

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

12 APRIL 2021

DAY 372



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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 12 APRIL 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Yes I got your message that Mr Singh's counsel indicated that they might be a few minutes late.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I see that it is sixteen minutes past ten and they are still not here.

10 **ADV SELEKA SC:** They are still not here Chairperson. I have phoned the Advocate again and she indicated to me that they are running ten to fifteen minutes late because they needed to commission an affidavit of Mr Singh so it is a further affidavit apparently which they would like to hand up this morning and that will take us beyond half past ten by the look of things.

CHAIRPERSON: Any affidavit they have for this morning obviously will not be used this morning.

ADV SELEKA SC: Correct.

20 **CHAIRPERSON:** And it could have been dealt with later. So – so it is really – it was not a few minutes.

ADV SELEKA SC: No it is more than a few minutes.

CHAIRPERSON: Ja. So the – the further fifteen minutes or so was from what time when you called them and they said that?

ADV SELEKA SC: From just two...

CHAIRPERSON: Two minutes ago?

ADV SELEKA SC: Just two minutes before the...

CHAIRPERSON: So that will take us beyond half past.

ADV SELEKA SC: Hm. But she is – she is apologising profusely.

CHAIRPERSON: Hm. Ja that is quite late. I am going to adjourn just a pity that we are losing a whole thirty minutes. I will – I will adjourn again and come back at half

10 past.

ADV SELEKA SC: Than you Chair.

CHAIRPERSON: We adjourn.

CHAIRPERSON: I see that Mr Singh and his counsel are still not here.

ADV SELEKA SC: They are not Chair but the attorney is here.

CHAIRPERSON: Ja this is unacceptable. This is completely unacceptable. The commission does not have time

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: We are working into the evenings, we working weekends to try and make sure we can finish in time. We cannot afford to lose time like this. I am going to adjourn. I hope that whatever affidavit they prepared – I am going to adjourn until half past eleven. I would like you

to get a chance to read whatever affidavit they have prepared so that if possible that can be used today as well because we – we are losing time.

ADV SELEKA SC: Yes.

CHAIRPERSON: I am going to adjourn and will return at half past eleven.

ADV SELEKA SC: Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: I see Counsel for Mr Singh and Mr Singh are here now.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes. I am sure Counsel for Mr Singh would like to say something.

ADV VAN DEN HEEVER: Yes good morning Chair person.

CHAIRPERSON: Good morning.

ADV VAN DEN HEEVER: First of all we want to apologise for being late this morning.

20 **CHAIRPERSON:** Hm.

ADV VAN DEN HEEVER: Unfortunately as it go with these things we had a few challenges some of them personal others just running late so we apologise for not being here on time.

CHAIRPERSON: No, no that is fine you have given me a full

explanation in chambers.

ADV VAN DEN HEEVER: Thank you.

CHAIRPERSON: That is fine. Okay alright let us start then and let us try and increase the pace.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Indeed.

CHAIRPERSON: Okay alright please administer the oath or affirmation to Mr Singh again.

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

MR SINGH: Anoj Singh.

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

MR SINGH: I do not.

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

MR SINGH: I do.

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

MR SINGH: So help me God.

ADV VAN DEN HEEVER: Chairperson before Mr Seleka start.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: Based on the questions that was asked on the last occasion we prepared an affidavit for Mr Singh. We believe that it is in the interest of this commission that Mr Singh start with some of those issues. I think having regard to where we were on the last occasion it would give you an the commission clarity on – on some important issues. So we – we beg leave for Mr Singh to first deal with the issues that is in the affidavit before Mr Pule continues leading his evidence.

- 10 **CHAIRPERSON:** Mr Seleka will see how – whether he is – it is accords with his plan to do so but of course if there were things that needed clarification last time at some stage or another they need – the clarification should be given.

ADV SELEKA SC: Yes. Did you...

CHAIRPERSON: And you had a chance to look at the affidavit?

ADV SELEKA SC: Yes during the adjournment I did glance through the affidavit. The affidavit itself is fairly short – it is eight pages but the annexures are quite voluminous.

- 20 **CHAIRPERSON:** Hm. You have not had a chance to look at the annexures?

ADV SELEKA SC: Not all of them.

CHAIRPERSON: Oh some of them.

ADV SELEKA SC: I looked at one or two of them.

CHAIRPERSON: Ja. Ja.

ADV SELEKA SC: But I have seen the contents of the affidavits. What I could do for Mr Singh is to – I could ask you – some of the questions which I intended asking Mr Singh this morning bear on the issues that he seeks to address in the affidavit. So I could follow my line and then in the course of him answering he could refer the Chairperson to that affidavit to the extent that he wants to answer some of the questions.

CHAIRPERSON: Well I ...

10 **ADV SELEKA SC:** And I know the Chairperson has not seen the affidavit.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja you sent me just the affidavit Whatsapp – on Whatsapp and I had a superficial look. So I think that the important thing is whether it is going to be fruitful to ask him questions on these matters before you have read the annexures. If – if it will be manageable that is fine but I have not ...

20 **ADV SELEKA SC:** You have not.

CHAIRPERSON: I have not read the – I have seen some parts of the affidavit I have not read it.

ADV SELEKA SC: No.

CHAIRPERSON: So of course we can – you could continue on the way you had planned and if Mr Singh in responding to

those questions uses information that is in the affidavit that is fine.

ADV SELEKA SC: Yes.

CHAIRPERSON: And – but later on when you have had a chance to look at the annexures and everything.

ADV SELEKA SC: Yes.

CHAIRPERSON: And when I have had a chance we might revisit the issues.

ADV SELEKA SC: Yes I think so.

10 **CHAIRPERSON:** Ja. So I think let us carry on on that basis.

ADV SELEKA SC: Yes. Mr Singh you understand – so we carry on on the basis that I have prepared insofar as you need to refer to this new affidavit – ja.

CHAIRPERSON: I think when – I think when he answers he can answer using the information that is in the affidavit.

ADV SELEKA SC: Yes.

CHAIRPERSON: But since we have not had...

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Read it there might be difficulties if he is going to refer in detail.

ADV SELEKA SC: Oh yes.

CHAIRPERSON: To annexures. So maybe he can use the knowledge that he has and say that some of the things are dealt with in certain annexures at a later stage when we

have all had a chance to read the affidavit and annexures.

ADV SELEKA SC: Yes.

CHAIRPERSON: We can go back and then he can supplement his answers by referring in detail if he wishes to the annexures.

ADV SELEKA SC: Yes. Yes Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you. Okay you follow that Mr Singh. Chairperson the affidavits of Mr Singh are found –
10 well the ones which are already in the bundle are found in Eskom Bundle 16.

CHAIRPERSON: I have got Bundle 16.

ADV SELEKA SC: Eskom Bundle 16. But the bundle Chair which I wish us to focus on as we proceed now is Eskom Bundle 14(c). Eskom Bundle 14(c) and from time to time I will refer to the relevant passages.

CHAIRPERSON: I do not want to forget this Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: It relates to Eskom but not to Mr Singh. I
20 wanted to look for something in Mr Marokane's affidavit for whether we can – I could only see the supplementary affidavit or second not the first. Apparently when my Registrar mentioned the name to you – you...

ADV SELEKA SC: Oh yes.

CHAIRPERSON: You could not remember.

ADV SELEKA SC: Yes.

CHAIRPERSON: But maybe I did not pronounce it correctly when I spoke to her but I thought I had because I subsequently checked the spelling and I thought I got it right.

ADV SELEKA SC: Oh okay.

CHAIRPERSON: You know which affidavit I am talking about?

ADV SELEKA SC: Yes it is – if it is Dan Marokane Chair I
10 know.

CHAIRPERSON: Yes well I do not know.

ADV SELEKA SC: Yes.

