraph 5.4 into the record please.

MR ARSON MALOLA-PHIRI: 5.4 Chair clarifies how these claims will be made and for which specific items,

“Dube Tradeport and S A Express will conclude addendum to this agreement to provide for each of the individual routes identified in Annexure A prior to commencement of the operation of those routes by S A Express. Each addendum will stipulate the actual rebate to be paid by Dube Tradeport and it will be calculated in accordance with the clause 5.3 (b) above. The rebates set out in clause 5.3 (b) above are based on 2012 regraded tariffs applied by ACSA and ATNS”,

At this point in time Chair I just wanted to clarify because it talks about ACSA and ATNS but this costs basically relate to the landing and parking for ACSA and then the navigation specifically speaks to ATNS and these rates are regulated – gazetted rates, so the thinking then was that S A Express would pay these rates for landing, parking and the navigation in accordance with the gazetted rates and then on invoice they would then claim. I just wanted to clarify that when they talk about ATNS and ACSA and it continues to say that,

“and such rebates will apply provided that in the event that these amounts are lawfully (indistinct) by ACSA and ATNS during their applicable period, the parties will provide for the permitted increases as to the regulatories in each addendum”.

So it makes it very clear that in the event that there’s an

increase in terms of the tariffs during the period where these rebates are applicable then there will be adjustment. So in other words Dube Tradeport would have the opportunity to validate the amount that S A Express is claiming not only from the invoice but also checking it against the regulated tariffs. So there was a double control from that point of view.

ADV VERUSCHKA SEPTEMBER: Then in summary the methodology of how this agreement applied to the incentivisation of the scheme based on the paragraphs that you read includes that S A Express is
10 entitled to claim a specific amount which is calculated per aircraft, that amount is regulated by tariffs which applies to both ACSA, for the record being Airports Company of South Africa and ATNS being Air Traffic Navigation Services.

MR ARSON MALOLA-PHIRI: That's correct.

ADV VERUSCHKA SEPTEMBER: In addition the claim methodology is that S A Express pays and then claims back based on a checks and balances process.

MR ARSON MALOLA-PHIRI: That's correct Chair.

ADV VERUSCHKA SEPTEMBER: Thank you. Now Mr Phiri while
20 some of these terms are quite familiar to you can I ask that we unpack some of these terms a bit so that – it's going to be used further in your evidence as well. Paragraph 5.2 on page 43 talks about a whole range of charges and costs and the like. You mentioned also earlier about operating costs, can you please explain what exactly operating costs would include for an airline on a route?

MR ARSON MALOLA-PHIRI: Chair as an airline in order to discharge its responsibility of flying passengers from one point to another point and also cargo from one point to another point, you would need an aircraft first of all, you'd need crew both cockpit and the cabin crew and of course you'd need fuel, you'd need to ensure that meals are provided on-board and you have to ensure that the aircraft is clean, in other words the product that you are offering the passengers is in good shape. So part of the operating costs have to do with the provision of the aircraft but over and above that, you'd also have to

10 incur costs in terms of distribution of your inventory which is the sale of the seats or space in terms of cargo and also the services that are rendered to passengers as they board the aircraft. So in other words, I'm looking at having access to the airport because that – in the case of Dube Tradeport or Durban it's the ACSA owned King Shaka Airport and they provide certain services of which they also charge for those services but also over and above that, we have, what we call, ground services. Now ground services ordinarily would include passenger services, which is when you walk to the airport, for those of you who have flown would understand that when you walk into the airport the

20 first thing that you do, you go to a check-in counter, that's a service for the passengers and sometimes you walk in and you'd like to change your flight so you go to passenger service desk where you can change your flights or book a new flight, whatever the case may be and of course after you've checked in, you walk through the security and you go inside and then you check-out but in terms of ground handling

services, I think that's when it really starts to kick in because as a passenger you have to get into a bus and you have to get to the aircraft and there are also certain services that are rendered to the aircraft for example the fuelling of the aircraft, the cleaning of the aircraft and providing the necessary equipment to allow safe boarding of passengers. So all those services are categorised as ground handling services and there's your costs attached to it. So over and above the cost of the aircraft you have to add all these costs and you would normally classify them as operating costs but basically it's a cost of
10 operating an aircraft.

ADV VERUSCHKA SEPTEMBER: Thank you, if I could then ask you to...(intervention).

CHAIRPERSON: I didn't say when we would take the tea break since we started earlier than normal, we'll take it at half past nine just in case there may be people attending who might not be aware we are not going to sit the whole day today, we'll adjourn at 11 and then tomorrow we will not start at normal time we hope to start around 12 o'clock so just so that people can plan their lives appropriately, yes thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. Pursuant to the
20 memorandum of agreement it was mentioned in there that certain – more substantive agreements need to be concluded in respect of each route and those were in fact concluded, is that right?

MR ARSON MALOLA-PHIRI: That's correct Chair.

ADV VERUSCHKA SEPTEMBER: Can I ask you to turn to page 55 please of the bundle. 55 appears to be the addendum which was

concluded in respect of the King Shaka/Lusaka route, is that right?

MR ARSON MALOLA-PHIRI: That's correct Chair.

ADV VERUSCHKA SEPTEMBER: Thank you and just to focus then on the particular costings which form part of the incentivisation scheme, if I could ask you to turn to page 56, paragraph 4 – sorry clause 4, 4.1 which specifically deals with preliminary activity costs that were contemplated in the previous memoranda, Dube Tradeport will contribute to the preliminary activity costs for the launch of the route to a maximum of R500 000 and that is as compared to the 5million rand
10 originally contemplated in the memoranda, is that right?

MR ARSON MALOLA-PHIRI: That's correct but Chair I must also emphasise that the R500 000 is just part of the 5billion that was contemplated in the memorandum agreement, bearing in mind that the 5billion was for both. The marketing as well as the rebates on the operations so those two items were separated so this is specifically talking to the marketing part of it.

CHAIRPERSON: Okay, alright I suspect that at certain stages your voice goes down, it may be that some of the people at the back might not hear you when it goes down, try and maintain it at the higher level,
20 okay thank you.

ADV VERUSCHKA SEPTEMBER: Chair I note that we are on one minute to half past, may it be a convenient time now?

CHAIRPERSON: Yes let's take the tea break and we'll resume at quarter to ten, we adjourn.

INQUIRY ADJOURNED

INQUIRY RESUMES

CHAIRPERSON: Yes let us proceed.

ADV VERUSCHKA SEPTEMBER: Mr Phiri we were talking about the addendum that starts on page 55 in relation to the King Shaka and Lusaka route. Just on that score to follow up on the evidence that you gave earlier you were no longer at SA Express at the time that these addenda were then concluded, is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And when you departed who did you
10 hand the department – sorry – the Dube TradePort project over to?

MR ARSON MALOLA-PHIRI: It was handed over Chair to Mr Brian Van Wyk.

