

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**30 AUGUST 2019**

**DAY 153**

20

**PROCEEDINGS ON 30 AUGUST 2019**

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

**ADV KATE HOFMEYR**: Good morning Chair.

**CHAIRPERSON**: Are you ready?

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

**CHAIRPERSON**: Good. Let us proceed.

**ADV KATE HOFMEYR**: Chair there are a few housekeeping matters just to address and also an update to conclude in essence the evidence of yesterday before we move to the evidence of today. If I may just be  
10 permitted to address you on that update?

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: Chair you will recall at the commencement which was many weeks ago of the aviation section of evidence. When I introduced the topic of the North West ground handling transaction which Mr Natasen's evidence yesterday completed at least in this evidence session. I indicated that one of the concerns of the commission as it had been investigating the matter was its understanding that there had been a series of criminal complaints laid in relation to the matters that were investigated and presented  
20 beginning as early as 2016. And the concern was why there had not been movement in relation to those cases.

**CHAIRPERSON**: Yes, yes.

**ADV KATE HOFMEYR**: We indicated then Chair that we had taken steps to engage with the relevant authorities about that. We have – we received an initial report to which I made reference at the outset.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: Of the evidence. That is a report there is no need to go there now but just to refresh our memories it was a report from the let me just have it here – the Lieutenant General National Head for the Directorate for Priority Crime Investigation colloquially known as the Hawks because the commission had engaged with the Hawks to say we are aware of these complaints the first of which laid in 2016, the second of which laid in 2017, the third of which laid in 2018 and we have seen no movement in relation to those cases. They gave  
10 us a report of what steps had been taken in relation to the engagements and it concluded on the basis that the investigation needs speedy conclusion. Those were the notes of the report from Lieutenant General Lebeya.

**CHAIRPERSON**: What was it – what did the conclusion say?

**ADV KATE HOFMEYR**: That there should – the investigation needs speedy conclusion. Right.

**CHAIRPERSON**: Okay.

**ADV KATE HOFMEYR**: So Chair we – we interrogated the report.

**CHAIRPERSON**: Yes.

20 **ADV KATE HOFMEYR**: Because we wanted to understand precisely what has happened since 2016 to 2019.

**CHAIRPERSON**: Yes. Yes and why there had not been a speedy conclusion all along.

**ADV KATE HOFMEYR**: Until that point indeed.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR:** Chair that precipitated correspondence, further correspondence and seeking's' of clarity. The report itself indicated certain bank statements had taken very long to be produced, had taken – had been requested again. That there had been an attempt to consolidate the cases. Chair the upshot that I report to you today is that none of the clarity that we have been – well attempted to be given has actually advanced the matter. It raises more questions in fact than it answers. And I raise that with you today Chair because it is our proposal that we continue to engage to try to understand why three and  
10 a half – well it is three years since the first complaint.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** These matters have not progressed.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And Chair it is with a view in due course.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** Once we get to the bottom of this.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** To make recommendations in our submissions to you.

20 **CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** About what you may consider in a report in due course.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** Chair our thinking there is if this can be explained by matters of incapacity.

**CHAIRPERSON**: Hm.

**ADV KATE HOFMEYR**: Well that is one thing and it may well influence the type of submissions we would make to you in relation to recommendations following from the commission.

**CHAIRPERSON**: Hm.

**ADV KATE HOFMEYR**: There is also concern though that there may have been delays in this prosecution of the matter for other reasons.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: And we have – we are in the process of  
10 engaging those matters with the Hawks.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: So I – my request to you today is that we continue to probe the matter. That we update you as and when we believe we have a full picture. I would not be in a position today to give you a full picture because there is much that still needs to be interrogated but we would do so in advance of making any submissions to you Chair about what our proposed recommendations may be in relation to these matters.

**CHAIRPERSON**: I am disinclined to deal with it simply on the basis  
20 that whatever we may need to do may only be done at the time of preparing the report.

**ADV KATE HOFMEYR**: Indeed Chair.

**CHAIRPERSON**: Certainly it would be important at that stage to know as much as possible about these types of delays, what causes them and so on. But I think that we should seek to assist if we can in

1. Understanding why either nothing or very little has happened and
2. Seeking to have the action that is required to be taken to be taken.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** What we may have to consider – I think the first thing is to try and get as much information as possible as to where – what has been done and then one option might be to then bring this to the attention of the – the leadership of whatever and law enforcement agencies are involved whether it is the Hawks or the SAPS and maybe  
10 ask them to see to it that something is being done and maybe to consider holding certain people accountable.

**ADV KATE HOFMEYR:** Hm.

**CHAIRPERSON:** But it may well be that we should consider whether senior people should not come here and explain what has happened.

**ADV KATE HOFMEYR:** Hm.

**CHAIRPERSON:** But we do not need to – if we can avoid let the time that we have which is limited for the hearing of witnesses who would be telling us about various matters let some of it be taken by ...

**ADV KATE HOFMEYR:** Indeed.

20 **CHAIRPERSON:** Those matters but at the same time it may well be that it might send the right message if people were to be called and to come and explain publicly what is happening. Because if it is a question of incapacity, not having resources one would expect them to come – to be open with us and say look the reason why there has been no action is because we just have too few police officers or something

like that.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** And then give a full breakdown of what is there – what is available and so on. But also one would want in that situation to understand what efforts have been made to bring that situation to the attention of senior authorities you know.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** To say look we cannot carry out our functions in this area, in this community because we do not have enough resources and  
10 this is the situation or whether people just have not done anything.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** So maybe you could think along those lines and obviously whatever we do we have got to look at what power we have.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Because we do not want to be accused of doing anything that does not fall within our powers.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** Thank you Chair that was just to conclude that  
20 aspect of the North West ground handling transaction for present purposes. If I may then move to today and one or two procedural aspects. Chair there has been a request – Mr Mainganya who is going to be sworn in shortly is the Chief Risk Officer of the Industrial Development Corporation. Some of the documents that the IDC has provided to the commission in their endeavours to assist with the

investigation are commercially sensitive. There are two pages of a particular annexure that are commercially sensitive and which there has been a request that we ensure are redacted from the public record when the bundles of today go onto the website. Chair the legal team has considered the two documents or the two pages of a document that appears in three places in the bundles after receiving the letter and we have no difficulty with the suggestion that they be redacted. As a matter of fact I do not even intend to take Mr Mainganya to those documents today. And so with your leave our proposal would be that

10 that arrangement be made. It is set out in a letter which those documents will be and Chair I can just hand that up to you if I may.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Chair you will see that it is a letter addressed by Cliff Decker Hofmeyr who are the attorneys acting for Mr Mainganya today and the relevant documents in respect of which redaction is sought are set out from paragraph 4.1 on that page over to 4.3. Chair my suggestion is this morning I was able to identify those documents with the legal representatives as they appear on the paginated pages in the bundles. And so my proposal is that if you are inclined to give the

20 ruling you do so with reference to the documents referred to in the letter and then we will simply ensure that the correct paginated pages of the record are redacted.

**CHAIRPERSON:** Well I would like to have sight of the actual document.

**ADV KATE HOFMEYR:** Certainly.



**CHAIRPERSON**: As well.

**ADV KATE HOFMEYR**: Chair let me take you to that then.

**CHAIRPERSON**: Yes but in the meantime I will just read this letter.

**ADV KATE HOFMEYR**: Certainly.

**CHAIRPERSON**: Okay no maybe even without looking at it I have just finished reading this letter. Maybe what we can do is – maybe I can make the order with a rider.

**ADV KATE HOFMEYR**: Hm.

**CHAIRPERSON**: That I – the order could be revisited should it become  
10 necessary.

**ADV KATE HOFMEYR**: Hm.

**CHAIRPERSON**: Later on just in case

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Later on it might appear that there is something.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Particularly when I have not looked at a lot of things.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Ja. So in that way then one can always relook at it and either withdraw the order or keep it as it is.

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

**CHAIRPERSON**: Ja. So is this identification of the relevant documents fine?

**ADV KATE HOFMEYR**: Yes it is.

**CHAIRPERSON**: Hm. Okay. The information contained in the documents identified in paragraphs 4.1, 4.2 and 4.3 of the letter dated

28 August 2019 from Cliff Decker Hofmeyr addressed to the secretariat of the commission will be included in the commission's record only in a redacted – redacted form. Is that adequate?

**ADV KATE HOFMEYR**: Indeed Chair.

**CHAIRPERSON**: Is that adequate?

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: Okay. Alright thank you. I think I must then say we will make that 1 and 2 will be the order in 1 above may be reconsidered at a later stage should circumstances dictate its reconsideration.

10 **ADV KATE HOFMEYR**: Hm.

**CHAIRPERSON**: Ja.

**ADV KATE HOFMEYR**: Thank you Chair we are indebted. Chair the final procedural aspect is just to update you insofar as Rule 3.3 Notices in respect of Mr Mainanya's evidence is concerned. Chair as you will see when we commence with Mr Mainganya's evidence it comes in two parts. There was an initial affidavit in respect of which a Rule 3.3 Notice was issued to an implicated person. Pursuant to that notice being issued we received an application for cross-examination from the implicated person but that was subsequently withdrawn. There was  
20 then a further affidavit that was received from Mr Mainganya on Wednesday of last week and it was a supplementary affidavit. It has been placed in the folder that – in the bundle that we will come to. In respect of that affidavit there were three further Rule 3.3 Notices that needed to be issued. They were issued on the Friday of last week first thing in the morning. That means implicated persons obtained a week's

notice of today's evidence. There has been only one response to that and that was a response received yesterday from Mr Komane's attorneys. Chair that correspondence indicates and if I may just beg leave to hand it up to you Chair before I go to it.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: Chair the way it has been put together is the covering email that you see there is actually the email that the commission sent in response to the letter that was received from Mr Komane's attorneys. Second in the documents that have been handed  
10 to you is Mr Komane's lawyer's letter. The essence of it Chair as I understand it is that Mr Komane places on record at paragraph 1 of the letter which you will find on the second page of it that he denies any involvement in the alleged payments that are described and we will come to that in Mr Mainganya's evidence. He goes on to raise concern that the allegation is based purely on hearsay evidence with no corroborating statements, affidavits or documents supporting the allegation and furthermore lacks merit and is conceived to be unsubstantiated and the concern is that it makes it impossible for their client to respond to it. At paragraph 3 concerns are raised about the  
20 public interest in the commission and the prejudice to Mr Komane both in private and his public capacity should the allegations be made public alternatively his client be associated with the allegations and then at 4 they are concerned – they raised the concern that he has not been granted adequate time to respond to the notice and has not received all the necessary information to properly respond. And if you go to the

last paragraph on that page it concludes on the basis of a request that Mr Komane be furnished with the founding affidavit of Mr Mainganya or any corroborating evidence that might exist in order for him to assess the merits and obtain the necessary further legal advice and assistance he is entitled to. Chair the letter on its face did not make any claim in relation to the proceeding of Mr Mainganya's evidence. But out of caution yesterday evening a letter was sent that is the first letter in the pack to the representatives and it was made clear to Mr Komane's representatives that it was the intention of the legal team to proceed  
10 with Mr Mainganya's testimony. You will see that at paragraph 3 of the email. It further went on to indicate that if Mr Komane intended to object to the commission proceeding to hear the evidence of Mr Mainganya that he was invited to send a legal representative to the commission to make such representations. And it continued in conclusion to say if no legal representatives appear to make such representations the commission will proceed with the evidence of Mr Mainganya and your client will be able to bring whatever application he intends to bring and to provide his version to the commission in due course. Chair the other thing I can update you on which is not  
20 reflected in this email is of earlier this morning the other affidavit of Mr Mainganya as well as an affidavit of Mr Rama which will be referred to in today's proceedings have been sent to Mr Komane in response to his request. Chair I am not aware of any legal representative today for Mr Komane and so it is my proposal that we continue with the evidence and of course we are eager to receive any information from any

persons related to the mandate of the commission and if in due course Mr Komane seeks to do so or makes an application to cross-examine any witness we will place that before you Chair for determination.

**CHAIRPERSON**: Yes and I see that on the last page of his letter – his attorneys letter it does emphasise that he intends to give his full cooperation.

**ADV KATE HOFMEYR**: Indeed.

**CHAIRPERSON**: To the inquiry and just once again does make the point that the lack of notice, lack of time and minimal admissible  
10 information against him is unfair and prejudicial.

**ADV KATE HOFMEYR**: Hm.

**CHAIRPERSON**: I think that the important thing is that he knows that the witness will be giving evidence today and he has been advised that he could be here if he wishes to object. And he is not here or his lawyers are not here. And whatever prejudice may – he may suffer would – at least he will be given a chance to present whatever challenge he wishes to present. So I think it is okay we can proceed and he must simply be given whatever it is he is entitled to from the commission.

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

**CHAIRPERSON**: That he might not have been given yet.

**ADV KATE HOFMEYR**: Indeed and if what we have given him in his view is inadequate and there are further documents that are relevant.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: He will certainly engage with us on that.

**CHAIRPERSON:** Ja okay.

**ADV KATE HOFMEYR:** Chair if I may then ask Mr Mainganya's legal representative just to place herself on record.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Before we proceed with the evidence.

**CHAIRPERSON:** Ja. Please come forward.

**ADV THABILE FURMAN:** Shall I walk up to here Chair?

**CHAIRPERSON:** There. Switch that off and go there.

**ADV THABILE FURMAN:** Thank you Chair. My name is Thabile  
10 Furman. I am the RDC's legal representative and therefore Mr  
Mainganya's legal representative.

**CHAIRPERSON:** Hm.

**ADV THABILE FURMAN:** I am from Cliff Decker Hofmeyr Attorneys.

**CHAIRPERSON:** Thank you very much. Okay.

**ADV KATE HOFMEYR:** Thank you Chair. If I may request the witness  
be sworn in?

**CHAIRPERSON:** Let it be – ja. Please administer the oath or  
affirmation?

**REGISTRAR:** Please state your full names for the record?

20 **MR MARK PHAKAMILE MAINGANYA:** Mark Phakamile Mainganya.

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

**MR MARK PHAKAMILE MAINGANYA:** No.

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

**MR MARK PHAKAMILE MAINGANYA:** Yes.

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

**MR MARK PHAKAMILE MAINGANYA:** So help me God.

**CHAIRPERSON:** Yes you may proceed.

**ADV KATE HOFMEYR:** Thank you Chair. Chair and Mr Mainganya before I proceed with the questioning of Mr Mainganya with your leave Chair I would just like to place today's evidence in context because it has been some time since we heard the aviation evidence.

10 **CHAIRPERSON:** Yes it has been a long time.

**ADV KATE HOFMEYR:** indeed.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** And in order for today's evidence to make sense in the scheme of the evidence that was presented previously if I may just take a moment to locate it? Chair one of the investigations that was presented in the aviation session related to jet fuel supply agreements that had been concluded between South African Express and South African Airways with a company called EML Energy. You will recall we had the evidence of Ms Loock and Mr Vaughan. Both of them  
20 dealt with this particular jet fuel supply engagements with their respective state owned entities and EML. Their evidence was that a jet fuel supply agreement had been entered into between South African Express and EML Energy in circumstances that did not follow procurement processes at a time when the fuel was already being supplied to SA Express by SAA.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** And so it – it on its face appeared to be a duplication of supply.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** It was at a price 30% higher than the price that SA Express was receiving fuel from SAA and the further evidence of Ms Loock was that EML after it was awarded the contract for jet fuel supply ended up never being paid for jet fuel supply because all – the only performance that it rendered was in relation to refuelling and defueling  
10 of aircraft which was in a small proportion. I think her evidence was about R80 000 whereas the contract was for many many more thousands beyond that. Chair that was the background of Mr Loock's evidence from the South African Express airways side. What Mr Vaughan gave us insight into was that actually prior to that South African Express airways contract there had been a decision of the board of SAA to set aside certain jet fuel transactions for certain identified parties? There was a process that was run to try and bring what were referred to as black industrialists into the jet fuel supply sector and the consequence of that was that EML was one of three  
20 parties that were identified for that 20% set-aside of jet fuel. As it so happened on Mr Vaughan's evidence despite them being short listed and recommended for appointment they were not actually appointed in the initial 2016 tender. There was a later appointment of EML in 2018. So that is the context against which Mr Mainganya's evidence is heard today and it might not be readily apparent why we would be hearing



from a witness from the IDC in circumstances of jet fuel supply to SA Express but the reason for that and it will be traversed with Mr Mainganya in his evidence is that off the back of these contracts with SAA and SA Express a funding application was made by EML Energy to the IDC and it received funding and that funding transaction has been investigated and will be explored with Mr Mainganya today. And so Chair with that background in place.

**CHAIRPERSON**: Thank you very much for that background.

**ADV KATE HOFMEYR**: If I may then commence with Mr Mainganya's  
10 evidence?

**CHAIRPERSON**: Yes. Which one of the ...

**ADV KATE HOFMEYR**: Right.

**CHAIRPERSON**: Files should – I should ...

**ADV KATE HOFMEYR**: Chair first of all if we could just enter into the record.

**CHAIRPERSON**: Oh yes.

**ADV KATE HOFMEYR**: There are three files comprising Mr Mainganya's evidence today.

**CHAIRPERSON**: Hm.

20 **ADV KATE HOFMEYR**: They are all in the DD13 range and they are files DD13A, B and C. If we can enter those into the record.

**CHAIRPERSON**: Only one of them has got his affidavit?

**ADV KATE HOFMEYR**: Correct.

**CHAIRPERSON**: The rest are annexures?

**ADV KATE HOFMEYR**: Correct ...

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** And other documents.

**CHAIRPERSON:** And other documents. The file that has Mr Mainganya's affidavit or statement will be EXHIBIT DD13A and then there are two other files. They are lever arch files. One will be marked EXHIBIT DD13B and that is the one whose first annexure is Annexure VDR 1 and the other lever arch file will be marked EXHIBIT DD13C and that is the one whose file document bears the logo of IDC and is dated 30 January 2017 with the heading "New Application". That will be  
10 EXHIBIT DD13C.

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

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And we will spend most of today in DD13A which contains the affidavit - the first and second affidavit of Mr Mainganya but we will on occasion move to the other documents. Mr Mainganya so my suggestion to you if I may is to keep A readily available in front of you and then when it is necessary to go to Bundles B and C I will identify that.

The second thing is just to ask that you put your microphone  
20 on and we find that if you bring it closer to you it sometimes amplifies a bit better. Thank you. Mr Mainganya could you just for the record clarify for us what your position is at the IDC?

**MR MARK PHAKAMILE MAINGANYA:** My position is that of the Chief Risk Officer.

**ADV KATE HOFMEYR:** Thank you and when did you join the IDC?

**MR MARK PHAKAMILE MAINGANYA:** I joined the IDC in 2014, September.

**ADV KATE HOFMEYR:** Thank you and what are your qualifications?

**MR MARK PHAKAMILE MAINGANYA:** I am a Chartered Accountant.

**ADV KATE HOFMEYR:** Thank you and before joining the IDC in 2014 what did your career involve?

**MR MARK PHAKAMILE MAINGANYA:** Banking, risk management in banking and before that I was in Public Service as - as an auditor.

**ADV KATE HOFMEYR:** Thank you. If we can then just pick up the first  
10 page of your affidavit and you will find that at page 1 of the Bundle DD13A. Mr Mainganya this is an affidavit as I have it that you deposed to previously as compared with a statement ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** But just for completion sake can you confirm that this is your affidavit and that its contents are true and correct?

**MR MARK PHAKAMILE MAINGANYA:** I confirm.

**ADV KATE HOFMEYR:** Thank you and then if I can take you to your second affidavit that you provided to the Commission. You will find that in the same bundle at page 32.1 - 3-2.1.

20 **MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** And can you just confirm for the record that that is the second affidavit that you provided to the Commission and that you confirm its contents as true and correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes I do.

**ADV KATE HOFMEYR:** Thank you. If we can then just return to the

first page of your affidavit and that is at paginated page 1.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** I would like to pick it up at paragraph 3 there. You have already told us about when you joined the IDC but in that paragraph you go on to explain some of the committees that you serve on. What are those?

**MR MARK PHAKAMILE MAINGANYA:** So some of them are the Special Credit Committee, the Credit Committee and the Post Investment Committee.

10 **ADV KATE HOFMEYR:** And you indicate also in that paragraph about a reporting line to you from the Risk Management Department. Can you explain to us how that works?

**MR MARK PHAKAMILE MAINGANYA:** So the risk management department reports to me. It is a second line function. So it is not directly involved in the transactions but it assesses them before the transactions are submitted to the committees.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** Just raise your voice a little higher if you can.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

20 **CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Mr Mainganya what I would like to deal with next just for us to be able to navigate your evidence today and understand the IDCs processes is to have your assistance in describing to us how the processes of the IDC work when it receives an application for funding and Mr Mainganya I have been guided in that by

an affidavit that was prepared by one of your former colleagues - Mr Rama - which had also been supplied to the Commission and for ease of reference that appears at page 38 of the same Bundle A.