CHAIRPERSON: He – I do not know his first name I just know the surname.

ADV SELEKA SC: Yes.

CHAIRPERSON: So if you can indicate to her where she will find that.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** I will.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you. Mr Singh just by way of recapping on this we were mainly dealing with the McKinsey matters last time when we adjourned. We dealt with the corporate plan and the – we started with the MSA and on the

corporate plan it was a debate for the in inverted commas “at the heart” who rendered services and we were trying to enquire as to who rendered services and in regard to the – well we had gone beyond that enquiry about who rendered services and on the MSA we were dealing with the conclusion thereof.

Now I just want to quickly finish off by reference to the affidavits of Dr Weiss and Dr Amankwah on the services or the identity of the entities which rendered services in
10 respect of the corporate plan and I am going to simply refer you to the paragraphs without too much time being taken on that.

So that is Eskom Bundle 14 Chairperson. Mr Singh turn – I will start first with – firstly with the affidavit of Dr Weiss and I – I will read from paragraph 38 – oh page – page 692 – 692 yes.

MR SINGH: Black numbers, correct?

ADV SELEKA SC: The black numbers as usual. 692.

MR SINGH: I am there.

20 **ADV SELEKA SC:** You are there.

MR SINGH: Paragraph 38?

ADV SELEKA SC: Ja. So you will see the heading there above paragraph 37 is an introduction of Regiments/Trillian at Eskom and subsequent dealings with Regiments/Trillian and then the sub-heading is introduction of Regiments at

Eskom.

Then paragraph 38 says:

“As discussed above when Mr Molefe and Mr Singh transitioned from Transnet to Eskom in mid-2015 Regiments worked with McKinsey on a two month project that arose out of the CEO and CFO on board. I understand that Regiments was an established firm that had relevant expertise on the financial and balance sheet aspects of the project and thus well equipped to lead the portion of the project. I was aware of the project but had limited personal involvement in it and thus limited interaction with Regiments at that time.”

Then under paragraph 39 you have a heading where he says:

“Mid-2015 work with Regiments at Eskom”

And then paragraph 40 reads:

“McKinsey presented the model developed during the two month project to Mr Singh around July/August – or August 2015 and was asked to support Eskom in writing its Annual Corporate Plan based on the model. Though McKinsey had not previously been

engaged to provide support to Eskom in writing this annual submission I believe the model was representative of the expensive institutional knowledge we had of Eskom and that Mr Singh recognised the importance of such existing knowledge during a period of great challenges for Eskom when a sound corporate plan was urgently needed.”

Then he says in paragraph 41:

10 “We wrote a proposal and the letter of acceptance we received from Eskom specified McKinsey was required to engage a SD and L partner. Given Regiment’s financial modelling capabilities and work on the previous projects which form the basis of the corporate plan we envisaged Regiments as the SD and L partner for the corporate plan project.”

In paragraph 42 he then says:

20 “As explained further below in October or November 2015 we learnt that a Regiment’s partner with whom we had worked on the month – on the two month project was planning to – a spin-off of the management consulting arm of Regiments which would

ultimately result in the creation of an entity called Trillian Management Consulting. We did not have a formal sub-contracting agreement for the corporate plan but we worked alongside Regiments/Trillian who provided financial component of the modelling required for the corporate plan.”

You see that Mr Singh?

MR SINGH: Yes Sir.

10 **ADV SELEKA SC:** Now the dates of October and November 2015 are significant in regard to a partner of Regiments going to form a company called Trillian Management Consulting because he comes back to that in paragraph 45. And you will see that as – he says:

20 “As discussed above around October or November 2015 we learnt that a Regiments partner Dr Eric Wood was in the process of buying out the management consulting arm of Regiments from his business partners and would spin it off into Trillian. At that time Regiments was already working on the corporate plan and McKinsey was finalising the turnaround programme with Eskom which envisaged Regiments as McKinsey’s as 00:15:34 partner. Though my personal

interaction with Regiments were limited at the time I understood that many consultants then at Regiments would move over to Trillian with Dr Wood and conduct the same management consulting business under the Trillian corporate name.”

And what I wish to draw to your attention and I think I must have done so previously is that sentence which he says:

10 “At that time Regiments was already working on the corporate plan and McKinsey was finalising the turnaround programme.”

I am going to read again or further from the affidavit of Mr Amankwah and I want to read a paragraph where he makes concluding remarks after several paragraphs in his affidavit.

So let us go to page – and I will give you a chance to comment after that because the theme is the same. Page 702.

20 **MR SINGH:** Sorry just repeat that 7?

ADV SELEKA SC: Yes 702.221.

MR SINGH: .221

ADV SELEKA SC: Yes. Now just for context ...

CHAIRPERSON: Remember to just tell us Mr Seleka whose affidavit you are ...

ADV SELEKA SC: Yes.

CHAIRPERSON: Referring to at 702.221.

ADV SELEKA SC: The – yes – the affidavit that we read pre – that we have just come from now.

CHAIRPERSON: Dr Weiss.

ADV SELEKA SC: Is Dr Weiss' affidavit.

CHAIRPERSON: Oh this one is still his?

ADV SELEKA SC: This one now is one of Mr Amankwah Chairperson.

10 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Safroadu Yeboah-Amankwah.

CHAIRPERSON: Okay.

ADV SELEKA SC: Which starts on page 7021. 174.

CHAIRPERSON: Okay give it to me.

ADV SELEKA SC: We read certain excerpts from this affidavit previously and I have said page 702.221. Just by way of context Mr Singh what Mr Amankwah deals with starts on the page 2 – page 702.220 and it is under the heading 9 February 2016 Letter. And he has – is Chairperson on page

20 702.220?

CHAIRPERSON: Not actually but I did hear that I am checking something else. You can continue I have got 220.

ADV SELEKA SC: Yes. Mr Singh let us start on point 220 – paragraph 20.18.

ADV SELEKA SC: We going to 220?

ADV SELEKA SC: Ja. Paragraph 20.18. So he say:

“By way of summary and in light of what has been stated above I draw attention to the following features of the relationship between McKinsey and Trillian – one he says:

10 1. McKinsey entered into discussions with Trillian in order to explore the possibility of working with Trillian as a supplier development partner at Eskom. Those discussions were terminated in March 2016 when Trillian failed to satisfy McKinsey’s due diligence requirements.

2. McKinsey never entered into a sub-contract or any other contractual relationship with Trillian whether for the corporate plan/project or the turnaround programme. Trillian has never been a sub-contractor to McKinsey.”

And then he mentions other points. Can you...

20 **CHAIRPERSON:** Well they are important –

3. Says McKinsey never paid money to Trillian.

ADV SELEKA SC: Yes.

CHAIRPERSON: And says

4. Or McKinsey never authorised payment to Trillian by Eskom. Then 5.

5. Any payments that were made by Eskom to Trillian or paid after McKinsey had informed Eskom of the fact that Trillian had failed its due diligence requirements.
6. McKinsey has found no evidence to suggest that any of its personnel were involved in corrupt activities with any employees of Trillian.”

I just thought 3, 4 – 3, 4 and 5.

10 **ADV SELEKA SC:** Yes Chair.

CHAIRPERSON: Appear to be quite important in the light of the issues.

ADV SELEKA SC: Yes, no the Chairperson is correct those aspects are important. And Then Mr Singh in regard to this letter of the 9th of February 2016 which relates to the direct payment to Trillian of R30.6 million that reads on the next page. He says paragraph 21.1.

20 “On 9 February 2016 Mr Vikas Sagar transmitted a letter to Mr Prish Govender of Eskom.”

And he references their annexure K65.

“The letter related to the professional services contract that is the corporate plan. The letter recorded that McKinsey has sub-contracted a portion of the services to be

performed under the agreement to Trillian Proprietary Limited. It authorised Eskom to make payments directly to Trillian but only if McKinsey confirmed in writing that it was satisfied with the relevant services performed by Trillian and that the amount of the invoice was correct. Two conditions that were never met.”