ADV VERUSCHKA SEPTEMBER: And which role did he take?

MR ARSON MALOLA-PHIRI: At that point Brian Van Wyk was the general manager commercial.

ADV VERUSCHKA SEPTEMBER: Thank you. If I could then ask you to turn to page 58 which is the signature page of this particular addenda – addendum. Whose name appears for and on behalf of South African Express having signed on the 22 November 2012?

20 **MR ARSON MALOLA-PHIRI:** Chair it is Mr Brian Van Wyk.

ADV VERUSCHKA SEPTEMBER: In particular it is noted GM Commercial below that, is that right?

MR ARSON MALOLA-PHIRI: That is right Chair.

ADV VERUSCHKA SEPTEMBER: If we could then resume where we had left off before the short adjournment and that is on page 56. For

the record paragraph 4.2 specifically talks to the preliminary activity costs will be drawn from the preliminary activities fund and will be utilised for route launch and marketing activities in advance of the commencement of the operation of the route, is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And then paragraph – sorry I keep on referring to them as paragraph – clauses – clause 5 on page 57 speaks specifically to flight incentive costs.

MR ARSON MALOLA-PHIRI: Sorry can you repeat that Chair?

- 10 **ADV VERUSCHKA SEPTEMBER:** Page 57 clause 5 talks to the flight incentive costs that were offered in respect of this route.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Having considered the detail and particularly having been looked at the comparative analysis between these agreements and the North West agreements it is recorded here that the ratings, the charges and the tariffs for the entitlements to claim are similar to as outlined in the memoranda but we can look at that on page 59 and 60 which details the charges that they were entitled to claim.

- 20 **CHAIRPERSON:** Your sentence is not complete. Your question is not complete.

ADV VERUSCHKA SEPTEMBER: Okay.

CHAIRPERSON: You started it and then...

ADV VERUSCHKA SEPTEMBER: Apologies.

CHAIRPERSON: I think you changed your mind about what to say

midway so...

ADV VERUSCHKA SEPTEMBER: Apologies.

CHAIRPERSON: Just ask the question again it is not complete.

ADV VERUSCHKA SEPTEMBER: Humble apologies Chair. Paragraph 5 outlines the flight incentive costs. That is on page 57.

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: Having considered this particular clause does it accord with the agreement set out in the memorandum of agreement in relation to flight incentive costs, the payment of it and the
10 calculation of it?

MR ARSON MALOLA-PHIRI: Yes it does agree Chair.

ADV VERUSCHKA SEPTEMBER: In that regard can we then turn to page 59 where at annexure A it sets out the costing schedule. Part B talks to the flight incentive costs and on the next page they give the detail of costs, is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Can you clarify exactly what the amount of 14 079.11 means in the context of this particular addendum? That sum is the cost per trip as found on page 59 of the bundle.

20 **MR ARSON MALOLA-PHIRI:** Page 59 are you making reference to the flight incentive costs?

ADV VERUSCHKA SEPTEMBER: Yes so page 59 part B talks to flight incentive costs. There is a rebate in relation to a CRJ200 aircraft and the cost per trip for 14 079.11, is that right?

MR ARSON MALOLA-PHIRI: That is right.

ADV VERUSCHKA SEPTEMBER: Okay. And if you then turn the page to page 60 you will see that that cost accords with the total reflected at the bottom of that page?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And how that amount is calculated is outlined in the table on page 60, is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Now when you look at the detail of these different types of costings in the centre of the page is called
10 ground handling, right?

MR ARSON MALOLA-PHIRI: Yes.

Yes.

ADV VERUSCHKA SEPTEMBER: For purposes of the record can you just clarify exactly which costs listed in here would all form part of ground handling?

MR ARSON MALOLA-PHIRI: Okay. Thank you. As I had indicated earlier that ground handling is normally used as a generic term in its totality. Meaning that it is all the services that are offered from passenger check-in all the way to when the aircraft is actually
20 boarding. Now ordinarily the passenger services rendered by the airline that is operating but in some instances the airlines may opt to use other service providers to do the passenger handling so that is why again for those people who have flown sometimes you are flying on SAA but you see that the check-in agents have got nothing to do with SAA it is possibly a British Airways for example or the service provider

that has been appointed by the airports company. So that service could be done by either the airline or a third party. Now if you move the passenger all the way to the ground where you basically are walking from the boarding gate the services that are offered from then onto the aircraft are also done by third parties. But I must also explain that I think which you would possibly touch on as we go through the testimony that the service providers for ground handling for airports or ACSA managed airports are licenced by ACSA and these service providers have to be compliant with what we call IATA which is the

10 International Aviation Transport Association and they also have to be compliant with the ICEL which is the International Civil Aviation Organisation. This is the [indistinct] body. So ACSA has a responsibility of identifying these service providers who then get licenced and as long as they are compliant with the IDA standards and IKEA standards. Now airlines ordinarily would only confine the selection of a service provider from this suite of service providers who are licenced by in this case ACSA. So you are confined to those service providers. And these are the services providers that offer the ground handling services. But as I said that sometimes we with ground

20 handling can be confusing because the scope can be expanded and it can be shrunk. So the true services that are offered under ground handling agreement are defined in specific agreements because the scope can be widened and it can be shortened and as long as the minimum services are being offered and you have what we call the standard IATA ground handling agreement. It is a template that we use

but you vary it depending on the scope of the services that you are contracting to. So this ground handling services although they have got [indistinct] they have to be defined in the actual contract. What is it that you are paying for and what are the rates and then based on that you have your service level agreement with the service provider. But as I said that these service providers have to be IATA and IKEO certified.

ADV VERUSCHKA SEPTEMBER: And so if you look at page 60 is it correct then that ground handling services would include all the
10 additional adhoc items listed there which should be aircraft towing, pushback, passenger assist unit which is for the acronym PAU, wheelchair, first bus, second bus, air starter unit and ground power unit which is the – for the acronym GPU.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Thank you.

CHAIRPERSON: Would it be correct to simply say that ground handling really that business – that part of the business relates to everything that needs to be done on the ground before and up to the time when the passenger and his or her luggage get onto the aircraft and after the
20 passenger leaves the aircraft up to when she leaves the airport building. That is what all the activities connected with the travelling of a passenger who is flying or who has been flying. All that happens to enable her or him to fly that happens on the ground up to the time when he or she gets onto the plane and his or her luggage gets onto the plane and when he or she has landed on the other and her leaving the

aircraft, going to the airport building, being able to collect his or her luggage that is all ground handling.

MR ARSON MALOLA-PHIRI: Chair I did not understand your last bit. I understood your first bit about how [indistinct].

CHAIRPERSON: Yes the second bit is when you leave the aircraft at your destination you leave the aircraft from that point and your luggage being taken out of the aircraft up to the time you get out of the airport building. Whatever activities need to be done to enable you to leave the airport building that is part of aircraft – ground handling?