That is DD13A. Can you confirm who Mr Rama is and whether he is known to you?

**MR MARK PHAKAMILE MAINGANYA:** Mr Rama was an employee of the IDC. He - he was a - specifically involved in the Chemicals Business Unit assessing the deal maker.

**ADV KATE HOFMEYR:** Thank you and if you ...

10 **CHAIRPERSON:** Sorry. It may be that your voice is soft by nature.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**CHAIRPERSON:** Make another attempt to speak up a bit. Thank you.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**CHAIRPERSON:** Okay.

**MR MARK PHAKAMILE MAINGANYA:** So Mr Rama was an employee of the IDC. He was a deal maker in the Chemicals Business Unit.

**ADV KATE HOFMEYR:** Thank you Mr Mainganya. That is much better I think.

**MR MARK PHAKAMILE MAINGANYA:** *Ja.*

20 **ADV KATE HOFMEYR:** So if we could continue in that frame for the rest of your evidence.

**CHAIRPERSON:** *Ja.*

**ADV KATE HOFMEYR:** Just from an audibility point of view. If you go to the last page of that affidavit. You will see it is the final page in the file in front of you - DD13A - and it is page 61. Could you just indicate

for the record the date on which this affidavit was deposed to?

**MR MARK PHAKAMILE MAINGANYA:** 7 June 2019.

**ADV KATE HOFMEYR:** Thank you. Now what Mr Rama does in this affidavit is to describe the end to end application process in the IDC and so what I would like to propose to do with you is to go to that and then ask you to explain it to us but we will just use the pointers in his affidavit for that purpose and you will find that at page 3-9 - 39.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** It is the second page of his affidavit and you  
10 will see a heading there “End to End Application Process”. Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Right. So he begins with what happens by the Pre Investment Business Centre at paragraph 5. Can you tell us about what that centre does when it receives an application?

**MR MARK PHAKAMILE MAINGANYA:** So that centre would be the first  
recipient of applications from wherever they come from especially in -  
in Gauteng and then you have other applications that come from the  
regions but that centre in Gauteng essentially does a pre assessment  
20 of the transactions.

That is to - to check if among other things they - they are within the mandate of the IDC to fund and to do a preliminary basic assessment before they were forwarded to the business unit ...

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** For proper assessment.

**ADV KATE HOFMEYR:** And - and what happens if it - if an application proceeds past that Pre Investment Business Centre's evaluation? Where does it go next?

**MR MARK PHAKAMILE MAINGANYA:** So it - it will go to the - the relevant department in which that unit falls. So if it is chemicals it is sent to the Chemicals Business Unit. Also they assess the assessment that has been done to determine if they can proceed to do a due diligence on that application.

**ADV KATE HOFMEYR:** And there is reference to a person called a deal  
10 maker. Who is that in the structures?

**MR MARK PHAKAMILE MAINGANYA:** So a deal maker would be the persons that - that would be involved in the due diligence mainly in preparation of the transactions for submissions to the committee.

**ADV KATE HOFMEYR:** And could you tell us a bit about that due diligence process? What does it involve?

**MR MARK PHAKAMILE MAINGANYA:** So the - I would say three  
distinct phases. It involves getting different expertise from the various people in the unit. So one person would for instance be marketing expertise. One would be the technical expertise. One would be the  
20 financial. So - and then there are various other units that are involved in the due diligence.

So for example the - the Environmental Unit which goes on to check the environmental compliance of the client. Then the other would be the Legal Department which will review the legal aspects of the transaction. Then you also have the - the fixed assets valuation

unit which would value the assets.

So - so all those people will be assembled for a specific transaction and - and should it be assessed as readily passing for due diligence. That is the team that will go to the client and do a due diligence on that client.

**ADV KATE HOFMEYR:** And when the due diligence is complete what is the next phase of the process?

**MR MARK PHAKAMILE MAINGANYA:** So the next phase is that each - each member would - would compile his report and the deal maker  
10 would - and the team leader in that unit would be appointed and the team leader would - would compile the assessment which is the submission now that should be serving at the committee from all the various members and that assessment - that submission report would then be sent to - to the Risk Management Department which would do an independent assessment of that submission and then they - they will raise various issues that they might have with the transaction and then there would be a to and from with the units where they - they try to address some of the risks that are raised by the risk management department and - and then post that if it is still proceeding meaning if  
20 adequate measures are included in the submission to deal with some of those risks.

It may be ready for - for submission to the Credit Committees.

**ADV KATE HOFMEYR:** And are the Credit Committees the ultimate decision making bodies in relation to the application?



**MR MARK PHAKAMILE MAINGANYA:** Yes depending on the amount that is requested it will go to various committees all the way up to board committees depending on the requested amount. If it is approved by that committee that is a final decision.

**ADV KATE HOFMEYR:** Thank you and can I just get one point of clarity. You spoke about the team leader producing the submission report and then you spoke about that being evaluated by the risk management committee.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh, huh-uh.

10 **ADV KATE HOFMEYR:** Is there also a peer review that happens before it goes to Risk Management?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** Right. So - so just - so that I can get it right the submission report ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Is prepared?

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** Then it is peer review - reviewed.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh, huh-uh.

20 **ADV KATE HOFMEYR:** Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes and - and the head of the unit must also sign off on the report ...

**ADV KATE HOFMEYR:** Right.

**MR MARK PHAKAMILE MAINGANYA:** And the - the executive responsible must also sign off on that report depending on the level.

**ADV KATE HOFMEYR:** Thank you and can I say just from the basis of what you have described now it sounds like a multistage process ...

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**CHAIRPERSON:**

**ADV KATE HOFMEYR:** With various endeavours to ensure accuracy in the process. Is that a fair description?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes. We try to do that.

**ADV KATE HOFMEYR:** Thank you and then after a decision to fund has been made there has been reference to a Post Investment Committee.

10 How does that committee become involved?

**MR MARK PHAKAMILE MAINGANYA:** Okay. So - so after a decision is made it does happen sometimes that various amendment to the approved transactions are requested. So that committee is mandated to - to deal with those amendments. It is - it is composed of four executives which all the time one of them would be the executive in which the - the application comes from and so each member of that committee assesses the request. It is not a committee that - that sits and discusses. So the submission is sent electronically to each member and they assess the request and they either agree an approval  
20 or not of the requested change.

**ADV KATE HOFMEYR:** And do they generally do so quite swiftly after the submission? Is there a sort of timeframe on resolving the request?

**MR MARK PHAKAMILE MAINGANYA:** Yes. So - so the committee was formed specifically for that purpose.

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** That we may deal speedily with a requests that come from the client. So - so - and hence it is - it is electronic.

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** It - it goes at the same time to - to all the members, *ja*.

**ADV KATE HOFMEYR:** Do you have a sort of sense of the average time? Are we talking about days after receipt?

**MR MARK PHAKAMILE MAINGANYA:** I - I do not have the average  
10 time but each member tries to process it as and when they receive it.

**ADV KATE HOFMEYR:** Thank you. When it becomes relevant I - I will seek clarity on the timing in relation to the specific decision that the Post Investment Committee made in this case.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** If we may then go to this particular application for funding and you will pick up how it originated in the IDC again in Mr Rama's affidavit ...

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** And that would be at page 41 - 4-1 of Bundle  
20 DD13A and you will see at the first paragraph on that page paragraph  
11 Mr Rama describes how he received the EML that is a reference to EML Energy Business Plan. Could you read there what he records?

**MR MARK PHAKAMILE MAINGANYA:** So he says:

"I received the EML Business Plan from  
Mr Billy Cobbinah a senior account manager in the

Development Funds Department via an email of 17 May 2016. He introduced the application to me. The email trail within Mr Cobbinah's email suggests that the email originated from Mr Edward Komane the Divisional Head Industrial Investment Facilitation Economy Department."

**ADV KATE HOFMEYR:** Thank you and if we could go and take a look at that email. You will now need to move to DD13B and it is right towards the beginning of that file.

10 **MR MARK PHAKAMILE MAINGANYA:** Sorry.

**ADV KATE HOFMEYR:** So if you go to the - DD13B. It will be one of the other files next to you on your left.

**CHAIRPERSON:** What is the page?

**ADV KATE HOFMEYR:** The page - 63 Chair.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** 6-3. Could you please describe for us the email that appears in the second half of that page? Who it is from and who it is to?

20 **MR MARK PHAKAMILE MAINGANYA:** So it is from Edward Komane. It is to Billy.

**ADV KATE HOFMEYR:** Could you give the full name - Billy?

**MR MARK PHAKAMILE MAINGANYA:** Billy Cobbinah.

**ADV KATE HOFMEYR:** Chair just for the record Cobbinah is spelt C-O-B-B-I-N-A-H and ...

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Mr Komane that is Edward Komane, K-O-M-A-N-E. Mr Mainganya on what date was that email sent?

**MR MARK PHAKAMILE MAINGANYA:** May, the 17<sup>th</sup> 2016.

**ADV KATE HOFMEYR:** Thank you and if you could just read for us what it says?

**MR MARK PHAKAMILE MAINGANYA:** It says:

“Hi Billy, as discussed on the phone now see attached and let me know if you need any additional information.”

10 **ADV KATE HOFMEYR:** And signed off by?

**MR MARK PHAKAMILE MAINGANYA:** Edward Komane.

**ADV KATE HOFMEYR:** Who is Mr Billy Cobbinah?

**MR MARK PHAKAMILE MAINGANYA:** Mr Billy Cobbinah is - was an employee of the IDC employed in the Development Funds Unit within the IDC.

**ADV KATE HOFMEYR:** Thank you and then if you go to the top of that page there is an email between what I understand to be Mr Cobbinah and Mr Rama. Can you tell us when that was sent?

**MR MARK PHAKAMILE MAINGANYA:** That was sent on 17 May 2016.

20 **ADV KATE HOFMEYR:** It appears to be shortly after the email that was sent from Mr Komane to Mr Cobbinah. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And what does Mr Cobbinah say to Mr Rama?

**MR MARK PHAKAMILE MAINGANYA:** “Can you do this deal fast for a potential client? I have asked for the

audited financial statements.”

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** Just to get somethings correct. You have got the IDC and then you have got divisions within it?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**CHAIRPERSON:** Is one of its divisions Industrial Investment Facilitation?

**MR MARK PHAKAMILE MAINGANYA:** No Chairperson.

**CHAIRPERSON:** Is that something else?

10 **MR MARK PHAKAMILE MAINGANYA:** That is where apparently Ms Edward Komane works. It is - it is the Economic Development Department ...

**CHAIRPERSON:** Oh.

**MR MARK PHAKAMILE MAINGANYA:** But it is not of the IDC.

**CHAIRPERSON:** Just repeat that. Repeat the last sentence. It is not ...

**MR MARK PHAKAMILE MAINGANYA:** It is not a unit of the IDC.

**CHAIRPERSON:** Oh, okay. So that is a - that is outside of ...?

**MR MARK PHAKAMILE MAINGANYA:** It is outside.

20 **CHAIRPERSON:** Okay. Okay. No that is fine.

**ADV KATE HOFMEYR:** So just for - for my own clarification purposes can we understand these emails to be a third party Mr Komane is sitting outside the IDC ...

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** Forwarding something that he had discussed

with Mr Cobbinah to him. Is that as you understand the bottom email?

**MR MARK PHAKAMILE MAINGANYA:** That is what the email says yes Chairperson.

**ADV KATE HOFMEYR:** And then the - the higher email is between two IDC employees as I understand it. It is Mr Cobbinah the forwarding it to Mr Rama both of whom are IDC employees. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**CHAIRPERSON:** And ...

**ADV KATE HOFMEYR:** Thank you.

10 **CHAIRPERSON:** And just repeat what Mr Cobbinah's position was. You - you did - I think you did say it earlier on.

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairman. He was employed by the IDC in one of our units called Development Funds Department.

**CHAIRPERSON:** Oh, okay. You did not say what his position was? Do you remember what his position was?

**MR MARK PHAKAMILE MAINGANYA:** I - I ...

**CHAIRPERSON:** You do not know?

20 **MR MARK PHAKAMILE MAINGANYA:** I think it was a Senior Accountant Manager.

**CHAIRPERSON:** Okay. No that is fine. I am sure we will get - find it as some stage.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** *Ja.*

**ADV KATE HOFMEYR:** Thank you Chair. If we can then just move

ahead to the actual decision that was made in relation to this funding but before we leave the page that we are on. I do just want to indicate Chair that Mr Komane's email at the bottom refers to see attached document.

If you go over to page 65 - 6-5 - you will that that is the attachment to the email and what I would like to just draw to the attention for the purposes of the record because it will become relevant later in the evidence of Mr Mainganya. Is at page 71 - well - sorry. Let us start at 65. What is that document Mr Mainganya?

10 **MR MARK PHAKAMILE MAINGANYA:** It says business plan 2016.

**ADV KATE HOFMEYR:** And whose business plan is it?

**MR MARK PHAKAMILE MAINGANYA:** At the top it has got EML Energy.

**ADV KATE HOFMEYR:** Have - had you seen this document before?

**MR MARK PHAKAMILE MAINGANYA:** No.

**ADV KATE HOFMEYR:** If we move in the business plan to paginated page 71 - 7-1 - you will see a heading there "Product and Services". Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Can you read for us what EML Energy indicates  
20 there in the business plan are its products and services?

**MR MARK PHAKAMILE MAINGANYA:** It says:

"EML Energy is selling Jet A1 and other - and offer the following services: refuelling, defueling, calibration, storage, maintenance and repairs."

**ADV KATE HOFMEYR:** Thank you. Can you just explain to us what -



what would a business plan of this nature from a potential applicant for funding then - how would it be treated then by the IDC?

**MR MARK PHAKAMILE MAINGANYA:** So - so remember I referred to the Pre Investment Business Centre. So a business plan like this would have gone to - to that centre for evaluation before it goes to the business unit.

**ADV KATE HOFMEYR:** And who would be the person who did that evaluation in this case?

**MR MARK PHAKAMILE MAINGANYA:** You mean in any of the people  
10 you have mentioned so far?

**ADV KATE HOFMEYR:** Yes.

**MR MARK PHAKAMILE MAINGANYA:** At - at the pre business centre  
...

**ADV KATE HOFMEYR:** Yes.

**MR MARK PHAKAMILE MAINGANYA:** It would have been none of these people so far.

**ADV KATE HOFMEYR:** Right. If we can then just jump ahead so that we orientate ourselves in time. As I have it this email with the application and the plan comes through in May 2017. There is a final  
20 decision to approve this funding on 6 February 2017. So I would like to jump ahead to that and then in the evidence we will go through the stages towards the decision but it is quite useful for us now to understand what the decision was if we may ...

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** And you will find that decision in the same

Bundle D that is DD13B at page 2-6-4. Mr Mainganya as I understand it this is the minutes of the meeting at which the decision in relation to EML's funding application was taken. Is - is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Just explain to us when that was.

**MR MARK PHAKAMILE MAINGANYA:** 6 February 2017.

**ADV KATE HOFMEYR:** Were you involved in this decision on that day?

**MR MARK PHAKAMILE MAINGANYA:** I was not involved here.

**ADV KATE HOFMEYR:** I - I can see down the page under the heading  
10 "Apologies". It appears you gave your apologies for not having been present. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** So would you ordinarily be on the committee that was deciding this application?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** But as it so happened you were not there on that day. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** No, I was not there.

**ADV KATE HOFMEYR:** Thank you and then if you go over the page to  
20 2-6-5 what is that?

**MR MARK PHAKAMILE MAINGANYA:** This is a funding request by EML.

**ADV KATE HOFMEYR:** Is this what was decided by the committee in relation to the funding? If you see under the heading 3.1 "EML Engineering and Construction (Pty) Ltd ("EML")". It says:

“The committee was requested to approve the following:”

Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Yes. I see that. So - okay.

**ADV KATE HOFMEYR:** Is that what they did approve?

**MR MARK PHAKAMILE MAINGANYA:** This is what was requested.

What was approved it is on the following page.

**ADV KATE HOFMEYR:** Thank you.

**MR MARK PHAKAMILE MAINGANYA:** The decision.

10 **ADV KATE HOFMEYR:** Thank you. If we could just take a bit of time with sub paragraph 1 of 3.1 on page 2-6-5. I would like to understand the two facilities in respect of which funding was sought. Can you explain to us what the first facility was which you see under sub paragraph 1 on that page?

**MR MARK PHAKAMILE MAINGANYA:** So the facility was for working capital. That was for six million that was requested to be funded under the MSEP program which the IDC manages.

**ADV KATE HOFMEYR:** Chair we will come back to explore what MSEP means.

20 **MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** But for present purposes thank you Mr Mainganya and tell us what the terms of the loan was going to be.

**MR MARK PHAKAMILE MAINGANYA:** It says:

“The loan will be used to fund working capital and will have a term of 42 months, six months capital

moratorium and sculptured payments as follows:  
instalment one to 12, 220 000; instalment 13 to 24,  
120 000; instalment 25 to 36, 160 000.  
Repayments will be in 35 instalments of 166 000  
and a final payment of 190 000. Interest will be at  
four percent.”

**ADV KATE HOFMEYR:** Thank you. so can I just clarify there I  
understand a term of 42 months - I had to do a quick calculation in  
advance of today’s evidence - is three and a half years. Is that right?

10 **MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** And those payments that you see one to 12, 13  
to 24 and 25 to 36 are those monthly payments?

**MR MARK PHAKAMILE MAINGANYA:** Yes. These will be monthly  
payments.

**ADV KATE HOFMEYR:** So when it says one to 12 that is month one to  
month 12. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** Over the period and so the full period if you  
add the six month capital moratorium would be three years plus six  
20 months which is four years. Is my understanding correct?

**MR MARK PHAKAMILE MAINGANYA:** Which is 42 months. Sorry.

**ADV KATE HOFMEYR:** Well 42 months is three and a half years. Is  
the capital moratorium within the 40 ...?

**MR MARK PHAKAMILE MAINGANYA:** Within the 42 months.

**ADV KATE HOFMEYR:** Excellent. So the full term of this loan is three

and a half years. The 42 months.

**MR MARK PHAKAMILE MAINGANYA:** The 42 months, yes.

**ADV KATE HOFMEYR:** Thank you and then tell us about the second piece of funding that was approved.

**MR MARK PHAKAMILE MAINGANYA:** So that was:

10                   “A 6 500 000 plant and equipment subordinated loan facility to be used for the upgrade of plant and equipment and the purchase of bowsers. The facility will have a term of five years and is expected to achieve a 13.8 percent real after tax return. Repayments will be in the form of cash sweeps from year 2021 to financial year 2024 maintaining a minimum cash balance of one million with cash sweeps occurring every six months beginning 28 February 2018.”

**ADV KATE HOFMEYR:** Mr Mainganya can you just confirm for me what was the term of this plant and equipment loan?

**MR MARK PHAKAMILE MAINGANYA:** Five years.

20                   **ADV KATE HOFMEYR:** Thank you. Then can you help me with something because I am - this was approved in 2017. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson.

**ADV KATE HOFMEYR:** We are in February 2017 as I recall it.

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** So a five term would take you to 2022. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** So help me with the last sentence there then, it says,

“Repayment will be in the form of cash sweeps from financial year 2021 to 2024 maintaining a minimum cash balance of R1million”,

Isn't 2024 beyond the term of the loan facility?

**MR MARK PHAKAMILE MAINGANYA:** So the term of the loan facility would start from 2021 in terms of repayments. It will start from 2021,  
10 2022, 2023, 2024 so it doesn't start from February 2017, the repayments thereof, only start from 2021.

**ADV KATE HOFMEYR:** We'll look at that, is that your clear understanding of how it works?

**MR MARK PHAKAMILE MAINGANYA:** Yes so from the date of approval until 2021 there are no cash sweeps.

**ADV KATE HOFMEYR:** But there are repayments preceding that, is that right?

**MR MARK PHAKAMILE MAINGANYA:** So repayments would only occur if there's cash but contractually the client is obliged to start  
20 repaying fro 2021.

**ADV KATE HOFMEYR:** Okay we'll need to explore that a bit further when we go to the cash flow statements that were prepared by the finance department, because the understanding you've given now does not accord with my understanding of that schedule but you may be able to clarify for us but as you understand it here, it's a five year loan for

planting equipment and that is a loan that they receive the cash for in February – well at a point in 2017, correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** And as you understand it did they only have a repayment obligation that began in 2021?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Okay thank you and then over the page at 266 can you assist me there, is it your understanding that those two loans were then approved?

10 **MR MARK PHAKAMILE MAINGANYA:** Yes that's correct.

**ADV KATE HOFMEYR:** And just deal with paragraph 3 at the top of that page, if you will, there was another facility sought and approved, what was that?

**MR MARK PHAKAMILE MAINGANYA:** So it's a guarantee facility of R62million to Total South Africa and R3million to Engen Africa for jet A-1 relating to the SAA contract, the facility will have a term of 12 months.