Then the next paragraph 21.2 says:

10 “Trillian was never McKinsey’s sub-contractor under the corporate plan because the assertion in the letter that McKinsey had sub-contracted to Trillian was wrong. This letter has generated significant confusion while it was expected at the time that Trillian would be McKinsey’s supply development partner on the turnaround programme which Mr Singh I will add which would have been administered under the MSA as explained
20 elsewhere in my statement McKinsey had not yet entered into a sub-contract with Trillian and would indeed in the weeks following the letter decide not to do so.”

And please turn to page 702.

CHAIRPERSON: Well Mr Seleka be careful not to have a

situation where you have read to Mr Singh a number of things.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: And when you ask him to comment he cannot remember a lot of things so I think you need to...

ADV SELEKA SC: Yes.

CHAIRPERSON: Break it into manageable portions.

ADV SELEKA SC: Components ja. That is alright Chair. It is just the paragraphs I wanted to read all deal with the
10 same theme.

CHAIRPERSON: Ja okay alright.

ADV SELEKA SC: Ja. So they all deal with the same theme.

CHAIRPERSON: Okay that is fine. Okay alright.

ADV SELEKA SC: I will give him a chance just to respond to this one before I go to the next ones. Mr Singh lastly turn to page 702 – 2.224.

MR SINGH: 224?

ADV SELEKA SC: Yes. 224 paragraph 21.7 he says:

20 “In some McKinsey regrets that the 9 February letter contained inaccuracies which generated confusion and misunderstanding. All of the people who had – who had involvement in the creation of the letter have been disciplined or have left the firm but the notion that the 9 February letter can be taken

to confirm that Trillian was actually McKinsey's sub-contractor is wrong. This has been thoroughly investigated and cannot be reconciled with contemporaneous information. Such evidence makes clear that Trillian was not McKinsey's sub-contractor was still undergoing the due diligence process and never became McKinsey's sub-contractor."

10 I can read further but I suppose you – you get the point of what the two gentlemen are making in regard to the corporate plan. So what emerges from here is that in respect of the corporate plan McKinsey was not – I mean Trillian was not just not but never McKinsey sub-contractor in respect of the corporate plan. We can deal with that first or you can even address it in respect of the MSA which is the turnaround programme in respect of which they also or he also says McKinsey – Trillian was never the sub-contractor to McKinsey because of failing to pass the test on
20 the due diligence. But let us first deal with the corporate plan.

CHAIRPERSON: And as – as you prepare to do that Mr Singh I just want you to be aware that last time and I think the occasion for last time we dealt with the issue of whether it was Regiments who had the sub-contract with McKinsey or

Trillian or both and the question of who rendered the services was it Trillian or Regiments and the question of whether Eskom should have paid Trillian direct. So I do not want us to repeat the same thing but I do believe that Mr Seleka was right to draw your attention to the portions of affidavits that he has done so. So as you respond just bear in mind that I know what you – what your version was that you have said or if you do not intend changing it then you just want to add or clarify it is enough. You do not need to –

10 go into details about that.

MR SINGH: Thank you Mr Chair and again just from my side just apology for the delay that we had caused this morning.

CHAIRPERSON: Yes.

MR SINGH: But we – at least I am of the view that the information that was provided this morning would eventually in time.

CHAIRPERSON: Yes.

MR SINGH: Reduce the amount of time we would have to spend on this one.

20 **CHAIRPERSON:** No, no that is fine. Your counsel did explain to me in chambers. It is just that the way it happens was not good but as I have said your counsel has explained everything to me and...

MR SINGH: Thank you for...

CHAIRPERSON: Ja.

MR SINGH: Thank you for your indulgence and understanding Sir.

CHAIRPERSON: Ja okay alright.

MR SINGH: Mr Chair just a couple of points before we go into the – the responses. Firstly in terms of Dr Weiss' affidavit Mr Chair I would like to place on record that the – the paragraphs that I am asked to respond do not form part of the 3.3 Notice that we have received.

CHAIRPERSON: Not form part of?

10 **MR SINGH:** Part of the 3.3 Notices that we have received.

CHAIRPERSON: Oh is that so?

MR SINGH: Relating to Mr Weiss' statement because we received a redacted version.

CHAIRPERSON: Oh.

MR SINGH: To that statement.

CHAIRPERSON: Is that so?

MR SINGH: Right.

CHAIRPERSON: But have you had a chance to read them subsequent to the 3.3 Notice that did not include them or you
20 have not had a chance to read them?

MR SINGH: Well we have not received the unredacted version I think as of here – as at now but obviously we have read it now to Mr Seleka's passage.

CHAIRPERSON: Oh so your only chance to look at them was now?

MR SINGH: Was now, we did have, or I certainly have occasion to read Dr Weiss' transcripts.

CHAIRPERSON: H'm, h'm.

MR SINGH: Relating to his evidence. And secondly ...[intervenes]

ADV VAN DEN HEEVER: ...sir ...[intervenes]

CHAIRPERSON: Oh, sorry.

ADV VAN DEN HEEVER: Sorry, to interrupt. Maybe just to place on record that we have in writing – probably on
10 the go, requested the unredacted versions of both Dr Weiss' and Fines' affidavits. As I think in my client's response to with what we were given, he makes it quite clear that he has only been given certain pages with certain paragraphs but up to now – and I think I have approached my learned friend, also, on one of the occasions ...[intervenes]

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: ...but we have not yet received the unredacted versions.

20 **CHAIRPERSON:** Yes. Okay. No. Mr Seleka.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: H'm?

ADV SELEKA SC: Chair, I know that they – we traversed this last time. They were or Mr Singh was given the affidavit through the Money Flow work stream because they

– the evidence of Dr Weiss was led by the Money Flow. So the request, I think, would have gone – would have been addressed to that work stream.

CHAIRPERSON: H'm.

ADV SELEKA SC: But the full affidavit of Dr Weiss is in the bundle.

CHAIRPERSON: H'm.

ADV SELEKA SC: Mr Singh has been given the bundle from the time or prior to the time of his appearance.

10 **CHAIRPERSON:** H'm.

ADV SELEKA SC: And we have asked him questions, previously, on two occasions relevant to that.

CHAIRPERSON: I do remember that there was a request to ...[intervenes]

ADV SELEKA SC: Correct.

CHAIRPERSON: ...an affidavit of Dr Weiss. It is just that I do not know whether he has provided one affidavit or more one affidavit.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** But I do recall that there was reference to at least an affidavit of Dr Weiss.

ADV SELEKA SC: Yes.

CHAIRPERSON: If you say to me this is the only affidavit, then it means it was this one?

ADV SELEKA SC: It is this one but what Mr Singh and my

learned friend are saying is that when they were given the affidavit the first time around, last year, it was redacted.

CHAIRPERSON: By the Money Flows?

ADV SELEKA SC: By the Money Flows.

CHAIRPERSON: Ja.

ADV SELEKA SC: It was redacted.

CHAIRPERSON: Yes.

ADV SELEKA SC: But I have since explained to them, Chair, and even here in an open session that witnesses are
10 given affidavits to the extent that they are implicated. Mr Singh has dealt with the affidavit in reply. He has a replying supplementary affidavit where he is expressly saying the affidavit of Dr Weiss does not implicate him.

So all we are doing, Chair, from our point of view, is to put Dr Weiss' affidavit in the bundle for his benefit and then we put the version of Dr Weiss to him.

CHAIRPERSON: But the – but your real answer to the concern ...[intervenes]

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** ...is that Dr Weiss' affidavit to which you have referred know has been in the bundle that was given to Mr Singh quite some time back.