10 **MR ARSON MALOLA-PHIRI**: Chair it is actually a very smart way of defining ground services. It is well understood Chair.

CHAIRPERSON: Ja. Hm. Yes ja, ja.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. Whilst we have now identified what the flight incentive costs would be it is recorded in clause 6 on page 57 that payment will be done in arrears. So once again you have SA Express that incurs the cost and then claims back from Dube TradePort, is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

20 **ADV VERUSCHKA SEPTEMBER**: Okay. If we could then turn to page 63 of the bundle. And this is an addendum which was also concluded in respect of the same route being King Shaka International Airport and Lusaka route and it was a follow up after the first addendum expired, is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay. If I could ask you to once

again just confirm that the payment structure in relation to this addendum was no different to the first addendum that was concluded?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And if one looks particularly at page 65 paragraph 4.2 – sorry paragraph – I mean sorry clause 4. Is it correct that there is no mention that is made of preliminary activity costs in here?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay. And one of them main objects
10 of preliminary costs related to route marketing and development.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: If we can then turn to page 66. For SA Express do you recognise any signatures that were appended on the 7 August 2013?

MR ARSON MALOLA-PHIRI: Chair this was signed by the then CEO of SA Express again [indistinct] SA Express Inati Ntshanga and as a witness it was signed by Brian Van Wyk and Ms Thandi Kunene.

CHAIRPERSON: So under witnesses the first signature is that of Mr Van Wyk and the second one is that of Ms Thandi Kunene, is that what
20 you are saying?

MR ARSON MALOLA-PHIRI: I could not hear.

CHAIRPERSON: Okay I must raise my voice.

MR ARSON MALOLA-PHIRI: Yes.

CHAIRPERSON: I forgot.

MR ARSON MALOLA-PHIRI: Yes Chair.

CHAIRPERSON: The first witness in relation to the signature or signatory of SA Express.

MR ARSON MALOLA-PHIRI: Yes.

CHAIRPERSON: Is that the signature for Mr Van Wyk? The first signature as a witness?

MR ARSON MALOLA-PHIRI: Ja Chair on the witness side it is definitely that is the signature for Mr Brian Van Wyk.

CHAIRPERSON: Yes. And the second witness' signature you say is that of Ms Thandi Kunene?

10 **MR ARSON MALOLA-PHIRI:** Yes, yes Chair.

CHAIRPERSON: Okay. And the signatory the one who signed for SA Express you say that signature is that of Mr Ntshanga?

MR ARSON MALOLA-PHIRI: That is correct Chair.

CHAIRPERSON: Okay thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. And then if you turn to page 67 at which annexure A and the costing schedule is reflected page 68 once again refers to an itemised costings cost process or not process sorry – an itemised claim in respect of different types of costs, is that right?

20 **MR ARSON MALOLA-PHIRI:** That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay. That then concludes the addenda in relation to the first route. If we could turn then to page 60 – apologies page 70. It is an addendum which is dated November 2013 and it specifically relates to the King Shaka Harare route as concluded between Dube TradePort and South African Express.

MR ARSON MALOLA-PHIRI: Yes Chair.

ADV VERUSCHKA SEPTEMBER: Once again if I can ask you to turn to page 73. Do you recognise any of the signatures who signed on behalf of SA Express during November of 2013?

MR ARSON MALOLA-PHIRI: I recognise Brian Van Wyk's signature representing SA Express.

ADV VERUSCHKA SEPTEMBER: Thank you. And then just to place this particular document into context. On page 71 para – clause...

CHAIRPERSON: I am sorry. Before that you recognise any of the
10 signatures who witnessed – who signed as witnesses against Mr Van Wyk's signature?

MR ARSON MALOLA-PHIRI: Witness number 1 is Ms Thandi Kunene.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: But I cannot recognise witness number 2.

CHAIRPERSON: Yes the second one okay thank you.

ADV VERUSCHKA SEPTEMBER: Thank you. To put this particular addendum into context on page 71 clause 3.1C records that this particular addendum supersedes the first addendum which we do not have before us. And on page 72 like with the second addendum in
20 respect of the other route there appears to be a similar process on the flight incentivisation costs and the process of claiming, is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: In particular at para – in clause 5.1 once again it is outlined that the payment methodology is such that SA Express incurs the debt and then claims the amount back from Dube

TradePort?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Now these particular amounts that have been recorded in the annexures to the addenda would they be contemplated to cover all of the costs for the operation of these routes or only part of the costs?

MR ARSON MALOLA-PHIRI: Chair the incentives were classified as rebates and by the very nature they did not cover the entire flight costs. It is partial recovery of those costs because if you look at the
10 total flight costs or operation costs compared to the rebates they cover in our thinking then about 5 to 10% of the operating costs of an [indistinct]. So it was in a true sense a rebate but also it defined how those rebates were going to be paid so it was not done upfront but it was done in arrears. So in other words SA Express had to prove that those were paid and in some cases in terms of the ACSA and the ATNS charges those had to be compared to the tariffs so there was an external verification that had to be done and only when those two tests have been passed would Dube TradePort then pay the rebate to SA Express.

20 **ADV VERUSCHKA SEPTEMBER:** Thank you. Then in summary of these particular agreements the common thread between the Dube TradePort agreements and please correct me if I am wrong is that on the one hand you have a preliminary activities fund from which certain costings can be claimed, is that right?

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: Part of those claims which should be a claim entitlement would be flight incentive costs?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And these flight incentive costs in particular were cost contributions that were calculated on clear public tariffs?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Published tariffs sorry.

MR ARSON MALOLA-PHIRI: Gazetted Chair.

10 **ADV VERUSCHKA SEPTEMBER:** Published gazetted tariffs. The claim process for how these claims are to take place are clearly outlined.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: The payment entitlement is payment in arrears.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And so the flight incentive costs essentially because of the itemised claims computes to a maximum amount that may be claimable in relation to a specific type of costs or relative to a specific type of aircraft, is that correct?

20 **MR ARSON MALOLA-PHIRI:** That is correct.

ADV VERUSCHKA SEPTEMBER: And so in so doing the flight incentive costs are also based on actual flights and it is also based on qualifying flight costs as we have dealt with through the different agreements.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: I can then ask you to now turn to page 12 of your affidavit. Paragraph 44 talks about monies that SA Express in fact claimed during the year of 2014 and in particular it is listed that out of the total of 3 882 984,27 that total form – includes costs relating to landing, parking, packs handling, presumably passenger handling and ramp handling or aircraft handling. Is that correct?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And that was the total sum that was
10 claimed over a twelve month period during 2014?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Are there any costings there that are excluded from operations costs that may have been claimed?

MR ARSON MALOLA-PHIRI: Chair there was an element of navigation costs which was claimable which is hardly less than 1 million which means that the figure of 3.8 should actually read 4.8. Bearing in mind that if go back to the MOA it does place a limit of how much you can claim in a year which was 5 million. So the claimable amount was close to the figure of 5 million limit.