**ADV KATE HOFMEYR:** Thank you, Mr Mainganya I'd then like to go back to the topic of MCEP and for that purpose I'd like to move to page  
20 2 of your affidavit. Now you'll recall your affidavit is in DD13A. Mr Mainganya at page 2 of your affidavit you'll see half way down there's a heading 4.1 in bold, "Manufacturing Competitiveness Enhancement Programme Qualifying Criteria". Is Manufacturing Competitive Enhancement Programme abbreviated as MCEP?

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** And please tell us what that is...[intervenes].

**CHAIRPERSON:** Hang on one sec, I haven't got to the right page, what's the right page on his affidavit?

**ADV KATE HOFMEYR:** His affidavit page 2.

**CHAIRPERSON:** Page 2 okay.

**ADV KATE HOFMEYR:** Apologies Chair. So we're midway down the page and we're dealing with the heading in bold there, "Manufacturing Competitiveness Enhancement Programme". What is that programme Mr Mainganya?

- 10 **MR MARK PHAKAMILE MAINGANYA:** So MCEP is the programme of the Department of Trade and Industry for which some of its funds are managed by the IDC, the IDC's Development Funds Department is a custodian of the MCEP programme within the IDC and it assesses applications for funding from the MCEP programme prior to these applications being submitted to the various IDC Committees for approval. I'm informed that MCEP is aimed at assisting, manufacturing of value adding companies that need funding for working capital or companies with at least 51% BEE shareholding that need capital equipment. MCEP is priced at a rate of 4% fixed for four years for  
20 working capital and seven years for capital equipment among other criteria. MCEP is not available for start up companies, MCEP is only applicable to manufacturers under standard industry classification code 3...[intervenes].

**ADV KATE HOFMEYR:** M Mainganya do you mind if we just stop there for a moment, I'd just like to get a little bit more clarity in relation



to the working capital loan that was approved for EML Energy that we just looked at. Did I understand you correctly to say it was approved under this MCEP programme, is that right?

**MR MARK PHAKAMILE MAINGANYA:** That's right.

**ADV KATE HOFMEYR:** And if we can just pause at that 4% fixed interest rate, is that a preferential rate?

**MR MARK PHAKAMILE MAINGANYA:** It is.

**ADV KATE HOFMEYR:** What would the ordinary rate be if you didn't qualify for MCEP funding?

10 **MR MARK PHAKAMILE MAINGANYA:** So this client was priced at prime plus three.

**ADV KATE HOFMEYR:** Right and that was the interest rate on the planting equipment loan was it not?

**MR MARK PHAKAMILE MAINGANYA:** That's correct – no, no it was 4% but if there was no MCEP it would have been prime plus three.

**ADV KATE HOFMEYR:** No I was talking about the planting equipment loan, the second loan was priced – the subordinated loan at prime plus 3% wasn't it?

20 **MR MARK PHAKAMILE MAINGANYA:** No it was not it was priced at 13.8%.

**ADV KATE HOFMEYR:** Right what was that prime plus what at the time?

**MR MARK PHAKAMILE MAINGANYA:** No this is a different – this is a real after tax return it's not linked to prime.

**ADV KATE HOFMEYR:** Oh I see so where is the prime plus 3%,

where does that come from?

**MR MARK PHAKAMILE MAINGANYA:** So for every facility whether it qualifies for MCEP or not, we calculate what the IDC pricing would have been had it not qualified. So for this client it would have been prime plus 3%.

**ADV KATE HOFMEYR:** Thank you, so at the time, 2017, do you recall what prime was?

**MR MARK PHAKAMILE MAINGANYA:** No I don't Chair.

**ADV KATE HOFMEYR:** If I said to you it was around 10% would that  
10 sound right?

**MR MARK PHAKAMILE MAINGANYA:** So it's in the schedule that we [indistinct] yes Chair, around 10%.

**ADV KATE HOFMEYR:** Thank you so that means you're comparing a difference of about – of 4% with 13% correct?

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** Thank you, then if we can go on because you were going to deal with the criteria, so as I understand your evidence MCEP is something that you must qualify for to get this preferential rate is that correct?

20 **MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** And then there are qualifying criteria, is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** And the first of those you indicated at the bottom of page two what is that?

**MR MARK PHAKAMILE MAINGANYA:** It says,

“Only applicable to manufacturers under standard industry code classification code 3”.

**ADV KATE HOFMEYR:** Thank you can I ask you what your understanding of standard industrial classification code 3 is?

**MR MARK PHAKAMILE MAINGANYA:** So the MCEP programme has various codes, so this should actually be level 3, so level 3 will have many sub-categories under it according – classifying it industry according to where it comes from, if it’s under 3 there will be various  
10 industries falling under 3.

**ADV KATE HOFMEYR:** So just – what is a standard industrial classification code, where does that come from?

**MR MARK PHAKAMILE MAINGANYA:** I stand under correction but I think this is a universally used industry classification code.

**ADV KATE HOFMEYR:** If I could take you to – in that same bundle page 37.1 you’ll find it just before Mr Rama’s affidavit commences, this is a SARS document reflecting standard industrial classification codes, is that what MCEP is referring to when it talks about standard industrial classification codes?

20 **MR MARK PHAKAMILE MAINGANYA:** I think so, but MCEP has its own codes, has its own classification which are not grouped according to this one.

**ADV KATE HOFMEYR:** Do you know that as a fact?

**MR MARK PHAKAMILE MAINGANYA:** Yes I’ve got them here.

**ADV KATE HOFMEYR:** Oh we haven’t seen those so maybe what you

would need to do is assist us over the tea break to make those available to us.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** What then, until today we had understood these to be the standard industrial classification codes the ones that you see at 37.1, what is code 3 under the standard industrial classification code that you understand to be the MCEP code?

**MR MARK PHAKAMILE MAINGANYA:** So the one I've got here, it says the DTI, SIC codes Manufacturing Competitiveness Enhancement  
10 programme MCEP, then it lists standard industry code level 3 and then under level 3 it lists various industries starting from 301 all the way to 395.

**ADV KATE HOFMEYR:** Mr Mainganya I have not seen that before so I would like to take a look at it over the break and then we can come back to this point if we may in your evidence.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** If we go over to page three where you were at the top bullet of your affidavit, you give the other qualifying requirements which are not pertinent for our purposes but at b) you tell  
20 us that the EML application was pre-assessed to have met the MCEP requirements, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** Who did that assessment?

**MR MARK PHAKAMILE MAINGANYA:** It was done by Mr Billy Cobina.

**ADV KATE HOFMEYR:** And what was he – what was the basis he gave

for identifying it as having qualified for MCEP funding?

**MR MARK PHAKAMILE MAINGANYA:** So in paragraph c) I say,

“Subsequent to my meeting with the Commission’s legal team above and for purposes of preparing this affidavit, I received – I interviewed the IDC’s Mr Billy Cobina who pre-assessed the EML transaction to determine whether it qualifies for MCEP. He indicated that he approved and recommended the transaction for MCEP on the understanding that EML will, as part of it’s operations, be involved in blending and value adding on some of it’s products”.

10

**ADV KATE HOFMEYR:** Thank you, I don’t want to jump to 2018 yet if we may that’s why I’ve stopped you there because I just want to stay faithful to the chronology at this point. This fact that it had been qualified for MCEP funding was referred to in the submission that was made to the Committee that took its decision on the 6<sup>th</sup> of February 2017 and so I’d like to take you to that document so that we could explore it a bit if we may. You’ll find it in DD13C, so it’s one of the files on your left-hand side and we’re looking there at page 554 which is right at the beginning, what is that document Mr Mainganya?

20 **MR MARK PHAKAMILE MAINGANYA:** So this is a submission to the special Treasury Committee.

**ADV KATE HOFMEYR:** Is that the Committee that made the decision on the 6<sup>th</sup> of February?

**MR MARK PHAKAMILE MAINGANYA:** Thanks correct.

**ADV KATE HOFMEYR:** And in the scheme of the processes of the

IDC what is this document?

**MR MARK PHAKAMILE MAINGANYA:** So this document is a basis on which funding decision is made it contains the requirement of the client, it tells what facilities are required, it describes the business, what it's going to do, it describes the industry, it summarises the due diligence that was done and based on that it recommends to the Committee that the facilities be approved.

**ADV KATE HOFMEYR:** Thank you, I'd like to pick up a few aspects of this submission because they will be relevant to the further evidence  
10 that that you give and it could then ask you to go to page 557 in that document. The third paragraph on that page deals with the fuel farm that EML Energy had, can you tell us about that?

**MR MARK PHAKAMILE MAINGANYA:** So it was indicated in the submission that Denel had donated a fuel farm to the client, that is the premises on which the client was conducting its business.

**ADV KATE HOFMEYR:** Thank you and in this paragraph the compiles of this submission are dealing with the valuation that was given to that fuel farm, can you tell us about what is recorded there?

**MR MARK PHAKAMILE MAINGANYA:** So it says,  
20 "EML had later revalued their assets using an independent valuer to [indistinct] R14.3million, however the assets were valued by the IDC's evaluations department at R7.4million".

**ADV KATE HOFMEYR:** Thank you we'll pick that up later but just so that I can understand does that mean EML in its books had given it a particular value but when the IDC did its due diligence it gave it a

different value – a lower value?

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** Thank you. If we then go to 559 the second paragraph there talks about the tender that EML had been involved in to supply jet fuel to SAA, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** And what is recorded in that second paragraph about that tender?

**MR MARK PHAKAMILE MAINGANYA:** "It has been established that  
10 there are three finalists for the tender, the budgets have been  
set-up in a manner where it has been assumed that EML will  
be awarded a third of the full tender as per discussions with  
SAA to remain prudent within the budget as the allocation of  
the tender has not yet been provided should a larger amount of  
the tender be awarded this will increase sales and nett profit  
further".

**ADV KATE HOFMEYR:** Thank you, Chair I note that we have just gone  
past quarter past, it may be an appropriate time to take the break.

**CHAIRPERSON:** Yes let's take the break but we'll take a rather longer  
20 tea break today let's resume at quarter to twelve, I just need to attend  
to something.

**ADV KATE HOFMEYR:** Thank you Chair well it will also facilitate us  
looking at the document, thank you so much.

**CHAIRPERSON:** Yes, we adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us proceed.

**ADV KATE HOFMEYR:** Thank you Chair. Mr Mainganya we were on page 559 of bundle DD13c when we broke for the break. And I was asking there about the second paragraph on that page where it is recorded that in the submission to the credit – the committee that was deciding this application that it had been established that there are three finalists for the tender. That is a reference to the SAA tender, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes that is correct.

**ADV KATE HOFMEYR:** And then what is your understanding of what else is recorded there about the stage in that tender that EML was at at the time that this funding decision was taken?

**MR MARK PHAKAMILE MAINGANYA:** Sorry the question is?

**ADV KATE HOFMEYR:** The submission indicates that the tender process had not yet been finalised, is that your understanding of it?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** What does it indicate was the stage of the tender process that had been achieved by the time this submission was made?

**MR MARK PHAKAMILE MAINGANYA:** So the tender had not been approved at that stage it was still adjudication.

**ADV KATE HOFMEYR:** Indeed but it does go on to say the budgets have been set up in a manner where it has been assumed that EML will



be awarded a third of the full tender as per discussions with SAA. Let us just stop there. If a tender process had not been completed how could it be that any reliance was going to be placed on what volumes EML would be awarded?

**MR MARK PHAKAMILE MAINGANYA:** So in the submission the team says they in doing their marketing due diligence they interviewed SAA and SAA at that stage informed them three bidders had been short listed and one of them was EML. And they also informed them that maybe the allocation would be equally among the three. So the team  
10 had to make assumptions in doing their financial model therefore they took the 20% of litres that was earmarked for BBBE suppliers and divided it equally among the three short listed bidders S&S Dimension to do the financial model.

**ADV KATE HOFMEYR:** Is that a customary approach for the IDC that it would assess an application prior to the tender in fact being awarded?

**MR MARK PHAKAMILE MAINGANYA:** Yes sometimes it does happen that when a client comes it is still bidding but the tender requirements for example would be such that when it is awarded it need to buy certain equipment. Therefore clients would come to us and say I have  
20 bid for this thing the requirements that I will need working capital. The requirements that I will need to prove that I have financial means to buy in this case the jet fuel from the suppliers. Therefore we would adjudicate that but as a condition of our approval would be that the disbursements or the facilities can only be done once confirmation of the tender has been awarded so it does happen.

**ADV KATE HOFMEYR:** And just in terms of how you assess the viability of the application is it customary to rely on representations from a state owned entity about how much is going to be allocated to a particular bidder?

**MR MARK PHAKAMILE MAINGANYA:** So in conducting the marketing due diligence the team indicates that it wanted to verify the assertions that the client had made. So the client had said I have put a bid for this tender at SAA therefore as part of DD the client wanted to verify that and ascertain the fuel requirements from SAA and ascertain what  
10 the client was saying with regards to the allocation for BEE suppliers.

**ADV KATE HOFMEYR:** But ...

**CHAIRPERSON:** I am sorry. Please just try what you tried earlier on when we could hear you quite well.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**CHAIRPERSON:** Just try that again.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**CHAIRPERSON:** Okay but it is fine you can continue you do not have to go back to the answer you have given.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

20 **ADV KATE HOFMEYR:** Thank you Chair. Mr Mainganya do you know who your – well the due diligence team of the IDC dealt with at SAA on this question?

**MR MARK PHAKAMILE MAINGANYA:** So in Vimal's affidavit he does indicate I just cannot recall the name now.

**ADV KATE HOFMEYR:** I think it was Mr Soqwezele.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Is – does that ring a bell?

**MR MARK PHAKAMILE MAINGANYA:** Yes it does ring a bell ja.

**ADV KATE HOFMEYR:** And do you know what position he held in SAA?

**MR MARK PHAKAMILE MAINGANYA:** No I do not.

**ADV KATE HOFMEYR:** Does – is it any cause for concern for you that reliance was being placed on a particular allocation of the 20% to EML in circumstances where the approval processes within SAA had not yet been completed?

- 10 **MR MARK PHAKAMILE MAINGANYA:** Yes in our risk report we did raise that risk that there is a risk that this tender might not be approved. So it was a concern.

**ADV KATE HOFMEYR:** Well I am interested in a slightly different thing. I know that you identified a risk and you also identified a risk in relation to how long the tender was going to be awarded for but this is a slightly different thing. This is the IDC going to a person within SAA and saying how much is this tenderer going to be awarded so that we can do our cash flow forecasts on the business. Is that customary?

- 20 **MR MARK PHAKAMILE MAINGANYA:** So what is customary is to verify the assertions made by the client. I do not know to what extent in this case the client revealed the tender processes. So in his affidavit he indicates that before the client could talk it was required that a non-disclosure agreement be signed.

**ADV KATE HOFMEYR:** Sorry who is he?

**MR MARK PHAKAMILE MAINGANYA:** Vimal.

**ADV KATE HOFMEYR:** Mr Rama?

**MR MARK PHAKAMILE MAINGANYA:** Yes Mr Rama that a non-disclosure agreement be signed so that confidential information regarding this process may not be disclosed.

**ADV KATE HOFMEYR:** And that was a non-disclosure agreement between SAA and IDC?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

10 **ADV KATE HOFMEYR:** Because certainly the client could not know anything about that process, could it?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** And then you go – well there you – submission goes on in the last sentence on page 559 to say:

“Should a larger amount of the tender be awarded  
this will increase sales and nett profit further.”

Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Ja.

20 **ADV KATE HOFMEYR:** That means it would be better for EML rather than worse, correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Could it not also be that a smaller amount of the tender could be awarded/

**MR MARK PHAKAMILE MAINGANYA:** It could.

**ADV KATE HOFMEYR:** But that is not reflected here is it?

**MR MARK PHAKAMILE MAINGANYA:** No.

**ADV KATE HOFMEYR:** If we can then go to page 564. When the decision to approve the funding was made on the 6 February 2017 there were certain conditions precedent that applied to that funding, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And the one I am interested in we can pick up at the bottom of page 564. Can you tell us what those conditions precedent relate to in the last block of that page?

10 **MR MARK PHAKAMILE MAINGANYA:** So condition number 1 ...

**ADV KATE HOFMEYR:** Well before we get there what are they conditions precedent for?

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** That is the underlined second line.

**MR MARK PHAKAMILE MAINGANYA:** Okay so you would remember three facilities were approved which is the working capital facility, the subordinated loan facility for equipment and the guarantees. So these conditions for the loan for the subordinated loan and for the guarantee. So there are conditions precedent for all the facilities that were  
20 approved.

**ADV KATE HOFMEYR:** Thank you. And if we could just focus on the second one.

**MR MARK PHAKAMILE MAINGANYA:** So the second one says there must be a signed offtake agreement between EML Engineers and Construction and South African Airways with the terms to IDC

satisfaction.

**ADV KATE HOFMEYR:** Why do you understand that was put in?

**CHAIRPERSON:** I am sorry I thought – I thought I understood where you were. I thought it was the last block at page 564.

**ADV KATE HOFMEYR:** Correct Chair we were at point 2 in that last block.

**CHAIRPERSON:** Oh okay.

**ADV KATE HOFMEYR:** Thank you. And that related to the requirement that there be a signed offtake agreement between EML and SAA with  
10 terms to the IDC's satisfaction? And MR Mainganye I was just asking you what is your understanding for why that was included?

**MR MARK PHAKAMILE MAINGANYA:** It is because it is a key basis on which the funding application was made.

**ADV KATE HOFMEYR:** What – what risk is sought to be protected there for the IDC?

**MR MARK PHAKAMILE MAINGANYA:** So it is the risk you have just raised that it may happen that the client is awarded fewer litres than the one that are modelled which would mean based on those litres the client cannot afford to repay the facilities. So IDC needed to be happy  
20 with the allocation that the client had got before it could proceed with the transaction.

**ADV KATE HOFMEYR:** So is it fair to say whatever terms were arrived at were important for the IDC to interrogate?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Then if we can go over to page 570 and this is

the point – this is the document that reflects the point that you made earlier about the risk committee having identified a concern in relation to the tender. Just to help us remind us in the processes when does this risk committee get involved?

**MR MARK PHAKAMILE MAINGANYA:** No, no remember I indicated that when the submission has been compiled by the business unit it is then sent to the risk department to assess the application. Then the risk department writes a report of that assessment and it attaches to the submission to the credit committee.

10 **ADV KATE HOFMEYR:** Indeed.

**MR MARK PHAKAMILE MAINGANYA:** So this is the risk report produced by [indistinct].

**ADV KATE HOFMEYR:** Thank you Mr Mainganya that is exactly as I understood it and I am indebted to your explanation for it. So the committee that is deciding whether to approve this funding is not only getting the submission prepared by the leader of the particular unit where the analysis has been done but they also are getting the risk department's appraisal of that submission, correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

20 **ADV KATE HOFMEYR:** And if we could then look at the first heading on that page which is entitled Material Risk Considerations and it is the second bullet there that I am interested in which is highlighted as the material risk. What was that risk?

**MR MARK PHAKAMILE MAINGANYA:** So the risk says the tender was issued for a period of three years however based on discussions with

SAA the tender may be extended for five years. The risk remains that the tender may not be awarded for five years resulting in a mismatch between the IDC loan tender and the awarded tender. Furthermore should the tender be awarded for five years it may expose the IDC to financial loss as the tender may be challenged by any other bidder and could be rendered unenforceable in terms of the PFMA. This will expose the IDC.

**ADV KATE HOFMEYR:** So can I just pause there? Are we to understand from that that the assessment of the contract that was used  
10 – should it have eventuated that was used to assess the financial viability of EML as a recipient of this funding was based on a five year contract from SAA?

**MR MARK PHAKAMILE MAINGANYA:** Yes,

**ADV KATE HOFMEYR:** And that is despite the fact that it was known to the IDC that the tender had only been advertised for three years, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Again my concern is a similar one to the previous one. Why would the IDC be comfortable in assessing the  
20 financial viability on the basis of a term for the contract that had not been the advertised term?

**MR MARK PHAKAMILE MAINGANYA:** Okay so – so at this stage when the decision is made it is not known how many litres a client has got and the allocation. So – so the modelling is based on a five year period since the facilities are five years but the tender is for three years so



when the tender is eventually awarded it will then have the exact allocation of – of the litres that are given to the client and based on that allocation then the IDC would determine if it proceeds with the facility or not.

**ADV KATE HOFMEYR:** But why model on five years when to the knowledge of the IDC the tender was only for three years?

**MR MARK PHAKAMILE MAINGANYA:** So – so remember the – the main facilities that are granted for – for purchase of fuel is the guarantee. So – so that one is modelled for twelve months. It is a  
10 short term facility. Then there are two other facilities. One is for working capital, one is for equipment. Now what is normal is the equipment you would model it along the lifetime of the – of the equipment because those facilities are secured by the underlying assets. So those are the [indistinct] that were taken into account in doing that.