ADV SELEKA SC: Prior to his appearance by ...[intervenes]

CHAIRPERSON: Before his first appearance?

ADV SELEKA SC: Before his appearance in the Eskom matters.

CHAIRPERSON: In the Eskom matters?

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes. Counsel for Mr Singh, do you accept that?

ADV VAN DEN HEEVER: Except that, Chairperson ...[intervenes]

CHAIRPERSON: Yes.

10 **ADV VAN DEN HEEVER:** I think what my client is trying to explain and what we are trying to explain is that at the time when he responded ...[intervenes]

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: It was a partial response to a redacted version.

CHAIRPERSON: Yes, yes.

ADV VAN DEN HEEVER: So, basically, he cannot be faltered for only dealing with those specific paragraphs.

CHAIRPERSON: Ja, okay. No, that is fine. As I
20 understand it, Mr Singh, Dr Weiss' affidavit was included in the bundle that was given to you before you came to testify in the Eskom work stream the last time for – I mean, for the first time. And if that is so, it would seem that there has been enough time for you to familiarise yourself with it.

And from what Mr Seleka says, it does look like you did look at it and you did not think there was anything implicating you. And you may be right about that but what Mr Seleka is doing – is saying: Here is something might not be implicate you in Dr Weiss' affidavit but it might be contrary to your version about Trillian. So I think that is the point.

MR SINGH: Mr Chair, the point is taken.

CHAIRPERSON: H'm.

10 **MR SINGH**: I think my additional comment regarding this is, Mr Chair. If the issue relating to Dr Weiss was going to be relevant to the discussion ...[intervenes]

CHAIRPERSON: Relating to?

MR SINGH: The affidavit of Dr Weiss ...[intervenes]

CHAIRPERSON: H'm?

MR SINGH: ...was relevant and produced in the bundle.

CHAIRPERSON: H'm?

MR SINGH: Mr Seleka is correct in saying that the affidavit that we have been provided to before did not
20 implicate me. Yet we comment on the paragraphs that were required to comment. If it was as significant as what we are now saying, my question is. Notwithstanding the fact that it does not implicate me, we should have been given the opportunity to comment on it in its entirety.

CHAIRPERSON: Well, but I thought you said it does not

implicate you?

MR SINGH: On the redacted version, Mr Chair.

CHAIRPERSON: Yes.

MR SINGH: Not this one.

CHAIRPERSON: As I understand it, which is not redacted, was part of the bundle that was given to you a long time ago.

MR SINGH: Yes, Mr Chair, but the comment around not being implicated relates to the unredacted version.

10 **CHAIRPERSON**: Okay, no, no, no. I understand that, yes, yes.

MR SINGH: And a similar point I have with Mr Amankwah.

CHAIRPERSON: Yes.

MR SINGH: Yes, it is ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: Yes, it is now going back to the bundle. We have access to it ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: ...because of Mr Seleka has ...[intervenes]

20 **CHAIRPERSON**: Yes.

MR SINGH: ...has given it to us.

CHAIRPERSON: Yes.

MR SINGH: But again, if we were placing such reliance on this document, as we are now doing, then I would have at least expected that this would have been provided to us

for us to provide an appropriate affidavit.

CHAIRPERSON: Yes. Well, but I think the bottom line is. As far as these particular paragraphs that Mr Seleka has referred you to. As I understand the position is. They might not be implicating you. All he is doing is. You have been given certain version and here is somebody else who might be talking not having you in mind but says something that might be contradictory to what you want to say.

In fairness, he wants to give you a chance to
10 say: What do you say about Dr Weiss who says the following things?

MR SINGH: Ja, I realise that.

CHAIRPERSON: Ja.

MR SINGH: I just want to place on record ...[intervenes]

CHAIRPERSON: Ja, ja.

MR SINGH: ...my reservations.

CHAIRPERSON: Ja.

MR SINGH: But I am done.

CHAIRPERSON: Okay.

20 **MR SINGH:** So in that light, we can continue.

CHAIRPERSON: No, no that is fine. Ja.

MR SINGH: Mr Chair, I am just trying to think the best of way of dealing with this issue. Okay, it is fine. Let us deal with 692 first, relating to Dr Weiss' comments.

CHAIRPERSON: Do you want us to go to what page, 220,

or what now?

MR SINGH: Sorry, sir, 692.

CHAIRPERSON: 692 first? Yes, okay. Yes, you may continue.

MR SINGH: Mr Chair, if we look at the paragraphs that have been referred to by Advocate Seleka, as he had mentioned, they relatively have one theme that runs throughout, is that mister – Dr Weiss was of the view, at some point in time, there was Regiment that was doing
10 certain amount of work and there was then a period of time when there was a, let us call it a merger or acquisition type of initiative that was happening between Regiments and Trillian.

ADV SELEKA SC: No, a spin-off. A spin-off.

CHAIRPERSON: Alright, alright ...[intervenes]

ADV SELEKA SC: A spin-off.

CHAIRPERSON: Ja, the ...[intervenes]

MR SINGH: Okay let us call it a buy-out.

CHAIRPERSON: I think there would be a normal word for
20 it. A break-away. [laughs]

MR SINGH: Yes.

CHAIRPERSON: There was to be a break-away from Regiments.

MR SINGH: Yes.

CHAIRPERSON: Ja.

MR SINGH: So, Mr Chair, I think – I certainly do not deny that but what I want to raise in terms of the issue relating to the – whether Mr Weiss has concretely concluded that Trillian or Regiments had done the copy plan work. If you have reference to his transcripts, those that I have read, then we can probably go to the relevant paragraph.

When he was posed the questions, Chair, it was not definitively answered. He basically said, there were emails, there was training, there were people, there were
10 meetings and Regiments and Trillian people attended these meetings.

CHAIRPERSON: Regiments and Trillian people..?

MR SINGH: Attended these meetings.

CHAIRPERSON: Ja.

MR SINGH: They were trained as such.

CHAIRPERSON: H'm.

MR SINGH: Emails came from Trillian email addresses. They came from Regiments' email addresses. So he could not conclusively conclude that Trillian had not done the
20 work, from my recollection of his transcripts. And that is my response to the question relating to Dr Weiss' comments.

CHAIRPERSON: But of course ...[intervenes]

MR SINGH: Mr Chair, for now. If you allow me?

CHAIRPERSON: No, before you proceed.

MR SINGH: Yes.

CHAIRPERSON: I just want to say. Depending on whether you accept his evidence that Trillian never had a subcontract with McKinsey. Your answer that you gave might not be so important.

MR SINGH: Mr Chair, I do not think whether Trillian had a subcontractor for McKinsey was put to Dr Weiss.

CHAIRPERSON: Yes. Yes, but in his affidavit, in that – in the passages that Mr Seleka read earlier on, if I recall
10 correctly. It is just that I was reading other passages whereas he might not have read. So I may be mistaken but he does say somewhere that... No, actually, the – one of the passages that he read where I even read more of the paragraphs, he does say that Trillian never had any contract with McKinsey.

MR SINGH: So ...[intervenes]

CHAIRPERSON: So I am saying, if that – if you accept that and I do not know if you do accept it. If you accept it, it may be that the fact that they may have or certain people
20 who were with Regiments or Trillian attended meetings, the weight one attaches to that, it might be different if compared to a situation where there was a contract.

So, in other words, if the contract was only with Regiments, whatever that personnel may have been doing, they may have been doing for Regiments and not Trillian if

Trillian had no subcontractors with McKinsey.

MR SINGH: Mr Chair, firstly, the passage that you are referring to comes from Mr Amankwah(?).

CHAIRPERSON: Oh, okay.

MR SINGH: Not Dr Weiss.

CHAIRPERSON: Not Dr Weiss ...[intervenes]

MR SINGH: And I will deal with that when we are dealing with ...[intervenes]

CHAIRPERSON: Okay, that is fine. That is fine.