20 **CHAIRPERSON:** Hm.

ADV VERUSCHKA SEPTEMBER: Okay.

CHAIRPERSON: So – so you say that this R3.8 million I am just rounding if off you still need to add another R1 million to it and that would be the costs. So they have not taken into account another amount of about R1 million?

MR ARSON MALOLA-PHIRI: That is correct Chair and

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: That cost element is the navigation.

CHAIRPERSON: Yes okay.

ADV VERUSCHKA SEPTEMBER: And that total cost then of 4.8 would really constitute a contribution towards the total cost of operation on these particular routes, is that correct?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay. Having concluded...

10 **CHAIRPERSON**: I am sorry would that be a contribution or would that be all the operational costs that would be claimable from that amount of R5 million?

MR ARSON MALOLA-PHIRI: Chair you must remember that the costs elements that were claimable.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: That clearly defined in the agreement.

CHAIRPERSON: Yes, yes.

MR ARSON MALOLA-PHIRI: Now this claim in line with the ...

CHAIRPERSON: Falls within the budget for that. Yes.

20 **MR ARSON MALOLA-PHIRI**: And I am just drawing to your attention that the total that has been claimed...

CHAIRPERSON: Yes okay.

MR ARSON MALOLA-PHIRI: Is then close to the 5 million.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: That was provided for.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: In a fund.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: So the total claimable amount is close to the 5 million.

CHAIRPERSON: Ja.

MR ARSON MALOLA-PHIRI: Limit that was set.

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: By both parties.

10 **ADV VERUSCHKA SEPTEMBER:** Thank you Chair. If I could ask you to turn to page 88 of your bundle. There appears to be some gazetted publications. Are these in fact the rates that you have provided which were relevant for purposes of the rebates during that particular period?

MR ARSON MALOLA-PHIRI: These were just to demonstrate the tariffs or the gazetted tariffs that were utilised in calculating the ACSA and the ATNS charges. So I am – I was just providing this to ensure that indeed the claims that were made against Dube TradePort were in accordance with the agreement but in any case Dube TradePort was within its rights to ensure that before they refund or before they pass

20 on the rebate that the rates that were appearing in the invoices are in line with the gazetted tariffs.

ADV VERUSCHKA SEPTEMBER: Okay. If we can now then turn to the North West's suite of agreements which have already been traversed through the evidence of Mr Ngwenya of yesterday. Based on that evidence we do not intend to go into particular detail as it has already

been addressed yesterday. Could I ask you to turn to page 107 please? Do you recognise this document as you have considered it?

MR ARSON MALOLA-PHIRI: Yes Chair.

ADV VERUSCHKA SEPTEMBER: And what is it?

MR ARSON MALOLA-PHIRI: This is what is referred to the main agreement between the North West Department of Community Safety and Transport Management which for the purposes of this agreement is reflect the department and the South African Express Airways SOC Limited.

- 10 **ADV VERUSCHKA SEPTEMBER:** Thank you. And it is correct that this agreement was the foundation or rather the contractual foundation which reintroduced an air transportation service from OR Tambo International airport, Cape Town International airport, Pilanesberg and Mafikeng?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And in particular the agreement was concluded on the basis of subsidy being given by the North West government to South African Express?

MR ARSON MALOLA-PHIRI: That is correct Chair.

- 20 **ADV VERUSCHKA SEPTEMBER:** Can I ask you to turn to page 144 please.

CHAIRPERSON: What page?

ADV VERUSCHKA SEPTEMBER: 144.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: In line with your signature

identifications of earlier can you please identify who signed this agreement on behalf of SA Express?

MR ARSON MALOLA-PHIRI: Chair the – the signature that appear on this agreement of the then CEO of SA Express Inati Ntshanga.

CHAIRPERSON: That is the first signature on the page? Is that the first signature on the page?

MR ARSON MALOLA-PHIRI: Sorry Chair.

CHAIRPERSON: Is – is the signature that you say belongs to Mr Ntshanga the first one ...

10 **MR ARSON MALOLA-PHIRI**: *Ja*.

CHAIRPERSON: On this page?

MR ARSON MALOLA-PHIRI: Yes Chair.

CHAIRPERSON: *Ja*. I just want to ...

MR ARSON MALOLA-PHIRI: So he signed for ...

CHAIRPERSON: I just want you to identify ...

MR ARSON MALOLA-PHIRI: Oh, I see.

CHAIRPERSON: Which one is whose signature and which one is whose signature.

MR ARSON MALOLA-PHIRI: Okay, thank you – thank you Chair.

20 **CHAIRPERSON**: Okay.

MR ARSON MALOLA-PHIRI: The first signature in the first row where it the file is signed for on behalf of SA Express is that of Inati Ntshanga who is the – who was the CEO at the time of SA Express and then as a witness it was signed by Brian van Wyk but it seems to me that both signatures are not dated.

ADV VERUSCHKA SEPTEMBER: Thank you. Noting that Brian van ...

CHAIRPERSON: I am sorry. Both signatures are not ...?

MR ARSON MALOLA-PHIRI: Dated. There is no date.

CHAIRPERSON: Oh, okay. Okay, thank you.

ADV VERUSCHKA SEPTEMBER: Based on the fact that Mr Brian van Wyk had witnessed this agreement and has also in one or other capacity been involved in the conclusion of the addenda between Dube TradePort and South African Express.

MR ARSON MALOLA-PHIRI: Hm.

10 **ADV VERUSCHKA SEPTEMBER:** Would it be fair to understand that Mr Brian van Wyk was familiar with the agreements or rather the addenda under the Dube TradePort Project and this particular agreement?

MR ARSON MALOLA-PHIRI: That is correct Chair. I must also state Chair that he – I mean – these signatures for the three addenda for the Dube TradePort/(indistinct) and the – on this main agreement North West and SA Express Brian van Wyk signed them as a General Manager for Commercial.

CHAIRPERSON: Thank you.

20 **ADV VERUSCHKA SEPTEMBER:** Who was the owner according to your knowledge of the Pilanesberg and Mafikeng Airports?

MR ARSON MALOLA-PHIRI: Chair the North West Provincial Government owns the two airports.

ADV VERUSCHKA SEPTEMBER: Okay. If we can then look at page 14 of the bundle and just to confirm evidence that was – rather

submissions and evidence that was presented yesterday in relation to the agreement Chair.

This contract was indeed for a period of five years which was from the effective date and the effective date is reckoned on page 1-1-0 of the bundle to mean 27 March 2015 in respect of certain routes and 1 May 2015 in respect of the other and SA Express in particular agreed to operate the two airports using the CRJ200 Aircraft and in doing so to provide crew distribution sales and airline operational infrastructure.