**ADV KATE HOFMEYR:** And the working capital loan?

**MR MARK PHAKAMILE MAINGANYA:** The working capital loan was for four years. So in the submission the team indicates that should their client allocation be for three years the remaining facility at that point in  
20 time would be minimal therefore the IDC took a view on risk on that – that remaining facilities could be serviced by other revenues other than the SAA contract. Because the client was already trading.

**ADV KATE HOFMEYR:** Where is that?

**CHAIRPERSON:** Is that something he could check over lunch?

**ADV KATE HOFMEYR:** Possibly. Let us do that Chair.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** I raised it Mr Mainganya because I have not found that in these documents.

**MR MARK PHAKAMILE MAINGANYA:** Okay I will get it – I will give it to you.

**ADV KATE HOFMEYR:** So it would be useful if you could check that for us.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** Assuming that it is not there thought would it  
10 not be more prudent to model for the purposes of financial viability assessment on the basis of the known tender period.

**MR MARK PHAKAMILE MAINGANYA:** Yes ideally we should merge the funding.

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** And then if we can go over to 571. You will see at the bottom there there is a heading Pricing, do you see that? Apologies 571.

**MR MARK PHAKAMILE MAINGANYA:** Ja.

20 **ADV KATE HOFMEYR:** So there is a heading at the bottom pricing, do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** And just read for us the first bullet there?

**MR MARK PHAKAMILE MAINGANYA:**

So working capital loan client qualifies under EMSEP alternate pricing

equal prime plus 3 using decisions [indistinct].

**ADV KATE HOFMEYR:** Thank you and that is a recordal of your earlier testimony as I had it. You said if they had not qualified under EMSEP then the alternative pricing would have been prime plus 3 correct?

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** This indication that the client qualifies under EMSEP, do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Do you know if anywhere else in this  
10 submission it was indicated to the decision making committee the basis on which it had been determined that EML Energy would qualify under EMSEP?

**MR MARK PHAKAMILE MAINGANYA:** No I can only think of reference to value adding part.

**ADV KATE HOFMEYR:** Right. And is your recollection that that may be somewhere in this submission?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** I understand mr Mainganya from your affidavit that and we looked at it just before we went to this document that when  
20 you went to Mr Kobena after your engagements with the commission and you asked him why he had qualified EML for EMSEP funding he told you and I am quoting here from page 3 you do not have to go there for present purposes but as I read it here he said to you.

“He approved and recommended the transaction for EMSEP on the understanding that EML will as part of

its operations be involved in blending and value adding on some of its product.”

Is that what he told you?

**MR MARK PHAKAMILE MAINGANYA:** Yes that is correct.

**ADV KATE HOFMEYR:** If I tell you that I have read this submission very closely it does not mean that I do so always without error but I read it very closely and I have not found any reference to blending or value adding in it, would that surprise you?

**MR MARK PHAKAMILE MAINGANYA:** It would not but there was  
10 reference to value adding.

**ADV KATE HOFMEYR:** There is?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**CHAIRPERSON:** Could you take me to that?

**MR MARK PHAKAMILE MAINGANYA:** Okay. Can I refer to [indistinct  
– not speaking into microphone]

**ADV KATE HOFMEYR:** Indeed certainly. If we can do it quickly then maybe we do so now otherwise Chair with your leave we can maybe pick these two aspects up after the break?

**CHAIRPERSON:** Yes. Yes, yes.

20 **ADV KATE HOFMEYR:** Just so that we do not delay ourselves too much.

**CHAIRPERSON:** Ja. Hm.

**ADV KATE HOFMEYR:** Mr Mainganya should we leave it for the break?

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** Would that be preferable.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** But just so I can understand where we are. You agree with me that there is no reference to blending anywhere?

**MR MARK PHAKAMILE MAINGANYA:** Ja.

**ADV KATE HOFMEYR:** But you do recall a reference to value add.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** And you will find that for me?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Thank you so much. We now should go to the  
10 document that you made available to the commission over the break.  
Chair we have managed to make a copy for yourself. If I may beg leave  
to hand that up?

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Chair it is a copy that Mr Mainganya had with  
him and so it does have some handwritten annotations of his. He is  
happy for us to work off this document now notwithstanding those  
annotations but he is going to provide us with a clean copy.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** For when it goes into the record.

20 **CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Chair my suggestion is that we slot it in after  
the codes that we had thought were applicable and that would mean  
paginating it at page 37.3. If that is suitable? Otherwise we could give  
it a different exhibit number I am in your hands on that?

**CHAIRPERSON:** Let us make it 37.3 if you think that will – that should

work?

**ADV KATE HOFMEYR:** I think it will because then it comes in the right place in the document.

**CHAIRPERSON:** Yes in the right place ja.

**ADV KATE HOFMEYR:** But we can just work with it separately now.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** We will replace the clean copy in your bundle as well Chair.

**CHAIRPERSON:** Ja okay. Thank you.

10 **ADV KATE HOFMEYR:** So Mr Mainganya I understand your evidence earlier to be this is the applicable set of standard industrial codes that applies to EMSEP, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** We are indebted to you for pointing that out to us this morning. Tell me which of those codes it was determined applied to EML?

**MR MARK PHAKAMILE MAINGANYA:** It does not say but the only one I could see that refers to petroleum is code 332 petroleum and syntheseses.

20 **ADV KATE HOFMEYR:** So if we go down there is a column the third column is SIC code and then we read the first one of those is 0301. If we move down to 0332 is that the one you referring to?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** The one you have ringed actually in pen?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes, yes.

**ADV KATE HOFMEYR:** Is that what you understand Mr Kobena determined or is that you looking at the code and working out what it might have been?

**MR MARK PHAKAMILE MAINGANYA:** It is me looking at the codes. Because – so if you look at that codes 332 it also has sub-codes between under it which I have indicated there but the submission and he did not indicate which of those particular codes applied to this.

**ADV KATE HOFMEYR:** But EML was neither a refinery nor a synthesiser was it?

10 **MR MARK PHAKAMILE MAINGANYA:** No it does not say so on the application.

**ADV KATE HOFMEYR:** Yes. So why would you identify that as the applicable one?

**MR MARK PHAKAMILE MAINGANYA:** Because the sub-codes talk to the crude petroleum.

**ADV KATE HOFMEYR:** I beg your pardon?

**MR MARK PHAKAMILE MAINGANYA:** The sub-codes that I have referred to talk to crude petroleum.

**ADV KATE HOFMEYR:** Crude petroleum?

20 **MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** Okay could you get us those sub-codes over the break?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Thank you. Right subsequent to you interrogating this pre-assessment.

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Of the EML funding qualifying for EMSEP with Mr Kobena you then I understand and that is if we go back to page 3 of your affidavit at paragraph C on that page. Chair that is DD13a. We are back in the smaller file.

**CHAIRPERSON:** Yes page 3 you say?

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And I would actually like to pick it up at D on  
10 that page. You say at D there

“Mr Kobena subsequently informed me on the 23<sup>rd</sup>  
May this year that the DTI in an email  
correspondence dated 3 May 2018 had confirmed  
that fuel storage and blending is not covered by the  
EMSEP program.”

Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Was EML ever doing anything other than fuel  
storage to your knowledge?

20 **MR MARK PHAKAMILE MAINGANYA:** No.

**ADV KATE HOFMEYR:** So in May 2018 if I read this and correct me if  
my understanding is incorrect. In May 2018 the DTI confirmed that  
EML would not have qualified for EMSEP funding, is that right?

**MR MARK PHAKAMILE MAINGANYA:** So in my supplementary affidavit  
this is a point that I am referring to.



**ADV KATE HOFMEYR:** Let us go there.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** You will find that at page 32.1 in the same bundle. 32.1. That is the commencement of your supplementary affidavit.

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes, yes.

**ADV KATE HOFMEYR:** Is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is right.

**ADV KATE HOFMEYR:** Mr Mainganya and then if you go over the page  
10 to 32.2 that is where in paragraph 5 you deal with EMSEP is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And what did you want to tell us about that?

**MR MARK PHAKAMILE MAINGANYA:** So I wanted to clarify that – that confirmation from the DTI was referring to a different transaction. Because the IDC was considering a different transaction and it requested confirmation from EMSEP – from DTI whether that would apply. So the response in that email was confirming that it would not apply.

20 **ADV KATE HOFMEYR:** Yes I understand that but if the DTI admittedly in relation to a different funding application in May of 2018 said fuel storage does not qualify for EMSEP that would I assume apply to any application for funding based on fuel storage, correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And EML was never doing anything other than

fuel storage, correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** So it would not have qualified when it was pre-assessed by Mr Kobena?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Sorry just say that correctly.

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes I agree.

**ADV KATE HOFMEYR:** Thank you. Thank you. I would then like to move if we may back to your affidavit and just to conclude the question  
10 of EMSEP is it fair then to say that the committee relied entirely on Mr Kobena's pre-assessment that this funding application qualified at least on the working capital loan for the preferential EMSEP rate?

**MR MARK PHAKAMILE MAINGANYA:** Yes he is the one who did the assessment. Usually the team would also motivate during the meeting as to why it deems it qualifying.

**ADV KATE HOFMEYR:** Did they do that to your knowledge?

**MR MARK PHAKAMILE MAINGANYA:** I cannot confirm I was not there. I do not know anything.

**ADV KATE HOFMEYR:** Indeed you were not present were you?

20 **MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Have you done anything to investigate whether there were justifications given or whether the committee just relied on that sentence that we read at page 571 – you do not need to go back there. But the sentence just stipulated client qualifies under EMSEP.

**MR MARK PHAKAMILE MAINGANYA:** I cannot confirm if there

discussions on that or not.

**ADV KATE HOFMEYR:** Thank you. I would then like to move to page 4 I think that is where we were and look at the engagements with South African Express. We have traversed this a bit already in your evidence because we were dealing when we looked at the submission that went to the committee. With some of what I am going to suggest are curious features ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Of the way in which the SAA tender was  
10 approached by the IDC and you will recall the issues we traversed there was taking a funding decision despite the fact that the tender had not been approved.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** And you have given your comment on that.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** And then deciding to run a financial viability model on a five year contract in circumstances where the tender was only for three years. Is there any other aspect of the engagements between the IDC and SAA that you would like to comment on?

20 **MR MARK PHAKAMILE MAINGANYA:** Not at this stage.

**ADV KATE HOFMEYR:** Thank you. Well then we can go over to page 5 because there we deal with the financial viability assessment ...

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** That was made of the EML application and you will pick that up under the heading of 4.3 in bold on that page. For this

purpose Mr Mainganya we are going to need to look at the cash flow model that was produced by the relevant team insofar as it was submitted to the committee.

Now it is in the Bundle C Chair but what I have done for today's purposes is just provided us with bigger copies because there are lots of numbers on the page and it is just easier to see. So if I may beg leave to hand it up. Chair this is a duplicate of the page in the bundle and ...

**CHAIRPERSON:** Yes.

- 10 **ADV KATE HOFMEYR:** My suggestion is just for today's convenience we work on the A3.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** I am handing up two pages.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** The idea is that we work with them together if we can. They come from different parts of the bundle. So just for record purposes the one page is paginated MPM 5-7-6. That is actually the one we need to start with and it appears in DD13C and then the second one I want to work with Mr Mainganya appears in your affidavit.

- 20 Well it is an annexure to your affidavit ...

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** And that is paginated MPM 21 and that is in DD13A but for ease we will work on - I understand you have also been given a larger copy Mr Mainganya and your legal representatives as well. I will work on my smaller copies because we seem only to have

received three. Mr Mainganya the document at 5-7-6 what is that?

**MR MARK PHAKAMILE MAINGANYA:** So during the discussions with the legal team it - it was identified that there was an error in the cash flow.

**ADV KATE HOFMEYR:** Oh, before we get to the error. Can we start with 5-7-6?

**MR MARK PHAKAMILE MAINGANYA:** *Ja.*

**ADV KATE HOFMEYR:** Sorry and I should have said to you 5-7-6- is the cash flow statement that appeared in the submission

10 **MR MARK PHAKAMILE MAINGANYA:** *Ja, ja.*

**ADV KATE HOFMEYR:** That was approved in February 2017.

**MR MARK PHAKAMILE MAINGANYA:** *Ja.*

**ADV KATE HOFMEYR:** Right. So I just want to know what this document is. Right.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** What is it?

**MR MARK PHAKAMILE MAINGANYA:** Okay. So these are the cash flow projections derived from the financial model. They are used to determine the repayment - the ability to repay the facility.

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

**MR MARK PHAKAMILE MAINGANYA:** *Ja.*

**ADV KATE HOFMEYR:** So just in layman's speak I assume the people in your Finance Department will look at the application for funding.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** How much is sought?

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** Will look at the position of the business.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** Its cash flow and will determine whether on the terms for the loan that are being proposed.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** The loan will be serviced. It will be - the company will be in a position to pay it back. Is that a fair summary?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

10 **ADV KATE HOFMEYR:** Thank you. So if we can just look at this page because for those of us that do not work with these spreadsheets often. It sometimes requires a little bit of deciphering. First of all just read for us the heading of the document.

**MR MARK PHAKAMILE MAINGANYA:** So 5-7-6 its "EML Energy Consolidated Cash Flow Statements for the Year Ending 28 February".

**ADV KATE HOFMEYR:** Thank you and then below that there is an underlined Rand denomination with an apostrophe and three zeros. Can you explain to us what that means?

**MR MARK PHAKAMILE MAINGANYA:** Thousands.

20 **ADV KATE HOFMEYR:** And let me just ask you here I understand that to signify that when we look at the table ...

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** Right. We have got a whole lot of numbers there. Those are - those are other than where it is a date indicated. Those are Rands. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** So it is - it is money being signified - funds?

**MR MARK PHAKAMILE MAINGANYA:** Ja.

**ADV KATE HOFMEYR:** Right, but often those numbers do not exceed five digits. Correct?

**MR MARK PHAKAMILE MAINGANYA:** Ja.

**ADV KATE HOFMEYR:** So does the R'000 mean we must add three zeros to any numbers that we see in this table?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

10 **ADV KATE HOFMEYR:** Okay. So just to help us if take that first column audit and it is headed "February 2015". Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Ja.

**ADV KATE HOFMEYR:** There is a number in brackets there - (47). Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Ja.

**ADV KATE HOFMEYR:** That is not R47,00. Is it?

**MR MARK PHAKAMILE MAINGANYA:** No. That is 47 000.

**ADV KATE HOFMEYR:** What is it?

**MR MARK PHAKAMILE MAINGANYA:** 47 000.

20 **ADV KATE HOFMEYR:** Okay. So every number in this table we must add three digits to.

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** In a sense multiplied by 1 000. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is right.

**ADV KATE HOFMEYR:** Okay. Right. Then I would like to know under

the heading “Senior Debt” do you see that halfway down on the left hand side?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** What is that describing?

**MR MARK PHAKAMILE MAINGANYA:** That is a working capital facility that was approved. The six million.

**ADV KATE HOFMEYR:** Okay. So just to remind ourselves three was an approval on 6 February 2017 for a working capital loan of R6 million at four percent interest. Correct?

10 **MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Okay and then just help me if we move across from that “Senior Debt” and follow it through the columns. If you go to July 2017’s column. Chair that is about four - five along from the left ...

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And you follow it down to where it is in line with “Senior Debt”. There is a R6 000 there. Do you see that? Well there is a 6 000. We have to multiply it by 1 000.

**MR MARK PHAKAMILE MAINGANYA:** Okay, yes.

20 **ADV KATE HOFMEYR:** So it - it signifies six million. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Is that showing us the six million that would have been made available through the loan facility to EML?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And why is it shown as coming into the cash



flow position of the business in July 2017?

**MR MARK PHAKAMILE MAINGANYA:** So that - that is a peak period.

It is a period when the full facilities would have been disbursed.

**ADV KATE HOFMEYR:** Right.

**MR MARK PHAKAMILE MAINGANYA:** So - so it is coming earlier but it reaches six million in 2017.

**ADV KATE HOFMEYR:** In July 2017?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes, yes.

**ADV KATE HOFMEYR:** Right, because the approval was in February.

10 So as I understand this it is anticipating that by what you call the peak the full facilities ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Will have been made available and that is why we have six million there. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Then help me. The next line under that - still under "Senior Debt" says proposed IDC loan repayments. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

20 **ADV KATE HOFMEYR:** And then if we follow that across that line starts in February 2019 with an amount of 2.640 million. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is right.

**ADV KATE HOFMEYR:** What is that?

**MR MARK PHAKAMILE MAINGANYA:** So those are the repayments.

**ADV KATE HOFMEYR:** Of the loan of six million ...

**MR MARK PHAKAMILE MAINGANYA:** Of the loan (intervenes).

**ADV KATE HOFMEYR:** That was extended in ...

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** By July 2017.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Correct; and if we track that along - please correct me if I am understanding it incorrectly but there is a repayment of about 2.6 million in February 2019. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** There is a next repayment in February 2020 of  
10 1.4 million or thereabout ...

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And then there is a repayment in February 2021 of about 1.9 million. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** So that insofar as capital of the loan is concerned is repaid by February 2021. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** If we could then go to the next line. What is that?

20 **MR MARK PHAKAMILE MAINGANYA:** So that is the interest. So the first line was just showing the capital. Now there is a - the four percent interest.

**ADV KATE HOFMEYR:** Right. So those start to be repaid from what I can understand here in July 2017. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And then you track those numbers through and if I am understanding this correctly by February 2022 that is when the last interest payment of 38 000 is made. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is right.

**ADV KATE HOFMEYR:** Okay. So just so that we are on the same page. The working capital facility of six million according to this cash flow statement was going to have been fully repaid capital and interest by February 2022. Is that right?

**CHAIRPERSON:** I am sorry Ms Hofmeyr.

10 **ADV KATE HOFMEYR:** Sorry Chair.

**CHAIRPERSON:** February 2022 ...

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** Oh that 38 (intervenes).

**ADV KATE HOFMEYR:** That 38.

**CHAIRPERSON:** 38 000 *ja*.

**ADV KATE HOFMEYR:** That is the final payment ...

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** As I understand Mr Mainganya's evidence on this facility and it would be towards the interest.

20 **CHAIRPERSON:** *Ja*.

**ADV KATE HOFMEYR:** So am I right Mr Mainganya that the repayment takes place and is concluded by February 2022?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Thank you. Let us move to the second facility that was available. That is under the heading "Mezzanine Debt". Is

that right?

**MR MARK PHAKAMILE MAINGANYA:** That is right.

**ADV KATE HOFMEYR:** So what does that signify - the “Mezzanine Debt”? Which loan was that?

**MR MARK PHAKAMILE MAINGANYA:** That was a 6.5 million facility for equipment.

**ADV KATE HOFMEYR:** And the interest rate on that was?

**MR MARK PHAKAMILE MAINGANYA:** It is the 13.8 percent real after tax return.

10 **ADV KATE HOFMEYR:** Thank you and again I understand this cash flow statement to work in the same way in this line as we did with “Senior Debt” but please just check me if I am incorrect.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** If we take July 2017 again because that is always the peak when the full funds will have been extended you see an amount of 6.5 million there. Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** What does that signify?

20 **MR MARK PHAKAMILE MAINGANYA:** Again it signifies that it is fully disbursed at that time.

**ADV KATE HOFMEYR:** So by July 2017 EML has received 6.5 million for the plant and equipment loan. Correct?

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** And then if we go down the line again what this is reflecting on my understanding is the repayments of that loan.

Correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Okay. So they start in February 2019. Is that right - with an amount of 2.1 million?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** There is a second payment in February 2020 of 2.1 million?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And there is a third payment in February 2021  
10 of 2.1 million/

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** So insofar as the repayments on that loan are concerned they are completed by February 2021. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** The capital portion?

**ADV KATE HOFMEYR:** Yes.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Again capital. Right; and then there is something called - on the left hand side - "Bullet Payment". What does that mean?

20 **MR MARK PHAKAMILE MAINGANYA:** So that is the interest on that facility because it is not priced like the first one.

**ADV KATE HOFMEYR:** Right.

**MR MARK PHAKAMILE MAINGANYA:** So the first one incurs interest as time goes. That is why the repayments start when it is disbursed. This other one is priced like an equity instrument. So the return on it is

achieved at the end. That is why it is referred to as a bullet facility at the end.

**ADV KATE HOFMEYR:** Oh, okay. So the liability to pay the interest only kicks in later. Correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes. So we start collecting the capital first ...

**ADV KATE HOFMEYR:** Yes.

**MR MARK PHAKAMILE MAINGANYA:** And then the return is collected later.

10 **ADV KATE HOFMEYR:** And as I understand this document the first interest payment is in February 2021. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And it is in the amount of 2.7 million?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And then the second interest payment is in February 2022. The same amount 2.7 million. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And so again similar to the working capital loan the plant and equipment loan is similarly repaid by the end of  
20 February 2022. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And that - February 2022 - is five years from the decision in February 2017. Correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Thank you. Right. You in your evidence

wanted to talk about an error ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** And I stopped you and I apologise. Let us understand the error that was brought to the attention of the IDC by the Commission's investigators. What is the error on this cash flow statement that we are looking at?