10 **MR SINGH**: But for now my response relating to the paragraphs is that, from what I recall from Dr Weiss' transcripts is that he is not definitive on the question ...[intervenes]

CHAIRPERSON: Not definitive?

MR SINGH: He was not definitive.

CHAIRPERSON: H'm?

MR SINGH: In terms of saying Regiments' people did the work ...[intervenes]

CHAIRPERSON: H'm.

20 **MR SINGH**: On the Corporate Plan.

CHAIRPERSON: H'm.

MR SINGH: He was not.

CHAIRPERSON: H'm.

MR SINGH: Yes. And I will come back to this point when I deal with the issue of Mr Amankwah's comments. In

having to deal with Mr Amankwah's comments. I think, Mr Chair, I will have to refer you back to one of my affidavits. I am not too sure which one it is. It is the one that we responded to the Corporate Plan.

ADV SELEKA SC: It is the first ...[intervenes]

CHAIRPERSON: You want your counsel to assist – to remind you?

ADV SELEKA SC: I know what it is, Chair.

CHAIRPERSON: Oh.

10 **ADV SELEKA SC:** Eskom Bundle 16, page 591.

MR SINGH: Filed there?

ADV SELEKA SC: Yes.

MR SINGH: [No audible reply- silence]

CHAIRPERSON: Are you referring to your affidavit that is on page 591 of Bundle 16, Mr Singh?

MR SINGH: Sorry, sir. I am there. I am just looking for the relevant paragraphs.

CHAIRPERSON: Okay. You are looking for a paragraph that says what so we can assist you if we see it.

20 **MR SINGH:** in terms of the STLN - I think I have found it in paragraph 15.

ADV SELEKA SC: [Indistinct] ...[intervenes]

CHAIRPERSON: Paragraph 15?

MR SINGH: You see, Mr Chair, if you look at para – so page 597, it deals with the point I was making, which says:

“Dr Weiss, in addition, outlines how Trillian came to be an SDL partner instead of Regiments...”

Then somebody here outlines the following in this regard:

“Dr Wood intended to start up his own Black Economic Empowerment in management consulting called Trillian.

This would be achieved by buying out
10 Regiments’ management consulting division.

McKinsey communicated with both Trillian’s and Regiments’ staff.

McKinsey trained staff that moved from Regiments to Trillian...”

So, Mr Chair, this is what I was talking about in terms of the fact that he was not actually definitive to say Regiments did not do the work on the Corporate Plan, firstly.

ADV SELEKA SC: Sorry, Mr Singh. But he is talking
20 about Trillian becoming an SDL partner of McKinsey instead of Regiments. That is in regard to the Turnaround Programme, the NMSA. It is not the Corporate Plan.

MR SINGH: Mr Chair, we can check that but my understanding and my recollection of the transcripts was, if that was a response to a question as to whether he could

say whether Regiments or Trillian was actually the people that did the work on the Corporate Plan.

Further, Mr Chair, I would like to take you to the emails that relate to the 9th of February letter. I am just trying to find it.

ADV SELEKA SC: In fact, Mr Singh, you have answered that question yourself in the paragraph – in the preceding paragraph on the page before which specifically shows that his answer relates to the Turnaround Programme and not
10 the Corporate Plan.

MR SINGH: Sorry, Mr Seleka.

ADV SELEKA SC: Yes.

MR SINGH: Just give me one second. I just want ...[intervenes]

CHAIRPERSON: No, that is fine.

MR SINGH: Sorry, Mr Chair. I am not sure where this...
Sorry.

CHAIRPERSON: You want to indicate what you are looking for?

20 **MR SINGH:** I am looking for the emails that relate to the 9th of February letter.

CHAIRPERSON: An email from who to who?

MR SINGH: It is a string of emails Mr Chair.

CHAIRPERSON: Oh.

MR SINGH: That culminated in the issuance of this 9th of

...[intervenes]

CHAIRPERSON: That relates to the letter from McKinsey

...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: ...that talked about Trillian?

MR SINGH: Trillian.

CHAIRPERSON: Mr Seleka, are you able to assist him?
And his counsel can indicate if she is able to say where we
find those emails.

10 **MR SINGH**: It is in one of the affidavits but while we
looking for that, Mr Chair. In the interest of primarily, I can
just deal with ...[intervenes]

CHAIRPERSON: Or what we can do is. We can deal with
other matters and then later on ...[intervenes]

MR SINGH: No, I will deal with Mr Amankwah's
...[intervenes]

CHAIRPERSON: Yes, okay.

MR SINGH: Responses to the ...[intervenes]

CHAIRPERSON: Okay.

20 **MR SINGH**: ...while we are trying to find this.

CHAIRPERSON: Okay, h'm.

MR SINGH: So we are looking at Mr Amankwah's issues
relating to paragraph 20.18(?).

CHAIRPERSON: Are you done with Dr Weiss?

MR SINGH: No, no I am saying ...[intervenes]

CHAIRPERSON: You will come back?

MR SINGH: I will come back once we find it.

CHAIRPERSON: Okay alright. That is fine.

MR SINGH: If we indeed have then.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Ja. Mr Singh, if we move on to Mr Amankwah.

MR SINGH: Yes.

ADV SELEKA SC: I was saying to you. In your affidavit
10 ...[intervenes]

MR SINGH: Yes?

ADV SELEKA SC: ...you referred the Chairperson to page 597 and you read paragraph 18.

MR SINGH: Yes.

ADV SELEKA SC: And I was drawing your attention that what Dr Weiss is talking about there is the proposal to have Trillian as an SDL partner of McKinsey in the Turnaround Programme and not the Corporate Plan because we are dealing with the Corporate Plan.

20 **MR SINGH:** That is correct, sir.

ADV SELEKA SC: Yes. And I am saying, the answer that gives credence to what I am putting to you is evident from your quotation in the previous page that he is specifically dealing with the Turnaround Programme. You are quoting from page 595, paragraph 17.

MR SINGH: That is correct, sir.

ADV SELEKA SC: And in summary, Dr Weiss states, and then you have all those paragraphs.

MR SINGH: Yes, sir.

ADV SELEKA SC: Regiments was actually quite capable internationally - and he talks about Regiments. If you turn the page and you go to the last paragraph on that page, he says:

10 “We have worked with them (that is Regiments) before and even done a due diligence with them before and this, you know, how – and we consider them also as potential supply development partner for Eskom’s Turnaround Programme...”

 Then you go on to say what you say in paragraph 18. And you are correct insofar as it is the Turnaround Programme because they did intent to replace Regiments with Trillian as a subcontractor in respect of the Turnaround Programme.

20 **MR SINGH**: Mr Chair, as I said. I will check these transcripts and come back, if indeed it is that ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...we will, obviously, accept that.

CHAIRPERSON: Ja-no, it is fine.

MR SINGH: But for now I am saying, the reason why I put this is because of my distinct recollection that this was asked.

CHAIRPERSON: No, that is fine.

MR SINGH: As it relates to page 29 of his transcript.

CHAIRPERSON: Yes, you have a chance to look at those emails and then come back.

MR SINGH: Yes.

ADV SELEKA SC: And Mr Amankwah?

10 **MR SINGH**: So, Mr Chair, in terms of responding to Mr Amankwah's affidavit relating to paragraphs – sorry, on page 702.221, which is paragraphs 20.18, 21.1, 21.2 and 21.7. Mr Chair, in order for me to respond. Or well, now... Okay. I would need for the Chairperson to actually go to paragraph 21.5.

CHAIRPERSON: Go back to Bundle 14, is that right?

MR SINGH: Yes. Yes, sir.

CHAIRPERSON: What page?

MR SINGH: Let me just get it for you, sir. It will be on,
20 Mr Chair, 702.221.