Mr Phiri when we look at then paragraph - sorry – page 1-1-5
10 to focus in on this contribution of costings in order for us to compare the apples with apples scenario between Dube TradePort and the North West Suites of Agreements. So page 1-1-5 paragraph – Clause 4.3 talks to:

“That as a contribution towards the cost of SA Express in providing the airline service the department shall grant to SA Express the subsidy as more fully described in Clause 6.”

And Clause 6 in particular is reflected on the next page on page 1-1-6. Clause 6.1 records that:

20 “The department shall pay to SA Express the subsidy and the management company the operational costs of both airports annually in advance the amount stipulated in Annexure A.”

Which can be found at page 1-4-5 and hopefully Chair this is a bit of a clearer copy to the one that you had yesterday.

CHAIRPERSON: At what page?

ADV VERUSCHKA SEPTEMBER: Page 1-4-5.

CHAIRPERSON: *Ja*, it is much better.

ADV VERUSCHKA SEPTEMBER: Just for the record then Mr Phiri you are at page 1-4-5?

MR ARSON MALOLA-PHIRI: *Ja*.

ADV VERUSCHKA SEPTEMBER: There appears to be a series of subsidies. The first relates to a concession. The second relates to route marketing and the last relates to operations costs. Is that right?

10 **MR ARSON MALOLA-PHIRI:** That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And these subsidies are in relation to the two airports. One being Pilanesberg and the other one being Mafikeng.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Please explain to the Chair what operations costs – sorry – let us start from the top. What concession as an airline subsidy could be possibly mean or relate to?

MR ARSON MALOLA-PHIRI: Chair the airline subsidy would relate to costs that would have ordinarily be incurred by SA Express in extending
20 its services to the two airports – Pilanesberg and the Mafikeng Airport and those costs would be subsidised accordingly. So it is being referred to as an airline subsidy.

ADV VERUSCHKA SEPTEMBER: Okay and then the next category of costs is called the route marketing subsidy. What is your understanding of the route marketing subsidy?

MR ARSON MALOLA-PHIRI: The marketing subsidy Chair would be making reference to the cost to the airline in developing the route. As I previously said that in the case of Dube TradePort it was the – the three month period before the commencement of the first flight but obviously in this regard they are talking about the route development in its entirety. That they evenly post the launch of the first flight.

ADV VERUSCHKA SEPTEMBER: So just to – to amplify on what you said. Under the Dube TradePort you spoke ...

CHAIRPERSON: I am sorry. Just one second. Thank you.

- 10 **ADV VERUSCHKA SEPTEMBER:** To amplify or clarify what you said. Under the Dube TradePort it was contemplated that you are looking at about a three month period before the launch of the first flight that you would need to invest for purposes of marketing that particular new route. Is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: But in this particular instance there is a subsidy which is granted over a five year period?

MR ARSON MALOLA-PHIRI: That is correct Chair.

- 20 **ADV VERUSCHKA SEPTEMBER:** How long does it normally taken then to have a new route fully functional and fully operational as part of ordinary routes?

MR ARSON MALOLA-PHIRI: As I had indicated the preliminary marketing costs would mean that the costs that you have incurred in marketing a flight before its first – first flight but the assumption again is that in a period of a year or two that you may be making losses on

the route before you start making money.

So route development could actually extend to a year within which you turn around a route to be profitable but certainly it cannot be for a period of five years. Generally in the aviation industry one year would be enough to ensure that the route is profitable.

ADV VERUSCHKA SEPTEMBER: And then if one were to look at the actual route marketing subsidy that was allocated to Pilanesberg and to Mafikeng respectively in year one. It was an approximate amount of 14. – 14.6 to 14.8 million. In year two it was 4.8 million. In year three
10 it was 4.5 million.

In year four it was 4.5 million and in year five it was also 4.5 million. Do you have any comments to the costings or rather to the subsidies that have been granted over this five year period in relation to route marketing in particular?

MR ARSON MALOLA-PHIRI: Save for the comments that I have already made Chair that ordinarily in the aviation industry one year should be enough to develop a route to a profitable situation. I do believe that firstly extending it for five years is I would call an outlier. It is not common in the industry but secondly the quantum in year one
20 just looks a bit excessive to develop a route in - in year one.

ADV VERUSCHKA SEPTEMBER: Okay. If you could ...

CHAIRPERSON: You did say earlier on in your evidence that when an airline starts a new route or starts on a route that it has not been – or starts a new route I think you said. That the first two years it would not make profit. You did not say that?

MR ARSON MALOLA-PHIRI: There is documental evidence Chair and also there will be documental evidence stating in the industry for additional carrier how much has it spent to develop a route but of course I mean that is subject to confidentiality because that information cannot just be shared with the public. I think our competitors would be quite excited to – to get that information. So ...

CHAIRPERSON: *Ja.* No, no I - I do not necessarily want that information. I just want to check whether I had – I might have misunderstood your evidence. I thought earlier on – much earlier –
10 thought you had said that if an airline starts a new route ...

MR ARSON MALOLA-PHIRI: *Ja.*

CHAIRPERSON: The first two or so years it should not expect profits. So I am just checking whether that is not what you said earlier.

MR ARSON MALOLA-PHIRI: Chair I was talking that generally if you are starting a new route it should take you a year or two to turn it around into a profitable situation but for a typical regional carrier we aim for a year ...

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: But I am just talking about in generality.
20 It can take you one to two years to turn it around ...

CHAIRPERSON: Oh, okay.

MR ARSON MALOLA-PHIRI: But in the case of regional carriers we basically plan for a year.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: The last category of costs is termed

operations costs and for each of the two routes an amount is allocated to each of those routes at 11 million for each of years one to five. Is that right?

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: Now how does operations costs compare to the concessions that is referred to above in this table?

MR ARSON MALOLA-PHIRI: Chair I think this is where I was a bit confused because the – Annexure A the way it is broken down the – what they call a subsidy and the – and the concession. It does not
10 particular tie to the way the agreement was actually structured. That is one but the secondly it seems to me that there is a duplication because if you look at the – the (indistinct) where it says concession and a subsidy my impression was that it will have covered what they call operations costs.

So it seems to me that there was some sort of indulgence and repetition which is worrying just looking at the agreement in the context of this Annexure A and the way they are broken down the – the subsidies. One, it looks excessive but two, it seems as if there is a duplication of what they define as a subsidy or a rebate.

20 **CHAIRPERSON:** *Ja*, okay.

ADV VERUSCHKA SEPTEMBER: In your experience how would these costs compare to the average cost of operating a CRJ200 Aircraft 50 seater?

MR ARSON MALOLA-PHIRI: Chair whilst I cannot comment on a specific aircraft type because as I say that it is almost like it is

privileged information but I can talk in general terms.

CHAIRPERSON: General *ja*.

MR ARSON MALOLA-PHIRI: If you – if an airline is operating a regional jet – an appropriate regional jet for Johannesburg to Mafikeng or to Pilanesberg. It should cost in the region of 50 to 60 000 per trip.

CHAIRPERSON: How many – how many thousands?