**MR MARK PHAKAMILE MAINGANYA:** So you will recall that the client said it had got equipment donated to it by Denel of 40 million and - and we valued it at seven million ourselves. So - so that donation is  
10 reflected as income in the hands of the client but it is asset. It is not cash.

So when we do the cash flow statements we must take it out because the client did not receive cash. It just received assets.

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** So - so in - in this cash flow statement the - the income should have been reduced by the value of that donation to take it out ...

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** And that is the error that  
20 happened. It was not adjusted out.

**ADV KATE HOFMEYR:** And what amount was the error?

**MR MARK PHAKAMILE MAINGANYA:** So the - the adjustment is about to - to add back that income. I think it will be around 6.903.

**ADV KATE HOFMEYR:** Yes. About 6.9 million. Right?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** Now Mr Mainganya how could an error like this occur in your rigorous processes that you have described?

**MR MARK PHAKAMILE MAINGANYA:** Chair, I - I think an error like this should not happen.

**ADV KATE HOFMEYR:** Could you - Mr Mainganya if you would mind just as bit closer.

**CHAIRPERSON:** *Ja, ja, ja.*

**ADV KATE HOFMEYR:** Thank you.

**MR MARK PHAKAMILE MAINGANYA:** So - so ...

10 **CHAIRPERSON:** I - I think I am - I have given up your voice. It seems to be just low by nature.

**MR MARK PHAKAMILE MAINGANYA:** Sorry. Sorry, sorry Chairperson.

**CHAIRPERSON:** I do not know if the technicians have ...

**ADV KATE HOFMEYR:** We will try and remind you to bring it closer.

**MR MARK PHAKAMILE MAINGANYA:** *Ja.*

**CHAIRPERSON:** Whether there is anything the technicians can do.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**CHAIRPERSON:** *Ja.*

20 **MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson. I was saying it is regrettable that this error was not picked by all the processes ...

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** Including the peer review processes.

**ADV KATE HOFMEYR:** Because Mr Mainganya if I may just come in there. It is - it is - I mean your description of it with respect is a very



simple description. It is not a complex matter.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** That it should not have reflected a R6.9 million cash position insofar as the Denel asset donation was concerned. Is it? It is not complex - the error?

**CHAIRPERSON:** It seems something that could and should have been easily picked up.

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes Chairperson. The - the amount should have been added back. I do not know how it was  
10 missed. It should have been added back ...

**CHAIRPERSON:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** Because it was not a cash receipt. It was an asset receipt.

**CHAIRPERSON:** Did - did ...

**ADV KATE HOFMEYR:** Hm.

**CHAIRPERSON:** I think we probably want to ask the same question.

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**CHAIRPERSON:** What are the chances that it - it was a genuine error? What are the chances that it was not a genuine error in your own  
20 assessment?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson.

**CHAIRPERSON:** Or is that something you are unable to ...?

**MR MARK PHAKAMILE MAINGANYA:** No, no, no. I - I have engaged with the team that prepared the financial model and I also showed them this error. They indicated to me this was a genuine error in the

assessment. I - I did not get the impression that it was done intentionally when I - when I interviewed them.

I interviewed both the financial specialist and the head of the department and - and hence I requested them to - to do another calculation. To say had this error not been done what would have been the impact on the cash flows?

**CHAIRPERSON**: Okay.

**ADV KATE HOFMEYR**: Thank you.

**CHAIRPERSON**: It was not your question.

10 **ADV KATE HOFMEYR**: No it - mine was close to it Chair. So mine has not become not necessary any further. Mr Mainganya when was the error first made known to you?

**MR MARK PHAKAMILE MAINGANYA**: I think it was around May when I had interviews with you.

**ADV KATE HOFMEYR**: With the Commission.

**MR MARK PHAKAMILE MAINGANYA**: Yes, yes.

**ADV KATE HOFMEYR**: Thank you and what steps did you take? You have indicated to the Chair you did go back ...

**MR MARK PHAKAMILE MAINGANYA**: Yes.

20 **ADV KATE HOFMEYR**: To engage with the financial team. I also understand from your affidavit you asked them to look at the numbers again in a sense ...

**MR MARK PHAKAMILE MAINGANYA**: Huh-uh.

**ADV KATE HOFMEYR**: And that is the second spreadsheet that you have in front of you Chair and it is at paginated page 21. That is in

DD13A. Mr Mainganya why did you ask for this recalculation of the cash flow statement to be done?

**MR MARK PHAKAMILE MAINGANYA:** Chairperson when - when the Commission pointed this to me they wanted to know whether the business would have been viable should this error not have been done. Hence I request this to be redone.

**ADV KATE HOFMEYR:** And Mr Mainganya I understand your affidavit to say it would still have been viable. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes. I am saying the facilities  
10 the - the working capital - the first one - would - would still be repaid in 2021 but the - the “Mezzanine” one facility would be repayable a year later than was anticipated.

**ADV KATE HOFMEYR:** It is that last part that I want to explore a bit further with you Mr Mainganya when you say the “Mezzanine Debt” which for our purposes I want to suggest we call the plant and equipment loan because that is how it was referred to in the decision making. I understand you to say the plant and equipment loan would have been paid later.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

20 **ADV KATE HOFMEYR:** Repaid later but only one year later than on the original calculation. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** Yes. However Mr Mainganya if you go back to page 5-7-6.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** Remember we had determined on that page that the plant and equipment loan would have been paid back by February 20 - 2022. Do you see that?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** If we look at that same line on page 21 which is the reconstructed cash flow statement.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** You will see that the plant and equipment loan is only repaid in February 2025. Correct?

10 **MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** So that is more than a year later. Correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** It is in fact three years later.

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes. Oh, so - so Chairperson remember the terms of the - of the equipment facility are that you only deduct payments such that there is cash available of a million. So when you repay the client must remain with a million. So if - if every year when we test the model we find that should we ask for repayment the client would have a million less.

20                   There is no repayment due in that date. So - so because of this error which had shown that the client was having more cash than it had. The - the team modelled repayments earlier than the terms of the facilities. The terms of the facilities say that the repayments must start in 2021 but because it was showing an erroneous cash they were starting earlier than the terms of the facilities.

So - so as per agreement - as per agreed on the credit approval the repayments must start from 2021 to 2024 but they started earlier because of this cash. So when we correct this adjustment we - we start sweeping with the terms of the facilities from 2021. So the terms of the facilities said the client must have repaid by 2024 as per agreement but on the restated model it repays by 2025. That is what I mean when I am saying it repays a letter than the first model.

**ADV KATE HOFMEYR:** Thank you Mr Mainganya. You will recall when we were looking at the decision taken on 6 February 2017 ...

10 **MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** I said we may need to come back to it when we looked at the cash flow statement and your clarification now has been helpful in that regard but I would like us just to go back there if we may so that I can be sure I am entirely understanding your position. You will find that in DD13B and it is at page 2-6-5.

**MR MARK PHAKAMILE MAINGANYA:** I am there.

**CHAIRPERSON:**

**ADV KATE HOFMEYR:** You will see under two there that deals with plant and equipment loan. The one we are interested in at the moment.

20 Correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Now it is just the wording here does trouble me because it seems on its face to be contradictory ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** But you may assist me there. It reads:

“A R6.5 million plant and equipment subordinated loan facility to be used for the upgrade of plant and equipment and the purchase of bowsers. The facility will have a term of five years and is expected to achieve a 13.8 real after tax return. Repayments will be in the form of cash sweeps from year 2021 to financial year 2024 maintaining a minimum cash balance of one million with cash sweeps occurring every six months beginning

10 28 February 2018.”

**MR MARK PHAKAMILE MAINGANYA:** Hm, yes.

**ADV KATE HOFMEYR:** I do not understand that. Can - can you assist me there?

**MR MARK PHAKAMILE MAINGANYA:** I - I looked at that Chairperson. So -

**ADV KATE HOFMEYR:** If you could just come a bit closer.

**MR MARK PHAKAMILE MAINGANYA:** So - so it was contradictory to me.

**ADV KATE HOFMEYR:** Hm.

20 **MR MARK PHAKAMILE MAINGANYA:** Hence I looked at the actual agreement. The actual agreement does actually correct that. So it is not 2018. It is 2021 in terms of repayment on the actual subordinated agreement with the client.

**ADV KATE HOFMEYR:** So was this an error that was then picked up before the agreements were concluded in your ...

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** View.

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** So the approval that was given did not make sense at point two. Did it?

**MR MARK PHAKAMILE MAINGANYA:** Yes. The facility was only supposed to start from 2021.

**ADV KATE HOFMEYR:** And then help me with one last part.

**MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

10 **ADV KATE HOFMEYR:** Why would you refer to it as a loan facility of five years when it ends up being a loan facility of eight years?

**MR MARK PHAKAMILE MAINGANYA:** I think it refers to the repayment period - the five years.

**ADV KATE HOFMEYR:** So there is basically a holiday of three years. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes because this is an equity instrument.

**ADV KATE HOFMEYR:** So they get to fund their plant and equipment from July 2017 ...

20 **MR MARK PHAKAMILE MAINGANYA:** Huh-uh.

**ADV KATE HOFMEYR:** But they only have to re - start repaying that in 2021.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Thank you but you agree with me that it cannot possibly have been that they started cash ...

**MR MARK PHAKAMILE MAINGANYA:** *Ja, ja.*

**ADV KATE HOFMEYR:** Sweeping in ...

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** February 2018.

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Let us go back if we may just to that page 21.

**CHAIRPERSON:** I am sorry. Just so that I follow that part. Is that  
10 regular for them to have that holiday?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson. We - we model what the client can afford. Sometimes because the cash flows are smaller in the beginning. We give clients a moratorium. So ...

**CHAIRPERSON:** Yes, but you recoup ...

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**CHAIRPERSON:** Later whatever they would have paid earlier?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes. Hence - hence you can see the return on this facility is ...

**CHAIRPERSON:** Okay.

20 **MR MARK PHAKAMILE MAINGANYA:** Much higher to compensate for that period.

**CHAIRPERSON:** Okay.

**MR MARK PHAKAMILE MAINGANYA:** That we give them a holiday for.

**CHAIRPERSON:** Okay, thank you.

**ADV KATE HOFMEYR:** And then if we go back to 21 but maybe before



we do that just to pick up on the Chair's question. Of course all the time - correct me if I am wrong - the IDC is deciding which applications to fund. Correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is right. That is correct.

**ADV KATE HOFMEYR:** Thank you. Just for the record you need to ...

**MR MARK PHAKAMILE MAINGANYA:** Yes that is correct.

**ADV KATE HOFMEYR:** Give the positive answer.

10 **MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** Not the head nod.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** So it is assessing at any point in time which to fund and whether it has three years receiving no repayment in relation to a particular applicant as compared with others. I assume would be something it takes into account. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes. That is correct because the - the subordinated facilities are treated as an equity instrument. So the return on them is - is much higher.

20 **ADV KATE HOFMEYR:** But delayed.

**MR MARK PHAKAMILE MAINGANYA:** Delayed. Hence the period is longer.

**ADV KATE HOFMEYR:** Indeed.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** So it is - it is - I would suggest to you a

balance that has to be struck when financial viability is assessed.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** You get a bigger return at the end ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** But you do not get repayment in the interim and I assume you would have to take into account that impact on the rest of the IDC's decision making albeit that we dealing with fairly small figures here. I accept that.

**MR MARK PHAKAMILE MAINGANYA:** Oh yes, yes. So we - we assign  
10 capital in terms of how much we can provide under these facilities and whether the other facilities do compensate for them because we have many facilities. Others are repaying during the period of moratorium that we grant to other facilities.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** The - where you give a client a holiday as - as we call it now - the compensation that you structure into the whole arrangement whole deal you just mentioned that later on the repayments are higher.

Would the aim be to achieve the same benefit for IDC as IDC  
20 would have achieved if there had been no holiday or is the position that because you have been given a holiday IDC will structure the repayments in such a way that it must end up getting more from you as a client then otherwise would have been the case if there had been holiday - holiday?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**CHAIRPERSON:** In other - is the aim to similarly achieve the same thing because you just want to assist the client or is there an element of saying well we must punish you a little bit in order to discourage people from wanting to get into holidays.

**MR MARK PHAKAMILE MAINGANYA:** Okay Chairperson. Thanks. So I would not say ...

**CHAIRPERSON:** Or is that something that you are not sure about?

**MR MARK PHAKAMILE MAINGANYA:** No, no, no I am sure.

**CHAIRPERSON:** *Ja.*

10 **MR MARK PHAKAMILE MAINGANYA:** I can explain it to you. So it is not a punishment ...

**CHAIRPERSON:** You would not use punish.

**MR MARK PHAKAMILE MAINGANYA:** It is not a punishment to the client ...

**CHAIRPERSON:** *Ja.*

**MR MARK PHAKAMILE MAINGANYA:** But it is an assistance to the client because the type of clients that we fund some of them are struggling.

**CHAIRPERSON:** Yes.

20 **MR MARK PHAKAMILE MAINGANYA:** So in the earlier periods they are not able to pay but over time they get more contracts the business survives, so we give this facility as if the IDC is investing in the business but because we are suspending our cash flows the clients must compensate us for that in the end. So – and also these facilities are subordinated, meaning other creditors are paid first that the IDC,

so there's more risks to the IDC hence we say the client at the end, when the business is viable and making money they must compensate us for that risk that we're taking so that we can plough it back and fund other clients with the return that we get but as is in this case we model it such that we are only able to get that money if the client's business succeeds as well. So should the client fail other creditors will be paid first then the IDC that is the assistance we are giving to the client, I don't see it as a punishment.

**CHAIRPERSON:** Yes, no, no I understand that I think what I'm  
10 looking for is whether you say, if we hadn't given this client a holiday over, for example, a five year period we haven't given this client a holiday of, what two years, for example the first two years and they start paying on the third year, whether you look at simply putting yourselves in the same position you would have been in financially in terms of what you get or whether you actually make more, you seek to make more money by reason of the fact that there's been some holiday?

**MR MARK PHAKAMILE MAINGANYA:** We try to achieve both.

**CHAIRPERSON:** Oh you try to achieve both?

20 **MR MARK PHAKAMILE MAINGANYA:** We try to be compensated for the longer period and we try to be compensated for the riskiness of the facility.

**CHAIRPERSON:** Okay thank you.

**ADV KATE HOFMEYR:** Thank you Chair. Mr Mainganya just in relation to page 21 you were explaining...[intervenes].

**CHAIRPERSON:** Are you back in his...[intervenes].

**ADV KATE HOFMEYR:** We are back in his affidavit which is DD13A. This was the recalculation done when you went back to the finance team, is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes

**ADV KATE HOFMEYR:** And it...[intervenes].

**CHAIRPERSON:** You did mention the page but...[intervenes]

**ADV KATE HOFMEYR:** 21 Chair but it's also on the big A3 that I handed up which might just be more convenient to look at.

10 **CHAIRPERSON:** Oh okay.

**ADV KATE HOFMEYR:** This was the reconstructed cash flow statement done by the finance team when the error was drawn to their attention, is that right?

**MR MARK PHAKAMILE MAINGANYA:** That's right.

**ADV KATE HOFMEYR:** It does not, as I understand it, account for the increase in the interest rate that ought to have been paid by EML if it, as we've agreed did not qualify for MCEP funding is that right?

**MR MARK PHAKAMILE MAINGANYA:** That's right.

20 **ADV KATE HOFMEYR:** That would have increased its interest payments from 4% to 13% correct...[intervenes].

**CHAIRPERSON:** I wasn't sure whether he wanted to add something?

**ADV KATE HOFMEYR:** Apologies did you want to add something there Mr Mainganya?

**CHAIRPERSON:** To the previous question.

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson for this I just

wanted to only adjust for the impact of the error, I didn't want to adjust for anything else.

**ADV KATE HOFMEYR:** Fully understood.

**MR MARK PHAKAMILE MAINGANYA:** Yes, so I didn't correct those other repayments that were repayable as per that facility and I didn't change any figure other than to correct the error.

**ADV KATE HOFMEYR:** Thank you, do you agree with me though, that if this was properly to have been assessed at the time, this application for funding, two things would have had to have changed in the cash flow statement analysis that was produced by the finance department. The first is that the facility would not have qualified for MCEP funding and so the interest rate on that loan would have had to have been at prime plus 3%, correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes that's correct.

**ADV KATE HOFMEYR:** And then the second thing is that the error would have had to have been removed, correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes that's correct.

**ADV KATE HOFMEYR:** So had no errors, and the Chair has already questioned you on the error of whether the R6.9million was a genuine error and you've given your evidence on that, we will return to the question of whether the MCEP error, I'm putting that in inverted commas at the moment, was also genuine in your view because there have been further developments and investigations around that but for present purposes at least those two things would have to be corrected for the committee to be in a proper position to assess the financial

viability of this application, is that right?

**MR MARK PHAKAMILE MAINGANYA:** So you want us to show what the interest would have been had it not qualified for MCEP?

**ADV KATE HOFMEYR:** Mr Mainganya I don't suggest it's necessary that we do that exercise, I'm working at the level of principle.

**MR MARK PHAKAMILE MAINGANYA:** Okay yes.

**ADV KATE HOFMEYR:** So just to establish that you and I agree at least those two errors would have to have been corrected.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

10 **ADV KATE HOFMEYR:** Thank you I then just want to understand the rationale because I read your affidavit to say you still think this would have been a financially viable loan to fund, is that right as you sit here today?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Why would the IDC want to extend loan facilities that end up extending for eight years in a situation where they only maybe have a tender which is, as I understand the submission, the sole source of revenue of EML at the time for three years, is that usual?

20 **MR MARK PHAKAMILE MAINGANYA:** So Chairperson the IDC being involved with this client was not seeing it as it will only fund it for that period of three years and exit. We raise the risk of the client having one contract and in mitigation of that the client indicated that it was working on other contract and as we'll see later the client was able to attain other contracts. So although for this loan the primary source of

repayment was a SAA contract the IDC was seeing it as helping it to be sustainable to be able to bid for other contracts hence we were investing in the client, getting sufficient equipment to not only get the SAA contract but to be able to bid for other contracts and for the point you are raising there is a risk in that, in that the client may not get those and again to the point you're raising it is why those other facilities are marked at a higher rate because the IDC carries more risk but we do set up clients like that with an initial contract and we push them to find other revenues so that the business doesn't end on  
10 completion of that contract. So that's why we were prepared to take the risk to put the client, since we've invested a lot in the equipment the client was having which had a lifespan extending more than five years.

**ADV KATE HOFMEYR:** And what if they can't get other contracts?

**MR MARK PHAKAMILE MAINGANYA:** So that is a risk we are in as a Development Finance Institution, sometimes clients are not able to get other contract, sometimes the businesses close, sometimes they get other contracts, sometimes it does happen that we suffer losses and they cannot repay our facilities.

20 **CHAIRPERSON:** What – I mean I can understand the idea on the part of an institution such as IDC of saying we are – we are prepared to take some risk in order to assist maybe a certain sector of business or society and so on but I wonder what measures the IDC would take to try and make sure that it's decision to take that risk is a reasonable one, particularly where you're looking at people who might be depending on



tenders you know, they tell you we have hope that we'll get two or three other tenders and they might not even know who else will be tendering for those tenders, what are their prospects, what will their prospects of getting those when they don't even know who else will be bidding for them. It seems different to me from somebody who say, look this is the business I have now and here is another business that I'm going to start, here's my business plan you can look at it and they motivate. You can assess the risk in a certain way there are not too many variables but I'm just thinking if it's an entity that is talking about  
10 getting other tenders in Johannesburg, in Pretoria, in Bloemfontein, I'm just making examples, you say, but we have no idea whatsoever what your chances will be, are you able to shed any light as to how those risks are assessed?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson and thanks for that question. It is a difficult space that we find ourselves in because on the other hand we have to play that role of assisting new entrants in the industry and we try our best to estimate on a balance of probabilities that the client has a reasonable prospect of getting that tender but we must always remember that our funding only flows on him  
20 getting the tender. So we won't give him money until he gets it but then we also try to do a pre-assessment of the ability of the client, so if somebody who's never been involved in this business come to IDC and say I've bid for this fund me and we will ask questions. Do you understand the industry, are you in this industry? So in this particular client what the submission says, it says that, this particular client had

been in existence for ten years and as we know most of the clients we fund, the small businesses fail within their first year. So this one at least as per application had been there for ten years, it is in this industry but the client is coming to us and saying, I've been doing this on a piecemeal I don't have the right equipment to be able to bid for bigger businesses and for me to bid for SAA it requires me to have this licensing regime, it requires me to have this equipment but then on that basis we assess, we say at least this client has survived for ten years in this business we can take some risk on him that he will be there  
10 even post the SAA tender because of his previous record, so...[intervenes].