ADV SELEKA SC: Sorry, just give us the reference again, Mr Singh?

MR SINGH: It is starting on 702.221, which is at – where you stopped at and you have quoted all of those paragraphs.

CHAIRPERSON: Ja.

ADV SELEKA SC: Oh, yes.

MR SINGH: Right.

CHAIRPERSON: I have got it.

ADV SELEKA SC: Thank you.

MR SINGH: So, Mr Chair, in order for me to respond to those specific paragraphs and the issue that was put to me by Mr Seleka. If we – I would need for the Chairperson to go to paragraph 21.5 which is on page 702.221.

10 **CHAIRPERSON:** Yes, I am there.

MR SINGH: Okay.

CHAIRPERSON: Ja?

MR SINGH: Mr Chair, if you would allow me, I will read the following. This 9th of February 2016 letter have been prepared at the request of Eskom.

CHAIRPERSON: Yes.

MR SINGH: And Trillian.

CHAIRPERSON: At the request of both?

MR SINGH: At the request of both.

20 **CHAIRPERSON:** Yes.

MR SINGH: Okay.

CHAIRPERSON: And was the request then granted?

MR SINGH: Well, Mr Chair, that is ...[intervenes]

CHAIRPERSON: It will be checked?

MR SINGH: Yes.

CHAIRPERSON: Okay.

MR SINGH: And Trillian. IN order to streamline the process for Trillian to receive payments for work, it had undertaken to that date in conjunction with the Corporate Project Plan.

CHAIRPERSON: You are reading now from page 702.221. What paragraph?

MR SINGH: Paragraph 21.5.

CHAIRPERSON: Oh, at 222. Ja.

10 **MR SINGH:** Oh, sorry, yes. 701... 702.222.

CHAIRPERSON: Ja.

MR SINGH: Paragraph 21.5.

CHAIRPERSON: Yes.

MR SINGH: It says – let me start again, Mr Chair.

CHAIRPERSON: H'm?

MR SINGH: Yes.

20 "This 9th of February 2016 letter has been prepared at the request of Eskom and Trillian in order to streamline the process for Trillian to receive payment for work it had taken – undertaken up to that date in connection with the Corporate Plan Project...:

CHAIRPERSON: H'm?

MR SINGH: It then puts in brackets:

"This letter has nothing whatsoever to do with

the Turnaround Programme...:

This is clear from the contents of the letter.

Okay?

CHAIRPERSON: H'm.

MR SINGH: So what it says to me, Mr Chair, that this letter was not simply contemplated by somebody in McKinsey that made a mistake to this letter.

CHAIRPERSON: Ja.

MR SINGH: Firstly. Secondly. He then goes off to state
10 in paragraph 21.1, 21.5(1).

CHAIRPERSON: Yes.

MR SINGH: Yes.

“Dr Weiss and McKinsey partner and Mr Sagar, consulted with McKinsey’s legal advisor regarding the content of the letter.

As a result, certain internal communication are subject to attorney-client privilege and have not been reflected below...”

But what is important for me is that Dr Weiss,
20 whose affidavit we have just been through, is part of this process in preparing this letter.

CHAIRPERSON: And I am not sure that, Mr Seleka, an internal legal advisor would give advice to an attorney-client privilege.

MR SINGH: Well, that was the other raised point that

counsel going to raise, but I ...[intervenes].

CHAIRPERSON: [laughs] Ja, I mean an internal legal advisor is just an employee.

MR SINGH: Yes, exactly.

CHAIRPERSON: Ja.

MR SINGH: Right?

CHAIRPERSON: Yes. So they might have to produce those – that – those communications they did not produce because they sought to – they sought cover under
10 attorney-client privilege.

MR SINGH: And Mr Chair, we will implore that we will actually get there.

CHAIRPERSON: H'm.

MR SINGH: Because we would like to see what this was.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes. Well, that must be pursued Mr Seleka.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** It has not been pursued, ja.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: H'm. Yes, Mr Singh.

MR SINGH: Then on subparagraph 2 it says:

“On 26 January 2016 ...[intervenes]

CHAIRPERSON: I am sorry. It is just – ja, I have got

something with regard to my - no, but I think something to be dealt with outside the hearing. Okay alright. Continue.

MR SINGH: Mr Chair, then 21.5(2):

“On 26 February 2016, Trillian, being represented by Mr Clive Angel, and others copied, wrote to McKinsey, Dr Weiss and Sagar...”

So these are the emails that I am trying to find, Mr Chair, but obviously it is confirmed.

10 “...seeks assistance in receiving payment from Eskom...”

And he actually attaches the same emails that I am trying to find.

“Mr Angel asked McKinsey to write to Eskom on Trillian’s behalf, seeking permission for McKinsey and Trillian to invoice Eskom separately under any contracts where Trillian is appointed supply development partner...”

Okay? And I concede, it is any at this stage.

20 “On 8 February 2016, Sagar emailed Dr Weiss relating that Eskom had asked McKinsey to issue a letter stating that Trillian can invoice Eskom directly...”

And there is the email again.

“Mr Sagar stated that he had received a

request from Mr Angel and asked Dr Weiss whether he had also received the same request.

In response, Dr Weiss informs Sagar that he had not received the request...”

But obviously that is contradictory to the email.

Paragraph 4. Oh, sorry, bracket 4.

“On 9 February 2016, Sagar, after consulting with McKinsey in-house counsel sent the first draft of the proposed letter to Mr Angel and Dr Wood at Trillian.

And there is the attached email.

Later that day Sagar sent the signed letter to Angel and Dr Wood relating that this would be the letter they would be sending to Eskom.”

And then there is the letter. Then (5):

“Shortly thereafter Sagar also transmit the letter to Prish Govender at Eskom. While the covering email discusses the MSA contract, the 9 February letter only relates to fixed fee six month corporate plan for which work can largely been completed in the time of this letter. This is clear from the content of the letter. Eskom also confirmed that the 9 February related solely to the corporate plan and provided no authority whatsoever in respect of the

turnaround programme.”

Para 6:

“In addition, the letter transmitted to Eskom includes two important conditions that requires McKinsey to issue written confirmation of our satisfaction of the relevant services performed by Trillian to McKinsey and to confirm the correctness of the amounts invoiced. None of these conditions were fulfilled.”

10 Again (7):

“Later on 9 February Angel reverts to Trillian proposed changes to the letter.”

And there is an email attached.

20 “These request changes from Trillian including removing the conditions described as above as they would introduce further administrative issues into the process because the letter only referred to the corporate plan contract. McKinsey did not adopt Trillian’s proposed amendment. The correspondence further envisages the party’s understanding at the time of 9 February letter submitted to Eskom related exclusively to the corporate plan project.”

ADV SELEKA SC: Ja, evinces.

MR SINGH: Evinces?

ADV SELEKA SC: Ja.

MR SINGH: Never heard the word. (8)

“Mr Clive Angel followed up Mr Vikas’ email noting that Trillian had invoiced Eskom and under the conditions of the letter McKinsey needs to write to Eskom to the effect that McKinsey was satisfied with the work Trillian had done on the corporate plan. Eskom never requested such a letter of satisfaction and McKinsey sent such confirmation.

10 Eskom has confirmed that the 9 February did not in itself basically...”

I would like to stop there, Mr Chair, in terms of the question that was posed by – or the issue that was raised by Mr Seleka is that, Mr Chair, I do not believe that if you read these passages that it can be simply dismissed, that this letter was an erroneous letter that just happened to be issued and for ...[intervenes]

CHAIRPERSON: So it seems to have been – before it was sent to Eskom you say it seems that it was subjected to
20 quite some detailed scrutiny within McKinsey and Trillian.