MR ARSON MALOLA-PHIRI: 50 000 to 60 000.

CHAIRPERSON: Okay, per trip?

MR ARSON MALOLA-PHIRI: Per trip.

10 **CHAIRPERSON:** Yes.

MR ARSON MALOLA-PHIRI: Now if we – we extend that to three flights a week for the entire year it comes to close to between 12 and 14 million.

CHAIRPERSON: Million?

MR ARSON MALOLA-PHIRI: Total costs, *ja*.

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: *Ja*.

CHAIRPERSON: Okay.

20 **MR ARSON MALOLA-PHIRI:** If you have to cut it for three frequencies a week ...

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: And operating either to Pilanesberg or to Mmabatho ...

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: From Johannesburg.

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: It tends to double.

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: If you are looking at Cape Town ...

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: To – to Pilanesberg.

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: It would typically possibly be between 22 million or 25 million per annum. That is the total cost of operating ...

10 **CHAIRPERSON:** Hm.

MR ARSON MALOLA-PHIRI: The aircraft type for Pilanesberg and Mafikeng.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Just to excuse my ignorance what exactly is a frequency?

MR ARSON MALOLA-PHIRI: Hm.

CHAIRPERSON: I think he said three times a week.

MR ARSON MALOLA-PHIRI: Frequency is the return leg. So what I have done is the cost of operating a trip and a trip is ...

20 **CHAIRPERSON:** A return trip?

MR ARSON MALOLA-PHIRI: *Ja*, it is a return trip.

CHAIRPERSON: A return trip, three times a week you said or not? A return trip three times a week or ...?

MR ARSON MALOLA-PHIRI: *Ja*, it is a return trip.

CHAIRPERSON: *Ja*.

MR ARSON MALOLA-PHIRI: Three times a week.

CHAIRPERSON: *Ja.*

MR ARSON MALOLA-PHIRI: That would cost you about 11 to 14 ...

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: But that also I mean the 14 would basically talk to four frequencies. So 11 million you are talking about three frequencies. 14 million you would be talking to about four frequencies. So that would be basically the range ...

CHAIRPERSON: Okay.

10 **MR ARSON MALOLA-PHIRI**: That the – approximately that he would be incurring ...

CHAIRPERSON: Hm.

MR ARSON MALOLA-PHIRI: As an airline.

CHAIRPERSON: And those costs that you are talking about in general you are talking about what it would cost today as opposed to that time? What are you having in mind? Are you having in mind some time back or at the moment?

MR ARSON MALOLA-PHIRI: We are talking about the – at time – at the time when the operation

20 **CHAIRPERSON**: Okay.

MR ARSON MALOLA-PHIRI: Was active.

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: So it is not at today's ...

CHAIRPERSON: *Ja.*

MR ARSON MALOLA-PHIRI: Rates Chair.

CHAIRPERSON: Okay.

MR ARSON MALOLA-PHIRI: *Ja.*

ADV VERUSCHKA SEPTEMBER: And so the numbers that you are given are really operations costs. Is that right?

MR ARSON MALOLA-PHIRI: *Ja.* The operations costs which includes the list of your expenses that I have spoken about which is the cost of the aircraft which if you are own it then it is depreciation. If you lease it – it is the lease costs. The cost of the crew with pilots and the cabin crew. The cost of fuelling the aircraft.

10 The cost of providing meals to the passengers and all other costs which (indistinct) and the handling charges which also includes accidental charges as add in. So it is the cost of operating to and from the relevant airports.

ADV VERUSCHKA SEPTEMBER: And the costings that you have given then would that include ground handling costs?

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: Now if you were to look at this table again it is subdivided into two levels. The first relates to the airline. The second relates to the management company. Effectively on the
20 average costing that you have given which ranges between 12 to possibly even early 20 million per annum the management company subsidy is aggregated to 11 million over the – over the five year period whilst the concession applying to the airline which is SA Express in this instance ranges between 11 million to 30 – to 34 million over the – over the full period. Is that right?

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: So effectively the subsidy that has been provided here would you say that it would be a partial rebate to the incurring of costs or could it amount to more?

MR ARSON MALOLA-PHIRI: Chair as I said that the – the amounts seem to be quite excessive from my experience and from my knowledge in the industry. In this case I can categorically state that these amounts were basically overstated.

ADV VERUSCHKA SEPTEMBER: Can I then ask you to turn to page 16
10 - 1-6 - of the bundle and having considered then the four ground handling agreements the first being commonly referred to as the PAMCO Agreement concluded with Pilanesberg Airport Management Company.

The second being with MAMCO being the Mafikeng Airport Management Company. The third being Valotek Facilities Management CC and the Koreneka Event Manager or rather the agreement concluded with Koreneka Event Manager trading as Koreneka Trading and Projects. You have considered all of these four ground handling agreements. Is that right?

20 **MR ARSON MALOLA-PHIRI:** That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Chair just for the record these agreements appear from Annexures 8.1 to 8.4 of the bundle. This table represents your consolidated analysis of the services that were contracted from each of the service providers. Is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And in particular the services that you have identified which were contracted by each of them following the correction that you have made was airport management ...

MR ARSON MALOLA-PHIRI: Huh-uh.

ADV VERUSCHKA SEPTEMBER: Passenger handling, ramp handling/aircraft handling and route development or marketing. Is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Thanks to the – thanks to your
10 assistance to the Commission you have also provided a – an agreement between SAA and SA Express in relation to passenger handling at the King Shaka International Airport. Is that right?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And that particular agreement appears at Tab 9 from page 2-6-3. Whilst certain agreements between ourselves and SAA have resulted in redactions to annexures to this agreement based on your personal knowledge is it correct that the rates that are charged in particular to passenger handling at the different airports are charged at rates per different types of aircraft?

20 **MR ARSON MALOLA-PHIRI:** That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And so there is a clear table although that particular detail is not placed before the Commission due to redactions but there is a clear table that is incorporated in respect of each airport under the annexures to this agreement which clearly identifies set costs as opposed to a globular amount.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Thanks to your assistance as well if I could ask you to turn to page 17 – 1-7 – you have also provided us with – rather you have provided the Commission with the Standard Ground Handling Agreement concluded between SA Express and Menzies Aviation?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: That particular agreement appears from page 3-0-7 of the bundle. If I could ask you quickly to turn to
10 page 3-1-2 – sorry. Sorry – it is 3-0-9. I am getting my numbers confused. You have provided this particular agreement to look at the basis of rates payable specific – specific to ramp handling. Is that correct?

MR ARSON MALOLA-PHIRI: That is correct.

ADV VERUSCHKA SEPTEMBER: And so as appears on page 3-0-9 once again you have ramp handling costs which are rated according to particular types of aircraft.

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Is it therefore correct that in terms of
20 the two agreements – additional agreements that you have provided the one being the ground handling concluded between SAA and SA Express. The other one being between SA Express and Menzies that the very basis for claiming is a rate that is clearly defined specific to a type of aircraft?