**CHAIRPERSON:** Looking at the track record.

**MR MARK PHAKAMILE MAINGANYA:** Looking at the track record, so – and it's not always the case Chairperson in other difficult sectors we have to still try to facilitate, especially the entrants of new black people, sometimes they just have the technical knowhow and then they don't have the equipment so we also give them business support. So as you'll see later on in this client we said he must go for corporate governance training, we gave him support in terms of appointing a  
20 financial manager, we assisted him with a financial support. So in addition to the funding we try to give them non-funding support so that they survive post that client but it is a risk that things don't always happen as we planned.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** Chair I note that we are at the lunch break

time if it's convenient we can take the adjournment.

**CHAIRPERSON**: Okay I think let's take the adjournment and we will resume at two, we adjourn.

**REGISTRAR**: All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: I note that this Friday afternoon is a very empty – it is a very empty hall.

**ADV KATE HOFMEYR**: It is indeed Chair.

10 **CHAIRPERSON**: We can just assure Mr Mainganya that it is has got nothing to do with him,

**ADV KATE HOFMEYR**: No indeed not, indeed not. I think it is a combination of Friday afternoon and lots of figures that we have been dealing with.

**CHAIRPERSON**: That is right.

**ADV KATE HOFMEYR**: Thank you Chair. If we may proceed then. Chair there were two aspects well there were three aspects that Mr Mainganya was going to follow up for us on over the break.

**CHAIRPERSON**: Yes.

20 **ADV KATE HOFMEYR**: The one related to the sub-codes. I indicated to him that as his evidence progressed after that point they no longer became material certainly for my purposes.

**CHAIRPERSON**: Okay.

**ADV KATE HOFMEYR**: So I am not concerned that we go to those sub-codes.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** The other two I do want to just reference quickly in fairness to Mr Mainganya and then one or two follow up questions and then we will proceed. Chair for this purpose we need to be working with DD13b.

**CHAIRPERSON:** Yes I have got it.

**ADV KATE HOFMEYR:** And if you pick that up at page 189. Chair the question arose in the context of the issue around the tender with SAA being for three years but then the loan assessment being done on a  
10 five year basis and the question to Mr Mainganya was well how could that really have occurred? And he indicated that there had been an assessment as to what the extent of the exposure would be over at the end of the three year period and I asked him to draw our attention to where that was in the submission. And that you will find at page 189 as I have it. In the second paragraph there this is part of the submission that went to the committee on the February 2017 date, is that correct Mr Mainganya?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** Thank you. And what the paragraph you have  
20 drawn to our attention is the second paragraph there it reads:

“Through the outcome of the due diligence the team has assessed that the accountants used by EML for monthly reporting should be changed this has been included as an undertaking.”

And then the relevant part begins in the next sentence.

“The IDC exposure to the senior loan outside the three year period of the SAA contract is 1.12 I assume that means million.”

And then it goes on and says:

“A mitigant is that there is R1.8 million cash in the bank at that point to repay the facility.”

Is that what you wanted to draw to my attention?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Mr Mainganya the R1.8 million that is reflected  
10 there is a product at the time of that error still being included in the cash flow statement, correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** So the error would have to be taken into account to know what the actual cash in the bank position would be after the three years, is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And as I have it from your reconstructed model that would reduce to about R1.1 million, is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

20 **ADV KATE HOFMEYR:** Mr Mainganya of course the R1. – you have traversed this with the Chair already but...

**CHAIRPERSON:** Yes I am sorry I think I got lost.

**ADV KATE HOFMEYR:** Apologies.

**CHAIRPERSON:** You went to 189.

**ADV KATE HOFMEYR:** 189 the second paragraph there Chair.

**CHAIRPERSON**: Oh okay.

**ADV KATE HOFMEYR**: It is the last sentence of it.

**CHAIRPERSON**: I was seeing that 1.12.

**ADV KATE HOFMEYR**: Yes.

**CHAIRPERSON**: And that 1.8 but I was not seeing some of the figures you were mentioning.

**ADV KATE HOFMEYR**: Apologies.

**CHAIRPERSON**: Hm.

**ADV KATE HOFMEYR**: So that last – well second last sentence says  
10 there is going to be an exposure on the senior loan that is the working  
capital loan of R1.12 at the time. That is million but the mitigant that is  
identified is that there is going to be about R1.8 million in cash in the  
bank, correct?

**MR MARK PHAKAMILE MAINGANYA**: Correct.

**ADV KATE HOFMEYR**: What I have also understood your evidence to  
be is you recognise that because of the error that had been included in  
the cash flow statement at the time that R1.8 million figure would have  
to be reduced, correct?

**MR MARK PHAKAMILE MAINGANYA**: Correct.

20 **ADV KATE HOFMEYR**: And it would go down to about R1.8 million, is  
that right?

**MR MARK PHAKAMILE MAINGANYA**: R1.1 million.

**ADV KATE HOFMEYR**: Apology from R1.8 to R1.1, correct?

**MR MARK PHAKAMILE MAINGANYA**: That is correct.

**ADV KATE HOFMEYR**: So there is less available cash than is recorded

here at the end of the three year period?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** If the error had not occurred, correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** Would that have influenced you materially if you had been making this decision?

**MR MARK PHAKAMILE MAINGANYA:** No because the amount of cash available is more or less equal to the outstanding balance then. Because there is R1.1 outstanding and then there is a balance of cash  
10 of R1.1.

**ADV KATE HOFMEYR:** Right. And just to conclude this Mr Mainganya of course that whole cash flow model depends on a range of assumptions made after the three years in which the contract which has been tendered for would apply, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** So you in a sense if I can understand and make sure we are on the same page when IDC looks at its modelling if the SAA contract had been awarded on the terms of the tender it then has a realistic sense assuming performance under the contract and on both  
20 sides what is coming into the company for three years, is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is right.

**ADV KATE HOFMEYR:** But after those three years so this was in 2017 after 2020 everything else we see in those cash flow statements are projections, they are assumptions, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes that is beyond the actual

contract.

**ADV KATE HOFMEYR:** It is. And you traversed with the Chair earlier well that is part of the risk as I understand it that the IDC evaluates, Correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes that is correct.

**ADV KATE HOFMEYR:** And what was the basis for those assumptions and the figures put into the cash position of the business thereafter?

**MR MARK PHAKAMILE MAINGANYA:** So in the submission the team indicates that it has grown the projections by the inflation rate beyond  
10 the contract among other assumptions.

**ADV KATE HOFMEYR:** So would that mean that they assume for the purposes of the model that what has been secured in the tender with SAA for the three years is likely to continue plus inflation?

**MR MARK PHAKAMILE MAINGANYA:** So they assumed in this one like they indicate that the submission would be for five years and they also assumed that the client will get other contracts on termination of the SAA contract.

**ADV KATE HOFMEYR:** And contracts of a similar value, correct?

**MR MARK PHAKAMILE MAINGANYA:** No not really contracts from  
20 different other suppliers not necessarily of a similar value.

**ADV KATE HOFMEYR:** But if you are and correct me if I am wrong but if you are increasing off a base for inflation you are assuming that base remains the same thereafter which would assume a similar value of contract being obtained elsewhere would it not?

**MR MARK PHAKAMILE MAINGANYA:** Or more or less.



**ADV KATE HOFMEYR:** Indeed but ...

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** They put a figure in and a I understand the figure assumes a continuation of the same cash receipt over time as was secured for the three years plus inflation?

**MR MARK PHAKAMILE MAINGANYA:** Yes so that they start at the base and put some growth assumptions on the company and they indicate in the submissions which other prospect that the client was pursuing and they model assumptions based on that.

10 **ADV KATE HOFMEYR:** Thank you. The second aspect that I asked for you to look at over the break related to whether there was any reference to the justification for EMSEP funding as being the value add that EML would bring and you drew my attention in the same volume Chair to page 222.

**CHAIRPERSON:** I have got it.

**ADV KATE HOFMEYR:** And Mr Mainganya I had introduced that question on the basis that I had not seen a reference to value add as the justification for the EMSEP approval or qualification in this submission. What you have drawn my attention to is right at the bottom  
20 of that page 222 where there is a reference to the approach that ACSA Airports Company South Africa takes to people in the position like EML would have been in its contract with SAA, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** And what it records there is ACSA sees through putters. Chair you will remember that phrase of through putter from the

evidence of Mr Vaughan. The real essence of it was that a company like EML was going to purchase the fuel from one of the big – the oil majors Total etcetera and then was going to utilise the pipeline at the relevant airport as a through putter to then provide that fuel plus a margin that SAA would pay into the aircraft. Is that consistent with your understanding of through putter status?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Thank you. So what is recorded here is ACSA sees through putters as a value add to the process as they will be  
10 sourcing the fuel, purchasing the fuel, transporting the fuel, storing the fuel and testing the fuel before it is put into the planes. You and I might have been at cross purposes insofar as I was interested in it being presented as the justification for the EMSEP qualification in this submission. Do you know whether this is what Mr Kobena took into account when he indicated to you when you followed up with him about this topic that there was a value add that EML was going to be contributing?

**MR MARK PHAKAMILE MAINGANYA:** Yes. So in one of the  
20 correspondence and also in the investigation that we will talk about it does draw reference to that.

**ADV KATE HOFMEYR:** To this.

**MR MARK PHAKAMILE MAINGANYA:** That was indicated in the submission.

**ADV KATE HOFMEYR:** Thank you. Do you hold the same view that it is a value add as understood under the EMSEP program when an entity

purchases fuel from one of the oil majors and enters into an arrangement to then put it into the aircraft thereafter. Is that the sort of value add that EMSEP is interested in?

**MR MARK PHAKAMILE MAINGANYA:** So I would understand that the client does not just simply take and put he does something so in the submission there is a quantification of what that value add amount to but I do not know if it is sufficient to qualify for EMSEP purposes.

**ADV KATE HOFMEYR:** If it was simply purchasing the fuel, transporting it, using the pipeline and putting it into the plane is that  
10 the sort of thing that you think would qualify as a value add?

**MR MARK PHAKAMILE MAINGANYA:** No I would not think that is value add.

**ADV KATE HOFMEYR:** Thank you. Sorry, apologies I have taken two files. If we can then go back in your affidavit Mr Mainganya and my hope is Chair that there are not too many topics to still deal with with Mr Mainganya so we look on good terms to complete this afternoon. I would like to pick it up at page 6 if we may? Mr Mainganya that is in DD13a. And it is under the heading on that page in bold 4.4 Request to replace the SAA contract with SA Express SOC Limited. Now Mr  
20 Mainganya for this point I do not want to have you move back and forward between files unless it is necessary because the document I am going to refer to now is one we have looked at before and I just need to quote from it. But if at any point you want to go and look at the document feel free to tell me that. It was in the conditions precedent of the decision in February 2017 that a requirement that there be a signed

agreement with SAA was stipulated and I just want to read how it was framed in that condition precedent. It said:

“A signed offtake agreement between EML Engineers and Construction and South African Airways with the terms to – the IDC’s satisfaction.”

Do you recall that?

**MR MARK PHAKAMILE MAINGANYA:** I do.

**ADV KATE HOFMEYR:** So when this was approved given everything we have traversed previously in your evidence as I understand it at that  
10 point the tender had not been awarded, correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** So as I understood your evidence it was a protection for the IDC to say well it is a condition precedent of all of these agreements both loans and the guarantee facility that there must be a signed agreement between EML and SAA with terms to the IDC’s satisfaction, Correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** Right then as I understand your affidavit that does not materialise that contract, is that right?

20 **MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** So then what happens?

**MR MARK PHAKAMILE MAINGANYA:** So around the 26 July the basics and chemicals team requested an amendment to the approval of the conditions set by the special grade committee. Amendments that are requested by transaction teams are presented in the form or a

memorandum addressed to the post investment committee which is comprised of the divisional executive directly responsible for the transaction. The divisional executive responsible for transaction support and post investment management. The Chief Risk officer and the general council. The post investment committee abbreviated PIC does not usually sit as a committee and does not have a chairperson as each member considers the requested amendment independently and indicates his or approval or objection.

**ADV KATE HOFMEYR:** If we could just stop there Mr Mainganya. You  
10 indicated that earlier in your evidence today that you do not convene as a committee and that it is done on an almost round robin basis and I said to you in that evidence when it became relevant I had ask you in relation to this decision where the submission was made on the 26 July 2017 whether you recall how soon after that submission was received the decision was taken?

**MR MARK PHAKAMILE MAINGANYA:** I do not recall exactly.

**ADV KATE HOFMEYR:** Would it have been a matter of days in all likelihood?

**MR MARK PHAKAMILE MAINGANYA:** So some members could have  
20 approved it on the same day, some a day or two later.

**ADV KATE HOFMEYR:** Indeed but we are not talking about more than a week or so, is that fair?

**MR MARK PHAKAMILE MAINGANYA:** No.

**ADV KATE HOFMEYR:** Thank you. In other words yes you agree?

**MR MARK PHAKAMILE MAINGANYA:** Yes I agree.

**ADV KATE HOFMEYR:** It is just the record does not always reflect the manner in which you have indicated the answer.

**MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** Thank you. So shortly after the 26 July 2017 a decision was made and what decision was that?

**MR MARK PHAKAMILE MAINGANYA:** So the decision was to agree to the requested amendment that instead of the SAA contract the SAA Ex contract would be used at the offtake. That is [indistinct].

**ADV KATE HOFMEYR:** Okay. Thank you. So now we have a  
10 substation of funding that was premised on a SAA contract being replaced by a SAA Express contract, correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** I would like to go to that actual submission because the aspects of it that we do just need to traverse. You will find that in DD13c and it commences at page 631. Mr Mainganya you will be in file c.

**MR MARK PHAKAMILE MAINGANYA:** Okay. File C.

**ADV KATE HOFMEYR:** At page 631. Thank you. Can you confirm what document that is at page 631?

20 **MR MARK PHAKAMILE MAINGANYA:** So it is a memorandum addressed to the post investment committee. It is from the basics and speciality chemicals business unit. Its reference it is for EML Engineering and Construction.

**ADV KATE HOFMEYR:** Thank you. And is this a submission that you have been discussing they went the post investment committee to

change the funding from a SAA contract to a SA Express contract?

**MR MARK PHAKAMILE MAINGANYA:** Yes. Correct.

**ADV KATE HOFMEYR:** Thank you. And then if you just go to page 634 it is a few pages on. Under the – the last table on that page where there is capital letters APPROVED ahead of it. I see there in the third line the chief risk officer identified, is that you?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And so that is your signature?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

10 **ADV KATE HOFMEYR:** So you were part of the group that approved this change from the SAA contract to the SA Express contract, is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And this occurred just a few months – a few days after the 26 July 2017, correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** I would like to look at the actual wording that was used in this request to the committee of which you were a member and you will find that at page 633. You will see there that the request  
20 under 1 if you could read that for us. What is the first request that the business unit makes to your committee?

**MR MARK PHAKAMILE MAINGANYA:** It is requested that the IDC consent to change NCP to allow EML to draw funding based on the SA Ex award letter.

**ADV KATE HOFMEYR:** And then under 2.

**MR MARK PHAKAMILE MAINGANYA:** It is requested that the first drawdown be changed from 6 August 2017 to 30 September 2017.

**ADV KATE HOFMEYR:** So that was to push the drawdown date out slightly, is that right?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** Okay I would like to focus a bit on point 1 though because you will correct me if I am wrong but this is a request as I read it that there be a consent to change the condition precedent that is the condition precedent that we saw previously related to the  
10 need for a signed agreement between SAA and EML on terms satisfactory to the IDC to a term which now stipulates that EML will be allowed to draw funding based on the SA Express award letter. Do you regard an award letter as being different to a contract?

**MR MARK PHAKAMILE MAINGANYA:** Yes it is.

**ADV KATE HOFMEYR:** So why would the request be being made to allow funding purely on the basis of an award letter in circumstances where previously it had been of some importance as I understood your evidence to the IDC that they actually had a signed contract in place.

**MR MARK PHAKAMILE MAINGANYA:** No. So this memorandum is  
20 requesting the change from SAA to SA Express and in support for that it is indicating that here is an award letter from SA Express. So – so I think if we – if we go to page 632.

**ADV KATE HOFMEYR:** That is the page back yes.

**MR MARK PHAKAMILE MAINGANYA:** That is the page back. So I think that paragraph after item 3. So which says as part of the



approval process condition precedent 6.1.7 of the guarantee facility was for EML to obtain a signed offtake agreement from SAA Limited. So it is that condition that is requested being changed.

**ADV KATE HOFMEYR:** Correct.

**MR MARK PHAKAMILE MAINGANYA:** So it remains a CP but instead of the contract being SAA the contract become SA Express. So – so if you read item number 4 it does not mean that on award payment will happen because the CP will now read we must get an offtake from SA Express. It is not saying based on this letter we can pay. It is saying  
10 based on this letter can we change the condition.

**ADV KATE HOFMEYR:** Is that how you understood this document at the time?

**MR MARK PHAKAMILE MAINGANYA:** Yes. Yes that is how I understood it.

**ADV KATE HOFMEYR:** Because can I say to you that language is not readily apparent to me certainly as an outside reader of this. And the reason is because when this document talks about the change it talks about a change and only ever makes reference to an award letter that has been received from South African Express. Do you accept that just  
20 in terms of the words?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes, yes. No I can understand but in support of what I am saying it is factual that upon this change being made the client started requesting payment and our teams and legal team said no we cannot pay you we still need the contract first. So that is my understanding it is just changing the

condition. Disbursements could not happen on the basis of this letter.

**ADV KATE HOFMEYR:** And do you understand the position to be that at 27 or call it 29 July when the approval was given the IDC had not yet seen the agreement?

**MR MARK PHAKAMILE MAINGANYA:** Yes at that point and it is not there – the agreement.

**ADV KATE HOFMEYR:** There is only the award letter?

**MR MARK PHAKAMILE MAINGANYA:** There is only the award letter.

**ADV KATE HOFMEYR:** Is that right?

10 **MR MARK PHAKAMILE MAINGANYA:** That is right.

**ADV KATE HOFMEYR:** And let us just go to that award letter because it is a few pages on it is at 635.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Is that the award letter that you refer to?

**MR MARK PHAKAMILE MAINGANYA:** Yes this is the one that was attached to this memorandum.

**ADV KATE HOFMEYR:** And I understand your evidence to be this you understand is not a contract but – and you also – your evidence is that as at this date the IDC had not seen a contract, correct?

20 **MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** But thereafter it was obtained, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** And disbursements were made only after it was obtained, correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** Were its terms interrogated at all by the team in the IDC?

**MR MARK PHAKAMILE MAINGANYA:** Yes I spoke to the legal team they indicated that they did review the contract.

**ADV KATE HOFMEYR:** Did they engage with South African Express at all about it like they had engaged with SAA previously?

**MR MARK PHAKAMILE MAINGANYA:** No they did not.

**ADV KATE HOFMEYR:** Because as I understand it from Mr Rama's affidavit and correct me if I am wrong there is no second due diligence  
10 that is done when a change of this nature occurs, is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes there is no second due diligence in the sense of restarting the process but they still requested to do diligence on the terms that have changed.

**ADV KATE HOFMEYR:** Right if we at 635 the one thing I just want to probe with you there is if a due diligence is not done when a change of this nature takes place I assume interrogating the prescribed litres of fuel that were going to be procured from EML would not have been interrogated at all would it?

**MR MARK PHAKAMILE MAINGANYA:** So with regard to that the team  
20 indicated in the submission that based on these litres then they redid the financial models that we have been discussing and then re-verified the supporting prices to those litres to test if the client would be able to make sustainable income from this new contract. So that is the extent of the interrogation that they did in checking that what the client bid was supported by reasonable prices from the suppliers and then they

use those litres to do a new model and based on that they indicated in the memorandum that based on the model the client would still be able to afford the facilities that were granted.

**ADV KATE HOFMEYR:** And in fairness Mr Mainganya to the IDC I expect in this process you are not on the lookout for fraudulent contracts being concluded with state owned entities are you?

**MR MARK PHAKAMILE MAINGANYA:** It is a risk that is always there in the current environment so hence the legal scrutiny must do reasonable processes.

10 **ADV KATE HOFMEYR:** Indeed.

**MR MARK PHAKAMILE MAINGANYA:** To satisfy itself that the contract that is presented to them is valid and that is the line between doing forensic process on the contract versus doing reasonable measures to check what you getting could be from a reliable institution.

**ADV KATE HOFMEYR:** Indeed.

**MR MARK PHAKAMILE MAINGANYA:** So we have to think about the risk of fraud when we do that.

**ADV KATE HOFMEYR:** Oh the reason I raise it Mr Mainganya and this is not evidence I assume of which the IDC was aware at the time but  
20 the 8 million litres that were going to be provided according to this letter of award to Pilanesburg airport the commission has received evidence was wildly in excess of the number of litres that airport would ever need annually but I assume that was not known to the IDC at the time?