MR SINGH: Mr Chair, in terms of the email trail that I am requesting is provided, you will even see post the letter the legal head of McKinsey follows up on the letter to suggest is there anything further that has actually happened relating to this letter. He then escalates it to the head of

the accounts department within McKinsey to say please follow up on this matter and make sure it is dealt with. He then sends an email to Eskom saying to Eskom – and this went to a lady called Mary-Anne Hendricks who I think is the PA of Mr Prish Govender who was the project manager on this project which states that should you have any issues relating to this matter further, please bring it to my attention within McKinsey so I can elevate it to the appropriate leadership level within the company to ensure
10 that these things are streamlined. Now, Mr Chair, taking all of that into account I will not understand how McKinsey basically says that this letter was prepared on the basis that it was incorrect and stand away from it.

Mr Chair, this brings me to another point that I would like to make to the Commission for the Commission to take note of. Mr Chair, these documents, this letter, 9 February letter, is a letter that has been issued by McKinsey signed by a partner of McKinsey, received by Eskom. Now, Mr Chair, when Eskom receives this letter, in
20 what mind does Eskom receive it? It receives it in good faith that McKinsey has issued this letter. What does Eskom do with it? Eskom places reliance on it that this letter was received in good faith.

Now for whatever reason, McKinsey decides to sidestep this letter and say no, we did not issue it or it was

invalid or for the fact that these two clauses in the agreement was not fulfilled by Eskom therefore it is invalid. Part for one minute, Mr Chair, the fact that the letter may have in Eskom been used for other purpose but for now, the purpose that we are using the letter is to understand whether McKinsey at any point in time contemplated Trillian to be their SDL partner and from what I have read to you, Mr Chair, I cannot find it in my being to suggest that they were not.

10 So McKinsey can say and do whatever they want but on objective fact that I have just read to you, in Mr Amankwah's affidavit himself which suggested that they at all material times believed that Trillian should have been paid for the work that they did on the corporate plan.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja, just talking about Eskom receiving it in good faith, Mr Singh, just remember that he says this was a letter at the request – prepared for the request of Eskom and Trillian.

20 **MR SINGH:** Yes, Sir.

ADV SELEKA SC: That is the point.

MR SINGH: Mr Chair, again, if we look at ...[intervenes]

ADV SELEKA SC: Ja, let me just finish. So it is not as if the letter comes unexpected to Eskom and Eskom simply oh, it comes from McKinsey, we will act on the letter in

good faith. It was specifically Eskom and Trillian who requested the letter to be prepared according to Mr Amankwah.

ADV SELEKA SC: Mr Chair, again, McKinsey is a world-renowned company, they are a global company. If they receive a request from Mr Singh and Mr Singh says to them listen, I want this letter or it comes from Mr Molefe or it comes from Mr Govender or it comes from whoever in Eskom and he purports to request McKinsey to not
 10 factually represent the state of affairs that McKinsey knows, why would McKinsey issue the letter? Or why would McKinsey have to issue the letter and that is where I am saying, if I request something in good faith I expect the reciprocation and therefore we rely on letters or we rely on assertions or we rely on representation or we rely on warrants that are made in good faith.

CHAIRPERSON: Well, speaking generally, there ought to be no problem with placing reliance on a letter that comes from – that genuinely comes from McKinsey but two things
 20 that I want to clarify. One, as I recall that letter, it did not specify certain conditions which, as I recall from last time we were dealing with that letter, would have had to have been met before any payment could have been made to Trillian and where they met.

MR SINGH: Mr Chair ...[intervenes]

ADV VAN DEN HEEVER: Chairperson, I think the letter that we are speaking about is AS19.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: To my client's affidavit.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: So I am going to leave it there because I have got a further issue with the interpretation that is attached to the letter but I am going to let my client deal with it.

10 **CHAIRPERSON:** Yes.

ADV VAN DEN HEEVER: And if necessary, I will bring it to your attention. Thank you very much.

CHAIRPERSON: Yes, no, no, that is fine. Which bundle or what page is the letter if you are able to...?

ADV VAN DEN HEEVER: Sorry, it is AS7, my attorney just corrected me.

CHAIRPERSON: Yes, it helps if we know the bundle.

ADV VAN DEN HEEVER: It is from 16-697, it is in the black...

20 **CHAIRPERSON:** Okay, alright.

ADV SELEKA SC: Ja, we – it is also contained, Chairperson, in Eskom bundle 13.

CHAIRPERSON: I think my registrar already has bundle 16. 16, is that correct?

ADV SELEKA SC: No, 14.

CHAIRPERSON: If it does appear there as counsel indicated then we can use that one.

ADV SELEKA SC: Okay.

CHAIRPERSON: Yes, I have got the letter at Eskom bundle 16 page 697, the letter from McKinsey and Company and it is addressed to Prish Govender at Eskom. Just to refresh everybody's mind it says:

“Dear Prish, authorisation to pay subcontractor directly.”

10 That is the subject or heading.

“We refer to the professional services contract for the provision of consulting services for six months entered into between Eskom SOC Limited, Eskom, and McKinsey and Company Africa (Proprietary) Limited, McKinsey, dated 29 September 2015, the agreement. As you know, McKinsey has subcontracted a portion of the services to be performed under the agreement to Trillian (Proprietary) Ltd, Trillian.”

20 So in this letter they make is clear in the second sentence that McKinsey had subcontracted a portion of the services to be performed under the agreement to Trillian and then it says in the second paragraph:

“Subject to:

1. The terms of the agreement relating to any

payments to be made by Eskom to us, and

2. Us issuing a written confirmation of our satisfaction with the relevant services to be performed by Trillian to McKinsey, and

3. The correctness of the amount to be invoiced, we hereby agree for and authorise Trillian to invoice and be paid directly by Eskom for any services performed by it in pursuance of our obligations under this agreement.”

10 Okay. So would you agree, Mr Singh, that on the face of it, in that letter, second paragraph, McKinsey’s agreement and authorisation that Trillian be paid directly by Eskom was subject to those three conditions? Do you go along with that understanding of paragraph 2?

MR SINGH: Mr Chair, I do, on the basis that it is forming part of the letter.

CHAIRPERSON: Yes. Okay, alright. And then the next question would be, when Eskom made the payment to Trillian, had these conditions been satisfied?

20 **MR SINGH:** Mr Chair, I think before we go and answer that question...

CHAIRPERSON: Ja.

MR SINGH: Let us deal with the issue that Mr Seleka had posed to me.

CHAIRPERSON: Yes.

MR SINGH: Relating to the identity of the party that performed the services.

CHAIRPERSON: Yes okay, deal with that and then come to this.

MR SINGH: And I am saying, given the content of this letter in terms of sentences one and two of paragraph 1, it is clear for all intents and purposes and at all material times McKinsey understood that Trillian had been doing the work and there was a subcontract, they were the
10 subcontractor to them ...[intervenes]

CHAIRPERSON: I do not think that you necessarily need to misrepresent anything but when you say at material times that that might widen.

MR SINGH: Okay, okay. Alright, so at the date of this letter, Chair.

CHAIRPERSON: Ja.

MR SINGH: Not it would appear, it is factual that based on the paragraphs that I have read to you from Mr Amankwah's letter – I mean, Mr Amankwah's affidavit, as
20 well as the – which results in this letter of 9 February, it would – it is that McKinsey accepted that Trillian would be their subcontractor on the corporate plan.

CHAIRPERSON: Let me mention this and then we can hear how you deal with it. That last sentence in the first paragraph of the letter suggests two things. One, that

McKinsey at the time of the writing of this letter had already subcontracted a portion of the services to Trillian. That is one.

But two, but that the services were yet to be performed under the agreement. That might be a certain interpretation, maybe somebody else might interpret that sentence differently but my first impression was it looks like they are saying we have already subcontracted to Trillian but that is for services to be performed in the
10 future but maybe what they meant is, at the time of subcontracting, the services were to be performed, but maybe they had already been performed by the 9th, I am not sure. I just want you to deal with those things.