MR ARSON MALOLA-PHIRI: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: How does – how does this pricing formula compare to the ground handling agreements as you have dealt with in the table which appears on page 16 such being the MAMCO, PAMCO, Koreneka and Valoteck?

MR ARSON MALOLA-PHIRI: Chair before I respond to that question if you could just indulge me for a second because I just want to explain the ...

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: Context of the SAA Contract versus
10 Menzies.

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: I would like to go back to the issue about services ...

CHAIRPERSON: Yes.

MR ARSON MALOLA-PHIRI: Just to allay the confusion. Passenger handling at the King Shaka International Airport had been subcontracted to SAA. So we do not do our own handling in - in Durban at that point in time but secondly we had to also contract with Menzies on what we call the airside or on ramp – sorry – on ramp
20 services but what I must emphasise just in terms of the rates is that the ACSA identifies licence to service providers from which an airline can opt to contract with and in the case of SA Express like another SOC you go through an open tender process.

So although you are confined to the licencing service providers but you are obliged as per a process to go out on a confined

tender and of course you evaluate the bids or the proposals on the basis of certain criteria. One of which is basically the rates. So when we look at awarding such services it is basically done on a competitive basis although it is confined to those that have been licenced by – by ACSA.

So my point is that the rates that you are seeing here are fair rates based on a process that we had to follow. So in response to the question that (indistinct) has posed in terms of these rates compared to the North West. It is actually quite difficult to compare from the point
10 of view that I don't think any process had been followed, the service provider was just appointed possibly without following a RFP process. So we would never know whether they were fair or not fair but again if – I just look at the rates in the context of the subsidies, they seem to be quite odd and excessive.

ADV VERUSCHKA SEPTEMBER: Thank you, if I can now ask you to please turn to page 19 of the bundle, because in as much as you compare the Dube Tradeport's suite of agreements with the North West's suite of agreements you've amplified certain aspects to the claim and payment methodologies specific to passenger handling on the
20 S A Express handling agreement, ramp handling agreement in relation to the S A Express and the Menzi's agreement and then what you also then do, is that you now deal with marketing spend of S A Express generally. If you could keep your finger on this particular page and open to page 145 which is the annexure to the main agreement, that details the different subsidies. So at page 19 – so keep page 19 open

but also keep page 145 open, so at page 19 you detail then the marketing spend of S A Express as it's recorded in the management accounts which, just for the record, is attached as Annexure 11 Chair that appears from page 349. Can I ask you to just place on record the annual marketing spend for the financial years of 2014/2015.

MR ARSON MALOLA-PHIRI: The marketing spend Chair for 2014/2015 and the financial year basically ran from the 1st of April to end of March. S A Express had spent 1.9million, in the following year 2015/2016 it had spent 1.03million and in 2016/2017 it had spent
10 7.4million and in 2017/2018 7.9million or 7.8million.

ADV VERUSCHKA SEPTEMBER: Is it correct that the financials for S A Express has in fact been audited, signed off but not yet released?

MR ARSON MALOLA-PHIRI: For...(intervention).

ADV VERUSCHKA SEPTEMBER: For the financial years of 2018/2019.

MR ARSON MALOLA-PHIRI: For the financial year 2018/2019 yes they have been signed off by the auditor but they are not in public domain yet, they have to go through the process, through our shareholder and then the cabinet. So I won't think that for the purpose
20 of the testimony those should be set aside from the point of view that these 2018/2019 financials are not in the public domain Chair.

CHAIRPERSON: Why is there such a big difference between 2015 and 2016 on the one hand and 2017 and 2018 on the other hand?

MR ARSON MALOLA-PHIRI: Chair I've missed you there.

CHAIRPERSON: Sorry?

MR ARSON MALOLA-PHIRI: I couldn't hear you.

CHAIRPERSON: Oh okay why is there such a big difference on 2015 – what was spent in 2015 and 2016 on the one hand on what was spent in 2017 and 2018?

MR ARSON MALOLA-PHIRI: Chair I'm not sure what actually happened...(intervention).

CHAIRPERSON: But can you see what I see?

MR ARSON MALOLA-PHIRI: There is actually a difference – a spike for the two years, there is definitely a spike but I'm not sure Chair what
10 happened that there is an additional 6million in each of those years.

CHAIRPERSON: I mean 2015 and 2016 are one comma something and – well 2015 is almost two million because 1.9million, 2016 is 1.03million but then 2017 is 7.4million and 2018 is 7.9million it's difficult to think it could be inflation related.

MR ARSON MALOLA-PHIRI: No – because I mean Chair the increase is, I think quite a huge spike so there's no way it could be inflation.

CHAIRPERSON: Yes, yes.

MR ARSON MALOLA-PHIRI: But falling short of having to give that
20 level of detail I'm just surmising that it's (indistinct) North West that it happened so it could have been but I'm just supposing but I would need to check whether that's even correct, there's an additional 6milliion in each of them, it's almost like a spike that is unique to the two years, so I'm just suspecting that there could have been an activity that happened in those two years and I'm just assuming that it could have

been something to do with the North West, I'm not sure.

CHAIRPERSON: Ja well – and then 2018/2019 there is that 534 there that's because it's incomplete it doesn't reach a million rand yet because that's an incomplete year or what?

MR ARSON MALOLA-PHIRI: Sorry Chair?

CHAIRPERSON: 2018/2019 you have got R534 000, is that right?

MR ARSON MALOLA-PHIRI: That's correct and that's the...(intervention).

CHAIRPERSON: And that's because that's not final, that's not the
10 final figure.

MR ARSON MALOLA-PHIRI: That's correct Chair.

CHAIRPERSON: Okay, no that's fine thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. This market spend, does it relate to existing routes or does it include new routes as well?

MR ARSON MALOLA-PHIRI: Chair if I take you back to paragraph 70.1, financial year 2014/2015 where an amount of near 2million was spent in marketing. During that year S A Express had introduced three additional routes namely, Johannesburg/Pietermaritzburg,
20 Johannesburg/Kruger National Park, Mpumalanga and Cape Town/Kimberley. So that 1.9 or near 2million does include route development of these three routes and the reason why I'm mentioning is specifically is I'm trying to put a context to the reasonableness of route development of the two North West Airports or routes.

CHAIRPERSON: Yes thank you.

ADV VERUSCHKA SEPTEMBER: And on your reasonableness point can we then turn to page 145, while keeping your finger still at page 19, the spend for the financial year 2014/2015 was 1.9million and that included existing and three additional routes.

MR ARSON MALOLA-PHIRI: That's correct Chair.

ADV VERUSCHKA SEPTEMBER: As compared to the route marketing subsidy for the two new routes which for, in year one, totalled approximately 28million, year two 9million, year three, four and five also 9million. One last point then and that is in relation to the new
10 route that you – that S A Express launched during December of 2018 can you please provide the Chair with an overview as to the – without necessarily having to mention any detail because the price sensitivities have been redacted and doesn't form part of this Commission, but can you just give a brief overview to the Chair in relation to the market spend on the new route launched during December 2018 as compared to the costings of these subsidies as well.