**MR MARK PHAKAMILE MAINGANYA:** No I did not know it.

**ADV KATE HOFMEYR:** And the process of review that was undertaken did not reveal that?

**MR MARK PHAKAMILE MAINGANYA:** No it did not.

**ADV KATE HOFMEYR:** Thank you. And then if we could go Mr Mainganya back into your affidavit.

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** And we will pick it up at page 8 if we can. At page 8 the heading begins 4.5 drawdowns paid directly to EML. Do you see that?

10 **MR MARK PHAKAMILE MAINGANYA:** Yes I do.

**ADV KATE HOFMEYR:** Mr Mainganya I know at the time you may not have been aware of a particular invoice for a consultant that was included when the drawdowns were sought by EML from the IDC but you have seen Mr Rama's affidavit before. Have you not?

**MR MARK PHAKAMILE MAINGANYA:** I have.

**ADV KATE HOFMEYR:** Can you assist us with what that particular invoice in the order of 1.5 million that was submitted to the IDC in respect of the drawdown related to?

20 **MR MARK PHAKAMILE MAINGANYA:** That invoice related to a fee for consulting services that was invoiced by an entity called Mamela Property Trust to EML.

**ADV KATE HOFMEYR:** And what were the services that were alleged to have been performed for that invoice?

**MR MARK PHAKAMILE MAINGANYA:** So it was alleged that Mamela Property Trust had assisted the client in compiling its business plan

and getting funding from the IDC.

**ADV KATE HOFMEYR:** Let us go to that invoice if we may. You will find it in DD13B and it is at page 4-5-6.

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Is this the invoice that we were speaking about?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** And who is it from and to?

**MR MARK PHAKAMILE MAINGANYA:** It is addressed to EML  
10 Engineers and Construction. It says - it is from Mamela Property Trust.

**ADV KATE HOFMEYR:** And the date of the invoice what is that?

**MR MARK PHAKAMILE MAINGANYA:** 3 July 2017.

**ADV KATE HOFMEYR:** And the contact person on the invoice?

**MR MARK PHAKAMILE MAINGANYA:** It is Eddie Komane.

**ADV KATE HOFMEYR:** That name came up earlier today. Did it not?

**MR MARK PHAKAMILE MAINGANYA:** Yes. That is correct. He is the one who referred the business plan to - to Mr Billy Cobbinah.

**ADV KATE HOFMEYR:** That was back in the middle of 2016. Is that right?

20 **MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** So his name appears here again on an invoice and what was the work for which this invoice of R1.5 million was raised?

**MR MARK PHAKAMILE MAINGANYA:** It says scope of work facilitation or raising of funding from the Industrial Development Corporation of

South Africa.

**ADV KATE HOFMEYR:** So what is your understanding of this invoice being forwarded to the IDC as justification for a drawdown on its facilities?

**MR MARK PHAKAMILE MAINGANYA:** So this - this invoice never featured in any of the funding requests that were made by the client. So it became apparent to the IDC only at the time when the client was requesting disbursements from the IDC. At that point in time when a client requests disbursements we request that they include supporting  
10 documentation as to what the money will be spent on.

So as you will see in - in Mr Rama's testimony he indicates that at that time among the invoices submitted by the client was this invoice at which point he says he indicated to the client that this will not be paid from the IDC because at no point in time was the IDC made aware that there is these services and the IDC did not budget for this service.

Therefore he indicated to the client that this invoice must not be paid by the IDC. So then the client submitted invoices excluding this one which is for equipment and working capital.

20 **CHAIRPERSON:** So this invoice was it - well I see that it - it seems to be addressed to EML but I hear you talk as if it was directed at IDC or did I misunderstand something?

**MR MARK PHAKAMILE MAINGANYA:** Okay. So - so the client ...

**CHAIRPERSON:** It was sent to - it was sent to EM - EML ...

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**CHAIRPERSON:** And EML sent it to IDC?

**MR MARK PHAKAMILE MAINGANYA:** Yes. That is correct because (intervenes).

**CHAIRPERSON:** As part of expenses?

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**CHAIRPERSON:** Oh, but how could - how could that happen?

**MR MARK PHAKAMILE MAINGANYA:** So - so for - for approved expenses it is normal. Remember Chairperson so we gave the client  
10 6.5 million and on that he says I am going to buy this equipment. I am going to buy this vehicle. I am going to pay these salaries. So - so before we pay the client must give us those invoices that he has received from the sellers of that equipment.

**CHAIRPERSON:** Yes.

**MR MARK PHAKAMILE MAINGANYA:** So we can justify giving him money. So - so we are saying in that pack of invoices he included this one but then we said this thing is not part of what we know to be your funding requirement.

**CHAIRPERSON:** This is not equipment or anything like that.

20 **MR MARK PHAKAMILE MAINGANYA:** Exactly, exactly. So it shall not be paid from the money from the IDC because at no point did you tell us that there is a - there is a consultant that is helping you to do the business plan.

**CHAIRPERSON:** But why did he even go there? Why did you - do you even have to say you did not tell us? I mean that - if there was such



an arrangement it was between the two of them. Is it not?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chair but - but we - the - as per (indistinct) he had to make it clear to the client that none of our money should be utilised to pay for this client - for this invoice.

**CHAIRPERSON:** Yes. *Ja*, no, no I understand that completely. I do not know about Ms Hofmeyr but I mean - I mean on the - on - on the assumption that EML had asked Mamela Properties Trust - Properties Trust - they are raising funds - Properties Trust to facilitate or raise funds for them. That must be their - their own business.

10 **MR MARK PHAKAMILE MAINGANYA:** Correct Chair.

**CHAIRPERSON:** How - how could they even begin to think they can pass that on to you. That - that is my - that is - that is my reaction you know and - and I am kind of thinking maybe you - ID - IDC should have been much harsher ...

**MR MARK PHAKAMILE MAINGANYA:** Oh, oh, oh.

**CHAIRPERSON:** To EM - EML

**MR MARK PHAKAMILE MAINGANYA:** I understand ...

**CHAIRPERSON:** Maybe - maybe I missed something.

**MR MARK PHAKAMILE MAINGANYA:** Your problem. So we will see  
20 later ...

**CHAIRPERSON:** Yes.

**MR MARK PHAKAMILE MAINGANYA:** Because later we discover that despite us saying do not pay this the client went on to proceed to pay this invoice.

**CHAIRPERSON:** From - from the money obtained from ...?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**CHAIRPERSON:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** So - so then - he then shows us a contract between him and Mamela Property Trust and then in that contract it says Mamela had - had indicated that part of the funding request would include the services that he rendered. So - so it is the reason that EML was sending this invoice.

He says Mamela had indicated that it will be part of the funding requirements. Which is a point we were saying no it is not. We  
10 are not going to pay it.

**CHAIRPERSON:** I do not know Ms Hofmeyr. Just - I think I would have been very harsh.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** *Ja.*

**ADV KATE HOFMEYR:** Indeed Chair. I - I - with respect I share that sentiment.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** Do you think it was sufficient for Mr Rama simply to say we are not paying it because it was not in the original  
20 terms or might he appropriately have said we are not paying it because the IDC does not pay R1.5 million only to be used to facilitate the very funding that the IDC is making available?

**MR MARK PHAKAMILE MAINGANYA:** No I think he should have gone further Chair. He should have even elevated this matter ...

**ADV KATE HOFMEYR:** Indeed.

**MR MARK PHAKAMILE MAINGANYA:** To the IDC and ...

**ADV KATE HOFMEYR:** Indeed Mr Mainganya because as we will discover ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** If this had been flagged at an appropriate time as being a basis on which EML was seeking drawdowns ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** On the facility ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

10 **ADV KATE HOFMEYR:** Possibly more about the arrangement might have been uncovered. Is that not so?

**MR MARK PHAKAMILE MAINGANYA:** That is correct. That is correct.

**ADV KATE HOFMEYR:** Thank you; but as I have the evidence all that happens is Mr Rama goes back and says we are not paying it. Right?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** You may not use the funding for this purpose. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And then what happens?

20 **CHAIRPERSON:** Or maybe before that.

**ADV KATE HOFMEYR:** Hm.

**CHAIRPERSON:** I take it that it is obvious that there had been no facilitation that was lawful that would have happened?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chair. Up to this point in time all the approval committees have never been made aware ...

**CHAIRPERSON:** Yes.

**MR MARK PHAKAMILE MAINGANYA:** That there is a facilitation.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And is it IDC policy not to fund where there is a facilitation?

**MR MARK PHAKAMILE MAINGANYA:** Exactly. We will never pay that Chair.

**ADV KATE HOFMEYR:** Thank you. I was moving onto what happened because you began in one of your answers to the Chair recently to talk  
10 about when it was picked up that despite the indication that it should not be paid it was paid.

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Can you explain to us how that came about? The - the uncovering of the payment.

**MR MARK PHAKAMILE MAINGANYA:** Okay. So - so in terms of our processes after we have paid the client the money then after some period once he has bought the - the items he needed. We go and do a verification that indeed ...

**CHAIRPERSON:** You do a verification?

20 **MR MARK PHAKAMILE MAINGANYA:** Yes.

**CHAIRPERSON:** Okay.

**MR MARK PHAKAMILE MAINGANYA:** We go to the client now and say did - where is the equipment that you bought and everything. So it is at that point that we discovered that he actually utilised some of the money that we had indicated to pay this invoice.

**ADV KATE HOFMEYR:** And what further inquiries were made in that regard?

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** You mentioned an agreement that was sought.

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes. So then at that point in time be - because the team had changed that did the initial application. So Mr Rama was no longer part of the team. A new team went in and as they do the audit they discovered that this payment has been made and - and then they take the client on as to why did you pay  
10 this because in our budgets we do not see an expense item like this.

Then - then the client says I had to pay this because I had entered into an agreement with this Mamela Property Trust that would help me to compile my business plan and the client now indicates that because Mamela is aware that the funds have been paid therefor it demanded its payment and the client says in an email addressed to the team it says it felt it had to pay this invoice.

It is then that the matter was reported back to the - to the IDC because until that audit we did not know that the - the client had utilised some of our money to pay for this.

20 **ADV KATE HOFMEYR:** And when about was that reported back?

**MR MARK PHAKAMILE MAINGANYA:** So we became aware of this around 4 May 2018 as the Credit Committee.

**ADV KATE HOFMEYR:** And that is a date on which an application was made for further funding. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes. That is a date when

an application is made for further funding.

**ADV KATE HOFMEYR:** So at this point 12.5 million has been extended to EML and that was drawn down in August 2017 as I recall it. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That is correct.

**ADV KATE HOFMEYR:** And then in May 2018 - early May 2018 there is a further application by EML for about R8.5 million of funding. Is that right Mr Mainganya?

**MR MARK PHAKAMILE MAINGANYA:** That is correct. That is correct.

10 **ADV KATE HOFMEYR:** And was this issue of the payment of 1.1 million made known to the committee that was asked to approve that further funding?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes. Now on - on 4 May it - it is at this point that the Credit Committee becomes aware because now the time must submit the new funding request from the client and they must also explain how the other money was utilised. So on 4 May they report back to the team why the client needs more money now.

20 Among other things the contract had not started yet and the client had bought the equipment in anticipation of this and the client had paid salaries and now it was running out of working capital and we said no but how did you use the money that we gave you and then it - it is at that point that the team reports back that among other things that were paid were - were for - for this business plan.

So - so at - at this stage if - if I recall it was reported to the committee that an amount had been paid for helping the client to do the

business plan. So at the committee it was not reported in this manner as a facilitation. It was reported as a legitimate expense incurred to assist the client but then we said we did not budget for this and - and - so - so Chairperson sometimes our clients do use people to help them compile the business plan but our condition is that it must be made known to the IDC the scope of services to be provided.

So - so the Credit Committee took issue with this matter that okay provided the client helped you with the business plan but you should have alerted the IDC that there is this service provider as well  
10 and we would have needed to assess if it is legitimate because the team indicated that in all their processes up to this point in time they had not seen any consultant doing their - their work.

So when this was tabled to the Credit Committee we did not approve it at that point because we were not happy with this. We sent the team back to obtain further clarifications from the client as to - as to how it is going to remedy this and - and at that point in time there were other breaches that the client had - had done on the facilities.

So the Credit Committee did not approve the application at that point in time pending resolution of those issues.

20 **ADV KATE HOFMEYR:** Mr Mainganya I understood that the Credit Committee did approve the request for the 8.5 million additional funding initially. Was I wrong?

**MR MARK PHAKAMILE MAINGANYA:** Initially declined it ...

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** And then they sent them back ...

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** And then they came back on 18 May.

**ADV KATE HOFMEYR:** And on the 18<sup>th</sup> it was approved?

**MR MARK PHAKAMILE MAINGANYA:** Yes. So on 18 May the - the issues that were raised by the committee were tabled and the client indicated how it addressed them. Now the - the IDC is - is at a point now where it had disbursed these facilities the 12.5 million and - and the client indicates that the - the contract from SA Express has not yet  
10 materialised and then in the meantime it had bought the equipment and it had obtained the compliances that it required that were budgeted for but now it had run out of funds ...

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** And then the client indicated at that point in time that it - it had received two new contracts. One was from an entity called Fly Africa and one was from GAAL the airport in Polokwane and then it requested funds to - to serve those contracts.

**ADV KATE HOFMEYR:** Thank ...

**MR MARK PHAKAMILE MAINGANYA:** Then the committee requested  
20 to know the client how is it going to pay back this money that it had paid for - for facilitation fees and at that point the client - sorry before that. A letter of breach was sent to the client indicating our displeasure with what had happened with the facilities and requested how it is going to remedy that situation and the team indicated in their responses that the client indicated that the - the funds would be



reimbursed from the proceeds of a - of a grant I think it was expecting from the other suppliers and then we put a condition as a committee because it is not the - the 1.5 that was paid.

I think 1.1 million was paid. So the committee indicated to the client at that point in time that it - it may not pay any further monies for any services related to - to this point in time and then it is then on - on the strength of those contracts that were provided to the IDC and - and in view of the equipment that had already been spent on the facilities that the - the committee approved that application.

10 **ADV KATE HOFMEYR:** If I could just a few aspects of that. What precisely did the client convey to the IDC as the reason for the fact that the SA Express contract had not been implemented?

**MR MARK PHAKAMILE MAINGANYA:** I - I do not recall what it said. I think among other things it indicated that IDC released the guarantees late as a reason to justify and then it could not provide the guarantees to the oil companies. Therefore it could not order fuel. That is what was indicated in the submission.

**ADV KATE HOFMEYR:** Would it have been prudent to possibly engage SA Express at that stage to understand from them why the contract had  
20 not been implemented?

**MR MARK PHAKAMILE MAINGANYA:** I think so among other things ...

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** That should have been done.

**ADV KATE HOFMEYR:** You see Mr Mainganya if that had been done the Commission has received evidence already that the irregularity of

that contract that had been awarded to South African Express ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** By South African Express to EML ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Had already been picked up in South African Express in October 2017 and an investigation had in fact been initiated as early as that. We are now in May of 2018 ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** When further funding is being requested from  
10 the IDC ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** And the only explanation that the IDC as I understand your evidence was given by the client ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** For non-implementation of that contract ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Related to some delay in guarantees. Is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes but - but - that is right and  
20 then you must recall this funding that was approved was suspended.

**ADV KATE HOFMEYR:** Yes indeed. It was suspended a few days later when a media article ...

**MR MARK PHAKAMILE MAINGANYA:** In May.

**ADV KATE HOFMEYR:** Broke.

**MR MARK PHAKAMILE MAINGANYA:** So - so when we became aware

of that.

**ADV KATE HOFMEYR:** Hm.

**MR MARK PHAKAMILE MAINGANYA:** We suspended it ...

**ADV KATE HOFMEYR:** Yes.

**MR MARK PHAKAMILE MAINGANYA:** Immediately.

**ADV KATE HOFMEYR:** No indeed. All that I am interrogating now is when EML comes to the IDC for more money ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** In May 2018 ...

10 **MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** A few things have happened ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** Between the 12.5 million that it received ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** In August 2017 ...

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** And its application for more money in May 2018. I would like to list those for you. The one it is that it in breach of a specific indication from the IDC that it not use those  
20 monies to pay a facilitation fee. It had done so. Correct?

**MR MARK PHAKAMILE MAINGANYA:** Hm.

**ADV KATE HOFMEYR:** If you can just say yes for the record.

**MR MARK PHAKAMILE MAINGANYA:** Yes, correct.

**ADV KATE HOFMEYR:** Thank you. It had and that facilitation as a facilitation of the very funding that it had secured from the IDC.

Correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** And I understood your evidence to be previously that is irregular in the view of the IDC's processes. Correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** It had then never yet implemented the substitute contract for which the 12.5 million had been provided to it. Correct?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

10 **ADV KATE HOFMEYR:** And notwithstanding that as I understand your evidence the IDC did not take further steps to try and get to the bottom of why that implementation had not taken place. Is that correct?

**MR MARK PHAKAMILE MAINGANYA:** So the steps what are taken was the breach that was communicated to the client in terms of indicating that the IDC at that point in time may call the facilities if those breaches are not remedied and then - so at - at that point in time the committee - these - these issues that you are raising were raised in our risk report that we did as you would see in my affidavit. The fact that the - sorry I am on page 10.

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

**MR MARK PHAKAMILE MAINGANYA:** So on page 10 in our assessment of the situation we did indicate that the client had failed to meet the condition regarding the off take contract. There was no off take contract from Fly Africa. The SA Express contract that you indicated had not - had not materialised and been implemented at that

point in time.

So - so these matters that you are raising were - were debated at the committee. Now the question was what do we then do with the facilities that have already been approved by the client. Now at that point in time two things could happen Chairperson. So one we can call the facilities.

Take the security and close the business or two we can review the client what it says it is going to do to remedy these breaches that have arisen and three we consider the facilities that we  
10 have disbursed. Are they - are they collateral? Are they supported by hard core assets?

So - so those - those are the two issues that often arise when clients do not - do not respect our - our agreements. We reach a point where we have to close down the business. So - so the - the committee was confronted with that. Does it close down the business and sell the equipment or does it request a remedial plan and based on the remedial plan that the client had indicated.

Being indication that it had obtained further contracts. Being indication that it had obtained additional financial support I think from -  
20 from Total or Engen one of the other guys and then it - it indicated that it had obtained the - the JIG accreditation which we paid over - I think - over a million to get that accreditation by other international operators so it can be able to - to supply fuel and - and whether we - we close down and the fact that at that point in time the client was employing about five people and - and the division of closing down would be those

jobs lost.

So - so those are the issues that the committee had to contend with versus these breaches from the client and - and given those two indications the committee decided to - to support the client further to avoid closure of the business.

**ADV KATE HOFMEYR:** Mr Mainganya was the fact of the facilitation fee not on its own enough of a red flag to make the IDC cautious about further extending funds to EML?

**MR MARK PHAKAMILE MAINGANYA:** So - so Chairperson to my  
10 collection this fact that this was - this facilitation fee only came to the IDC when we did the investigation to - to the people but - but when ...

**ADV KATE HOFMEYR:** Mr Mainganya if I could just come in there because I understood your evidence to be previously that it was brought to your attention specifically the agreement between Mamela Trust and EML was called for and you actually made it the condition of the further extension of the loan that there be some arrangement with EML about the fact that it was going to reimburse the 1.1 million. Did I understand that incorrectly?

**MR MARK PHAKAMILE MAINGANYA:** No you not - you not incorrect. I  
20 am saying when it was reported to the Credit Committee it was not reported in this fashion that it was a facilitation. They said the client had paid a consultant who helped them to do the business plan at that point in time. The committee had not seen this invoice. The - the matter was reported to the Credit Committee.

**ADV KATE HOFMEYR:** I see. So you had not at the time seen either

the invoice or the Commission Agreement?

**MR MARK PHAKAMILE MAINGANYA:** Yes at the - it was not presented there.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** Well this 1.5 did you ask EML exactly what it is that was done by Mamela Property Trust, the properties trust that Mamela Properties Trust understood to constitute facilitation raising of funding from the IDC.

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson when we  
10 investigated this the client sent a long email to the IDC, it is just that I don't have it now which indicated to the IDC what services this Mamela Property Trust is alleged to have performed.

**CHAIRPERSON:** But what was it really, was it preparation of the submission, what was it?

**MR MARK PHAKAMILE MAINGANYA:** You would recall Chairperson in the beginning we – the advocate referred to a business plan ... (intervention)

**CHAIRPERSON:** You may have but I remember I told you I have – I've given up trying to hear what you say because I'm – I hear some things,  
20 I don't hear others but I've given up, I think it's the nature of your voice.

**MR MARK PHAKAMILE MAINGANYA:** (Indistinct)

**CHAIRPERSON:** Ja, so what is it was it preparation of the submission or what was it?

**MR MARK PHAKAMILE MAINGANYA:** Yes, I was ... (intervention)

**CHAIRPERSON:** In essence?

**MR MARK PHAKAMILE MAINGANYA:** I was saying that business plan that advocate referred to earlier in the beginning it was among other things that are alleged to have been done by this Mamela Property Trust in return for this.

**ADV KATE HOFMEYR:** For ...(intervention)

**CHAIRPERSON:** But is that understood to be the raising of funds, generally speaking, when somebody raises, can anybody raise funds the way it's understood in business or do any facilitation without talking  
10 to the person who is being asked to provide funds?

**MR MARK PHAKAMILE MAINGANYA:** So Chairperson I think perhaps as the Advocate proceeds it will become clearer what happened.

**CHAIRPERSON:** Oh I'm ahead of – okay alright.

**MR MARK PHAKAMILE MAINGANYA:** Because we were asking the same question in the committee, what has exactly this person done to deserve these things.

**CHAIRPERSON:** Yes, well the reason why I was asking, I was going to ask it much earlier but the reason why I asked it now was because Ms Hofmeyr talked about whether it wasn't a sufficient bad flag to IDC so it  
20 brought back that question in my mind to say but if you as IDC know that there is nobody who has been talking to you on behalf of this client to try and raise funds, if you are shown an invoice that says somebody is demanding money because they facilitated or raised funds with you, not with somebody else, and you know that there is no such you know, isn't it – shouldn't that have said to IDC hang on maybe that is fraud



here.

**MR MARK PHAKAMILE MAINGANYA:** So indeed Chairperson the credit committee that initially rejected this application was very displeased with this and it is especially for that reason that it said a letter of breach must be issued to the client and it is for that reason that they sent the team back to the client to obtain explanations as to exactly what happened, so I fully agree with you, we were not happy with what has happened here Chairperson.

**CHAIRPERSON:** Okay.

- 10 **ADV KATE HOFMEYR:** Mr Mainganya I appreciate everything you have said about the steps that were initially taken, the breach letter sent, the feedback that you obtained, but the fact of the matter is the IDC did decide to extend another R8.5million to EML, did it not?

**MR MARK PHAKAMILE MAINGANYA:** It did.

**ADV KATE HOFMEYR:** It did, and back to the Chair's question isn't just the mere fact that there's a facilitation fee of now R1.1million, which is not an insignificant amount is it Mr Mainganya?

**MR MARK PHAKAMILE MAINGANYA:** It is it is.

- 20 **ADV KATE HOFMEYR:** It is significant isn't it, I mean especially if it is for preparing the business plan that we looked at previously that is a business we should all be getting into because as I see that business plan it's about 10 pages long it is not particularly difficult together. Why was this not more of a concern to the IDC, when it agrees to provide R8.5million more funding?

**MR MARK PHAKAMILE MAINGANYA:** It was a concern Advocate, also

what was a concern was the money that we had already incurred on the client, we had to recover that money.

**ADV KATE HOFMEYR:** And as I understand your evidence you made a brief reference to a media article, what happened with the media article and how did that influence the IDC's processes. If you would like a reference for that, it's at page 9 of your affidavit and it's at paragraph B on that page, where you refer to media reports on the 27<sup>th</sup> of May 2019.

**MR MARK PHAKAMILE MAINGANYA:** Yes, okay, okay, so the relevant  
10 – it says however on 27 May, remember this facility was approved on  
18 May so on 27 May various negative allegations were published in  
the media regarding EML. Upon this media allegations being brought to  
IDC's attention, and my attention I immediately communicated to the  
Head of the Basics and Chemical Special Unit that no draw-downs  
should be allowed on these facilities until all the allegations referred to  
in the media above have been resolved, and then I have attached proof  
of that correspondence, so in a sense what happened immediately after  
we approved we read about these fraud allegations concerning our  
client, then I told the business unit that they shouldn't allow any  
20 disbursements until we understand the nature of these allegations. We  
then engaged S A Express to say we have funded this client, we read  
about these things in the media, can you tell us what is happening  
because we will not disburse on these facilities, so at that point in time  
S A Express indicated to us that they are investigating, they have  
launched an investigation and then there were several to's and fro's

between us and S A Express regarding these allegations but to ultimately we never got to disburse these facilities, because we were telling the client that until we get a clearance on the allegations we will not disburse and that is where we are. We never got to disburse on these facilities, up to this point in time.

**ADV KATE HOFMEYR:** Mr Mainganya just a few follow up questions there, who did the IDC engage with at S A Express?

**MR MARK PHAKAMILE MAINGANYA:** I do not remember but I was forwarded with the email correspondence, I think at some point in time  
10 it went all the way to the CEO of S A Express.

**ADV KATE HOFMEYR:** I have not seen that correspondence to the best of my recollection so maybe you can provide that to the Commission, but ...(intervention)

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes, we will provide it.

**ADV KATE HOFMEYR:** But what I'm interested in is whether in your testimony you said that they were going to, you were told they were going to launch an investigation, is that what they said?

**MR MARK PHAKAMILE MAINGANYA:** Yes, they said we cannot tell you anything because this matter is currently investigation.

20 **ADV KATE HOFMEYR:** Currently under?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Did that suggest it was already being investigated, or pursuant to the media reports it was going to be investigated?

**MR MARK PHAKAMILE MAINGANYA:** I think – it gave me the

impression that there was an investigation under way, I don't know if it was started because of the media or it was already proceeding.

**ADV KATE HOFMEYR:** Well it will be useful to have that correspondence because we know from the evidence of Ms Lookk that she raised this for investigation as early as October 2017 within South African Express, and if you are engaging them in May of 2018 that investigation should have been well underway if not completed by then, so it would be of interest to the Commission to see that correspondence if we can.

10 **MR MARK PHAKAMILE MAINGANYA:** Okay.

**ADV KATE HOFMEYR:** Right, the next thing I just want to ask is a follow up, is it fair Mr Mainganya to say but for the media reporting on this issue those draw-downs would have occurred?

**MR MARK PHAKAMILE MAINGANYA:** No those draw-downs were dependant on contracts being provided to IDC.

**ADV KATE HOFMEYR:** Which contracts were those?

**MR MARK PHAKAMILE MAINGANYA:** The Fly Africa contract.

**ADV KATE HOFMEYR:** So that would be another prerequisite?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

20 **ADV KATE HOFMEYR:** But the fraud that had taken place and the irregular procurement in S A Express was the subject matter of this article, is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** So it could have been the case that EML had secured other contracts pursuant to which funding would have flown but

this issue around S A Express would not have been unearthed, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson did help us because at that point in time we had not disbursed any facility so these allegations when they became apparent to us we realised that we cannot proceed, hence we stopped facilities, so they were crucial in us stopping this decision, because I was not aware at that point in time that there is an investigation currently happening in S A Express.

**ADV KATE HOFMEYR:** And just to be clear what was not made  
10 available was the second request for funding which was the 8.5million but by this stage in May 2018 there had already been 12.5million released, is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes, for the purchase of the equipment.

**ADV KATE HOFMEYR:** Well and the working capital loan.

**MR MARK PHAKAMILE MAINGANYA:** Yes, that's correct, that's correct.

**ADV KATE HOFMEYR:** What has happened in relation to that, has there been repayment on that loan?

20 **MR MARK PHAKAMILE MAINGANYA:** So Chairperson because we refused to release funds on this facility the client couldn't supply any other funders and then in fell in breach with our facilities. What has happened is we have had to perfect security, we have had to go to the Court and we've perfected our collateral and so our security that we funded in the vehicles and everything we took it under an order of the

Court.

**ADV KATE HOFMEYR:** So just so I have it clear there was never any repayment of the loan by EML, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** Yes, that's correct.

**ADV KATE HOFMEYR:** Then if we can move to page 11 Mr Mainganya because this is where the further investigations of the Commission ...(intervention)

**CHAIRPERSON:** I'm sorry Ms Hofmeyr, did you say that you – there was some security that you called, you called back or whatever?

10 **MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson.

**CHAIRPERSON:** And in what form was that, where was the security?

**MR MARK PHAKAMILE MAINGANYA:** Chairperson when the client came to us he had requested money to purchase ...(intervention)

**CHAIRPERSON:** Equipment.

**MR MARK PHAKAMILE MAINGANYA:** Equipment which included bowsers, tanks, so these are motor vehicles.

**CHAIRPERSON:** Ja.

**MR MARK PHAKAMILE MAINGANYA:** And that is the security which we took as part of our facilities, we registered a general, a special  
20 notarial bond over those assets, so meaning we would look to either realise them to recover the money that we spent.

**CHAIRPERSON:** But you are still going to do that, you haven't realised the money?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson we have not realised at this stage but we are holding the security because we have

to find the best way to realise it such that the institution does not suffer a loss, so which may include offers from prospective companies who use that equipment or it may include other operators who are able to use that facilities, which we have improved, so we have not disposed of the equipment at this point in time because the perfection of the court I think was granted, I don't recall the date, we had to go through the court process.

**CHAIRPERSON:** Oh you had to wait for the litigation?

**MR MARK PHAKAMILE MAINGANYA:** Yes we had to go through the  
10 court processes to register that bond.

**CHAIRPERSON:** Ja but in the meantime when you talk about vehicles if you talk about a year later they're depreciating and all of that, I'm not suggesting that there might be a better way in which you could have done, I'm just stating what would be effective there, just sitting, if they are parked somewhere for a year because I guess in the nature of your job you don't use them you have to sell them, if they are parked somewhere for a year they are depreciating.

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson what you are  
20 saying is correct and that is what happened in these instances, if we decide to foreclose, it comes at a huge risk to us, that's why we really have to balance that decision when the client can't afford to pay our facilities we have to think which is the best way to protect what we have spent, because if we take them back we risk selling them at a far discounted price, now we have to look is there another operator who is in this business, who can use these facilities, therefore sometimes we

invite prospective bidders, so we sell the business as a going concern so that we don't suffer as much loss as we would have suffered if we just disposed them individually in pieces, but the court processes do add another risk to that because we can't do anything until we get legal right to those assets.

**CHAIRPERSON:** Well I don't know if you are able to say this, if you can't then you can't, I get the impression that you are unlikely to get to recover much through them, if you bear in mind exactly what you had given this client.

10 **MR MARK PHAKAMILE MAINGANYA:** So it is possible Chairperson that ...(intervention)

**CHAIRPERSON:** There are challenges.

**MR MARK PHAKAMILE MAINGANYA:** I did enquire from the team that is handling this what is happening, and they indicated at that stage that there was a prospective offer on the business that is close to what our facilities are but I cannot say anything about that, I haven't interrogated the offer but you are correct, the risk that we may suffer is there.

20 **ADV KATE HOFMEYR:** Mr Mainganya in your experience does foreclosure usually involve loss?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** Mr Mainganya if we then move to page 11 this is where you pick up a topic there at 4.7 in bold entitled Billy Cobbinah, before we go through this, because this is really the concluding aspect of the evidence Chair, prior to your meetings with the Commission's



investigators on this topic were you aware at all that there may have been irregular conduct on the side of the IDC in relation to this funding transaction?

**MR MARK PHAKAMILE MAINGANYA:** I was not aware.

**ADV KATE HOFMEYR:** And can you then take us through what was disclosed to you in your engagements with the Commission, and then what further steps have been taken by the IDC in that regard?

**MR MARK PHAKAMILE MAINGANYA:** Okay, so in our engagements with the Commission it was put to me whether I am aware that Mr Billy  
10 Cobbinah is a trustee of this entity called Mamela Property Trust, I then indicated that I am not aware and then, but I will go back and investigate, so when we went back to the office we instructed a forensic investigation into this whole aspect of this transaction, upon becoming aware that Mr Billy Cobbinah is a trustee of this entity which had invoiced us. Do you want me to proceed?

**ADV KATE HOFMEYR:** Indeed.

**MR MARK PHAKAMILE MAINGANYA:** So then the investigation was concluded and indeed it was confirmed that Mr Billy Cobbinah is a trustee and it was also confirmed that he had not declared this to the  
20 IDC, we have a policy that all employees must declare their conflict of interest, we have a conflict of interest register, so he did not declare in any manner in that register that he was a trustee of this thing. And then furthermore during the investigation Mr Cobbinah confirmed that he received money from Mr Edward Komane.

**ADV KATE HOFMEYR:** What was the amount of the money that he

indicated he had received?

**MR MARK PHAKAMILE MAINGANYA:** It was R50 000.

**ADV KATE HOFMEYR:** R50 000?

**MR MARK PHAKAMILE MAINGANYA:** Yes.

**ADV KATE HOFMEYR:** And how did he receive it?

**MR MARK PHAKAMILE MAINGANYA:** I think it was paid in cash.

**ADV KATE HOFMEYR:** Mr Mainganya was the interaction between IDC and Mr Cobbinah when this confession was made recorded?

**MR MARK PHAKAMILE MAINGANYA:** I understand it was Chairperson.

10 **ADV KATE HOFMEYR:** Thank you, certainly when we met previously we did request that we have that recording made available to us, could you assist us with that, we haven't yet received it.

**MR MARK PHAKAMILE MAINGANYA:** Okay we will Chair.

**ADV KATE HOFMEYR:** But as I understand it there's a forensic investigation and in the course of that there is an engagement between the IDC and Mr Cobbinah, is that correct.

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** You indicate now it was recorded and you will make that recording available to us, correct?

20 **MR MARK PHAKAMILE MAINGANYA:** Correct.

**ADV KATE HOFMEYR:** And in that interaction Mr Cobbinah admits to having received R50 000 in cash from Mr Edward Komane, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** What then followed in relation to Mr Cobbinah?

**MR MARK PHAKAMILE MAINGANYA:** In relation to Mr Cobbinah we instituted a disciplinary hearing, and then on conclusion he was found guilty of the charges that were put to him, being failure to declare, and a breach of our code of conduct in accepting this payment, he was found guilty and it was recommended that he be dismissed, and he has been dismissed and then we reported this matter to the Police as well, we opened a case against him.

**ADV KATE HOFMEYR:** I understand from your supplementary affidavit that Mr Cobbinah also indicated to you further information in relation to  
10 Mr Rama's involvement in the funding transaction, can you explain to us what Mr Cobbinah relayed to you?

**MR MARK PHAKAMILE MAINGANYA:** So he also indicated that he made a similar offer, him Mr Cobbinah, to Mr Rama that he will also be given R50 000 if he assists in getting these transactions approved.

**ADV KATE HOFMEYR:** And did you take that further with Mr Rama?

**MR MARK PHAKAMILE MAINGANYA:** Yes, he was included as part of the investigation for – first to ascertain the fact whether it is correct, he did also admit that is correct that an offer of an amount was made to him, he does not indicate what the amount was, but he confirmed that  
20 this was made and then that was also not reported to the IDC, so we also instituted disciplinary hearings against Mr Rama, and we started the hearings, and then before we could conclude Mr Rama resigned from the IDC, so that disciplinary hearing couldn't be concluded but also a case against him was reported with the SA Police.

**ADV KATE HOFMEYR:** Thank you. Mr Mainganya insofar as the

evidence that you have presented here today is concerned there's certain just concluding aspects that I would like to get your comment on if I may, and it is really in an effort to try and draw together what evidence we have heard from you today.

The first is that do you agree that pursuant to being made aware of the information related to Mr Cobbinah in particular by the Commission the IDC has established that corruption did take place in this funding transaction.

**MR MARK PHAKAMILE MAINGANYA:** Correct.

- 10 **ADV KATE HOFMEYR:** And I also would like to suggest to you that in the course of the evidence it has become clear that certain aspects of the IDC's process in deciding to fund EML Energy was inadequate, and I would like to give you the respects in which I suggest they were inadequate for your comment. The first is that this application should never have been pre-approved for MCEP funding, do you agree with that?

**MR MARK PHAKAMILE MAINGANYA:** Can I comment on that one?

**ADV KATE HOFMEYR:** Indeed.

- 20 **MR MARK PHAKAMILE MAINGANYA:** So Chairperson on that one the confirmation from DTI that this is not included came post-approval of the transaction, a year later. What the team indicated is that in their motivation they anticipated that there would be blending and value add and as part of our processes to approve this transactions we do invite the MCEP people to sit in our credit committee, so at that point when we approve this transaction they were also part of the credit committee,

so the committee didn't take that decision lightly, it was together with the people who are responsible MCEP and at that point in time it was not clear that this particular industry doesn't qualify for MCEP so it was made clearer by DTI a year later, so I agree, now that we know but at that time we didn't know that it doesn't qualify for MCEP.

**ADV KATE HOFMEYR:** Mr Mainganya if I can just follow that up, it was a false representation to that committee that EML was involved in blending at all, wasn't it?

**MR MARK PHAKAMILE MAINGANYA:** Yes, EML was not in blending as far it was indicated, so what the team motivated as I understand it, because I was not in that meeting, that that was anticipated to happen later but at that time it was not in blending at all.

**ADV KATE HOFMEYR:** Well when – as I have your affidavit when Mr Cobbinah was pressed on this with you he didn't use language about anticipation, he said he qualified them as pre-approved for MCEP because EML was involved in blending and value add, did I recall your affidavit incorrectly?

**MR MARK PHAKAMILE MAINGANYA:** No I think he said there was going to be blending.

20 **ADV KATE HOFMEYR:** Oh, I didn't read your affidavit in that way. But you accept now that it should not have qualified is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** And you accept that it was falsely represented at the time that they were involved in blending if that had been the representation?

**MR MARK PHAKAMILE MAINGANYA:** Chairperson ...(intervention)

**CHAIRPERSON:** Is that the same that the two of you have just talked about?

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Where he says he understands that they said it was going to happen.

**ADV KATE HOFMEYR:** Indeed.

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson.

**CHAIRPERSON:** Yes?

10 **MR MARK PHAKAMILE MAINGANYA:** So I am trying to say I do not know if the team intentionally named a false representation or whether they understood that it would qualify then, so that is what I am trying to say, I do not know if they intentionally made a false representation or they understood it to be value adding at that point in time.

**ADV KATE HOFMEYR:** Was that an aspect that was traversed with Mr Cobbinah in his disciplinary?

**MR MARK PHAKAMILE MAINGANYA:** If I am correct in his disciplinary he was still asserting that it qualifies.

20 **ADV KATE HOFMEYR:** Thank you. There was an error in the cash flow forecast that was done, that was not picked up by the IDC, is that correct?

**MR MARK PHAKAMILE MAINGANYA:** That's correct.

**ADV KATE HOFMEYR:** And there was an unauthorised payment for a consultant for facilitation that took place notwithstanding which there was further approved funding to be given to EML?

**MR MARK PHAKAMILE MAINGANYA:** Correct.

**CHAIRPERSON:** I'm sorry, just before your next question, is it accepted that whoever made that payment or made the decision that payment be made, the 1.5, that – no I think I may be confusing this, from IDC you just made a payment to the client and the understanding was that the client knew from what they had been told that IDC is not going to pay this 1.5, is that right?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chair that was a written instruction to the client.

10 **CHAIRPERSON:** Yes, yes so the actual payment to Mamela Trust would have been from the client to Mamela Trust?

**MR MARK PHAKAMILE MAINGANYA:** That's correct Chair.

**CHAIRPERSON:** And not from IDC as a payment to Mamela Trust.

**MR MARK PHAKAMILE MAINGANYA:** That's correct Chair, that's correct, it was made by the client.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Indeed, but just to follow that up Chair that was known to the IDC that that payment had been made when it decided to provide further funding?

20 **MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson, this is 2018 now, when it has become known to the IDC.

**ADV KATE HOFMEYR:** Thank you. Mr Mainganya there are certain reporting obligations under PFMA for the IDC in relation to irregular expenditure and losses resulting from criminal conduct, are you aware of those provisions?

**MR MARK PHAKAMILE MAINGANYA:** Yes, yes.

**ADV KATE HOFMEYR:** Is it the IDC's intention to report on this aspect insofar as there has been losses incurred by it resultant from this conduct?

**MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson we do report them in our annual report.

**ADV KATE HOFMEYR:** Thank you. And in going forward is the IDC intending to put any other measures in place to not permit a repeat of this type of corrupt activity?

10 **MR MARK PHAKAMILE MAINGANYA:** Yes Chairperson we have certainly learnt a lot from this experience, first in terms of enhancing our due diligence processes, I think with regard to verifying the contract we could have done more work in that regard. Also with regards to the review processes on due diligence, I think we need to enhance that process to avoid the reoccurrence of these errors, and we have also looking at all other transactions that we approved involving some of these individuals to identify if there are any other events of a similar nature, and based on those findings we will enhance our processes.

20 **ADV KATE HOFMEYR:** Thank you Chair, those are our questions.

**CHAIRPERSON:** Thank you very much Mr Mainganya, if a need arises for the Commission to ask you to come back we will ask you, but for now you are excused, thank you very much.

**MR MARK PHAKAMILE MAINGANYA:** Thank you Chairperson.

**CHAIRPERSON:** Okay. Next week it is SABC and ... I think, ja.



**ADV KATE HOFMEYR:** As I have it Chair.

**CHAIRPERSON:** Yes, yes, we will adjourn for the day. We adjourn.

**INQUIRY ADJOURNS TO 2 SEPTEMBER 2019**