MR ARSON MALOLA-PHIRI: In December Chair we had introduced the Johannesburg/Mthatha route in the Eastern Cape Province and we spent in the region of R100 000 in terms of marketing and the
20 development of that route and that route is actually performing quite well just in six months and it's one of the routes that believe that we will be able to turn it around or get it to a profitable level within the 12 months that I was making reference to, we spent R100 000 in marketing in developing the route and again, I think that should have been done in the context of the excessiveness or the reasonableness of the

amount of money that are being spent on the route as far as Pilansberg and the Mafikeng Airports are concerned.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Chair before I close in all fairness to this witness, he wasn't provided with a copy of Annexure 1 to the Koreneka agreement which has been presented as part of Mr Ngwenya's evidence yesterday but he has just briefly looked at it this morning. On that particular Annexure, having looked at it quite briefly this morning, does it change your position in relation to the costings on
10 the ground handling agreements?

MR ARSON MALOLA-PHIRI: No Chair actually it doesn't I think it just puts duress to the testimony that was delivered yesterday that the main agreement stipulated exactly the issues that need to qualify for rebates or what they call concessions and the subsequent agreement does have that Annexure which I did not have a copy of until this morning that basically looks at the service and the rates, which don't talk to the subsidies that are captured in the main agreement because those amounts are quite insignificant compared to the millions that are being defined as rebates in the main agreement. So my position still
20 remains that the rebates and the concessions or subsidies are quite excessive with the North West Province project.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Then just to summarise some of the observations that you've given through your evidence on the North West agreements, as compared to the clear parameters of claim

entitlements and payment processes reconciled in, under the Dube Tradeport suite of agreements, is it correct that the North West suite of agreements which comprises of your main agreements and then the four ground handling agreements which were effective at some or other stage, dealt with advancing a subsidy to S A Express, is that right?

MR ARSON MALOLA-PHIRI: That's correct Chair.

ADV VERUSCHKA SEPTEMBER: And that particular subsidy related to a subsidy provided to S A Express and also to management company whichever it may have been at any particular point in time.

10 **MR ARSON MALOLA-PHIRI:** That's correct.

ADV VERUSCHKA SEPTEMBER: And the management company's subsidy was split between route marketing and operating costs.

MR ARSON MALOLA-PHIRI: That's correct.

ADV VERUSCHKA SEPTEMBER: And in particular as compared to the arrear payment methodology under the Dube Tradeport agreement this particular subsidy was paid in advance before any work would have taken place, likely, within that particular financial year.

MR ARSON MALOLA-PHIRI: That's correct.

20 **ADV VERUSCHKA SEPTEMBER:** What are your concluding observations when looking at the Dube Tradeport contract, structure and management as compared to the North West Contract – the North West suite of agreements, contracts, structure and management?

MR ARSON MALOLA-PHIRI: Chair I can look at the two projects from three eyes, the first eye, the way the contracts have been structured, Chair sometimes some of us have the third

eye...(intervention).

CHAIRPERSON: No I'm laughing about three eyes.

MR ARSON MALOLA-PHIRI: So the first eye it's the way the contracting was done, if I may go back to the relationship between S A Express and the Dube Tradeport were there too many contractors vis a vis ACSA and the third party service providers, the relationship there is actually quite clearly defined as an airline because we make use of an airport we would have no choice but to contract with the ACSA to provide the infrastructure but secondly we're also saying that the ACSA
10 as the airport manager has the obligation to ensure that the service providers that provide these ground handling are selected in accordance with the IATA and the ICAO standards. So they go through a very rigorous process to ensure that those that have been selected and licensed are compliant to IATA and ICAO standards and as an airline the way we select our preferred service provider is through an open tender process which we did and (indistinct) we had to contract with the SAA and the contract with (indistinct) for the purpose of the King Shaka Airport. So the contract that we are sitting with, with this particular project was between S A Express and Dube Tradeport and of
20 course the service provider would have to be contracted in accordance with the – on PFMA processes. Now in terms of North West I'm looking at it through the first eye is that there was a contract between North West and S A Express but on the back of it S A Express then had to contract with these ground handling service providers and my understanding – my knowledge is that no procurement process was

actually followed one, but also secondly there is no sense that these ground handling companies are IATA or ICAO compliant, that test was actually not done, so that's the first eye. The second eye talks to the incentives, the agreement between S A Express and the Dube Tradeport was typically an arms length negotiation with the clear objectives having been stated by Dube Tradeport and also the clear objective was stated by SACS and in that regard the terms of reference for the relationship were also clearly defined and one of which was the use of incentives to encourage S A Express to operate out of Durban but those

10 incentives were clearly defined as rebates and again, there was a full definition of what those rebates mean and how they should be paid. So it was very clear in the agreement that what you are paying for. The third eye I believe is actually quite important is now the mechanism of claiming those incentives, the Dube Tradeport agreement it was very clear that it would be done in arrears and the Dube Tradeport would have to verify whether the costs are legitimate and the quantum is reasonable, through the invoices and then checking against the – either the gazetted tariffs or the contract that we have had with the SAA and the Menzies as the ground handlers and that bid was basically lacking

20 in the North West in the sense that not only was the reasonableness in terms of quantum done but also it is stated that S A Express was going to be paid in advance and there was no accountability for the funds that were paid to S A Express.

CHAIRPERSON: Thank you very much.

ADV VERUSCHKA SEPTEMBER: Thank you Chair, there's no further

questions from our side.

CHAIRPERSON: Yes, yes, thank you. Thank you very much Mr Phiri, if you are required to come back we'll ask you and if anybody applies for leave to cross-examine you and that application is granted we will ask you to come back but – unless you have a question that you didn't think about earlier, I'm about to release him.

ADV VERUSCHKA SEPTEMBER: There's no further questions from our side.

CHAIRPERSON: Thank you very much Mr Phiri you are excused,
10 thank you very much.

ADV VERUSCHKA SEPTEMBER: Chair with your leave I've been requested to ask that you please warn Ms Phatudi who was summoned to be here today for appearance tomorrow.

CHAIRPERSON: Ja where is Mr Phatudi – oh Ms Phatudi.

ADV VERUSCHKA SEPTEMBER: Yes Ms Phatudi.

CHAIRPERSON: Please be back here tomorrow we are going to aim
to start at 12 tomorrow there might be a little bit of some delay because
some things will be beyond our control, but be here by 12 o'clock. We
are going to adjourn then for today and tomorrow we'll aim to start at
20 12, there might be some delay and if need be we may go on until early
evening if we have to in order to make up for the hours that we won't
be able to use tomorrow morning. We adjourn.

INQUIRY ADJOURNS TO 21 JUNE 2019