MR SINGH: Mr Chair, I would hazard to say it is your second interpretation and I will tell you why I say so. Firstly the reference “the agreement” which can only be the corporate plan agreement because they actually define it in the first sentence, okay?

And secondly, Mr Amankwah in the passages that I
20 have read to you, states that the bit on which this letter was prepared in the process that I had taken you through, by that time the work relating to the corporate plan had substantially been completed.

CHAIRPERSON: Okay, okay.

MR SINGH: If you recall the corporate plan would have

needed to be submitted by the 28 February.

CHAIRPERSON: Yes, yes.

MR SINGH: And this is around the 9th, so substantial completion was achieved by that time.

CHAIRPERSON: Ja, okay, okay. Yes. Okay, alright. Mr Seleka?

ADV SELEKA SC: Yes. Yes, Chair, your – the Chairperson's question about the condition should not be forgotten.

10 **CHAIRPERSON:** Oh yes, yes. Ja.

MR SINGH: Oh, yes. So hopefully, Mr Chair, this puts paid to the issue of whether the identity of the party relating to the corporate plan is still a mystery or not. In my view, it should not. In terms ...[intervenes]

CHAIRPERSON: It is – we will put everything into the basket, into the pot and see what we come out with, ja.

ADV SELEKA SC: Ja, because, Mr Singh, we cannot turn a blind eye to the correction they made that the information was inaccurate and the people who drafted the letter have
20 since been disciplined or have left the firm.

MR SINGH: Well, Mr Chair, the fact that the people ...[intervenes]

CHAIRPERSON: Maybe let us not go back to it.

ADV SELEKA SC: Ja.

CHAIRPERSON: Let us leave it at this that everything

must be put into the pot to see what the real picture is, what you have said, the passages that you read in the affidavit and what Mr Seleka referred to, everything will be looked at to see exactly what picture emerges.

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: Ja.

MR SINGH: I think again, Mr Chair, not going back to the issue...

CHAIRPERSON: Ja.

10 **MR SINGH**: But the fact that someone has been disciplined, someone who has left the organisation, does not detract from the fact that this is a legitimate letter.

CHAIRPERSON: Ja, no, I understand what you say, I understand what you say.

MR SINGH: Coming back to the issue of, Mr Chair ...[intervenes]

CHAIRPERSON: The conditions.

MR SINGH: Not the conditions. Mr Chair, as I understand it, once Mr Angel – once this letter was transmitted to
20 ...[intervenes]

CHAIRPERSON: Eskom.

MR SINGH: To Eskom and to Trillian and after Mr Angel's subsequent amendments to the letter was rejected, Trillian's CFO, Mr Leballo, issued a letter or an email to McKinsey requesting this sign-off in terms of these

proceedings and I think the email had been sent to Mr Lawrence Chamberlain a McKinsey manager or senior partner and he then in the email basically said the sign-off should be sent to Mr Edwin Mabelane. In terms of whether the sign-off was actually provided or not, I am not too sure, but I know that a request had been made. In my affidavit I do go to the extent of saying that Mr Govender also engaged with Mr Lawrence to understand whether this is approved by McKinsey or not. I do not have an email to
 10 prove that Mr Lawrence had given the go-ahead but maybe when Mr Govender is requested for an affidavit or when Mr Govender appears he can be asked and Mr Edwin Mabelane can also be asked in terms of what was the status of these conditions being [indistinct – dropping voice] or not.

CHAIRPERSON: So your short answer is you have no personal knowledge whether or not these conditions were complied – had been complied with by the time Eskom paid the money to Trillian.

20 **MR SINGH:** No, Sir.

CHAIRPERSON: Ja.

MR SINGH: Other than the documents ...[intervenes]

CHAIRPERSON: No in this case meaning yes to my question.

MR SINGH: No, I did not ...[intervenes]

CHAIRPERSON: I said is your short answer that you have no personal knowledge of whether these conditions had been met by the time Eskom ...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: Ja, okay, it is yes. Ja, you know, no and yes can confuse. Okay, alright. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Just for the benefit of the Chairperson, Mr Singh, in the same affidavit of Mr Amankwah and I will not read this Chair unless when you
10 look at them you will find them crucial(?).

CHAIRPERSON: Ja, well if you think it is important you can.

ADV SELEKA SC: Yes, let us look at paragraph 7, Eskom bundle 14, Eskom bundle 14 page 702.191.

MR SINGH: 191?

ADV SELEKA SC: Ja, point 191. You know it is just...

CHAIRPERSON: Take it that we do not – we will not be going back to this letter of the 9th any time soon?

ADV SELEKA SC: No, Chair. You can put aside.

20 **CHAIRPERSON:** So this can go. 702.191?

ADV SELEKA SC: 191, correct, Chair, paragraph 7. And I am concluding on this because...

CHAIRPERSON: Yes?

ADV SELEKA SC: Remember Mr Amankwah said the information in the letter is inaccurate because they did not

subcontract to Trillian and to say otherwise, would contradict information that existed at the time, in that last paragraph we read. And he deals with that in ...[intervenes]

MR SINGH: Sorry, Mr Chair, can you just repeat?

ADV SELEKA SC: Okay. He says in paragraph 21.7.

MR SINGH: 21.7?

ADV SELEKA SC: Ja.

CHAIRPERSON: I am sorry, you have moved from page
10 702.191 now?

ADV SELEKA SC: I have – yes, Chair, I thought – sorry, Mr Singh, what did you want? Let me ask you what did you want?

MR SINGH: No, no, you started speaking and I was not listening.

ADV SELEKA SC: Oh.

MR SINGH: So I just said if you could just repeat what you have said.

ADV SELEKA SC: Oh, just repeat, yes. Okay, but you
20 are on page ...[intervenes]

CHAIRPERSON: You referred us to page 702.191, Mr Seleka, paragraph 7.

ADV SELEKA SC: That is right, Chair. Paragraph 7, yes.

CHAIRPERSON: Ja, what was the point about paragraph
7?

ADV SELEKA SC: So before I read it, I want to underscore the paragraphs here by what Mr Amankwah says.

MR SINGH: So which are those paragraphs?

ADV SELEKA SC: Which is what he said in paragraph 21.7.

MR SINGH: 21.7?

ADV SELEKA SC: Yes.

MR SINGH: That is what I was looking for.

10 **CHAIRPERSON:** Ja, tell us what he says there, Mr Seleka?

ADV SELEKA SC: It is where he says it is inaccurate to say Trillian had been subcontracted in corporate plan as McKinsey's subcontractor. To say otherwise is not reconcilable with contemporaneous information. Yes. So that is the underscore. Then I go to this paragraph. Do you hear, Mr Singh?

MR SINGH: **CHAIRPERSON:** Yes, okay, go to paragraph 7 then.

20 **ADV SELEKA SC:** Then paragraph 7 deals with Regiments' role in the corporate plan projects and there he deals with it. He says:

“7.1 McKinsey was notified late in the contracting process in Eskom's acceptance letter of 29 September 2015 that McKinsey would need

to outsource 30% of the corporate plan contract to a SDP.”

Which is supply development partner.

10 “7.2 At this time Regiments Capital (Regiments) a firm that had previously performed work at Eskom and a financial strategy was viewed as a logical candidate to partner for the corporate plan. Regiments’ prior track record at Eskom and its prior work with McKinsey positioned it to make an important contribution to the corporate plan.

20 7.3 In the end, however, there was no formalised relationship in the form of a contract with Regiments for work at Eskom on the corporate plan. Regiments reported directly to Eskom on its work and McKinsey and Regiments largely worked on separate work streams although McKinsey’s consultants collaborated with Regiments on select issues.

7.4 Regiments worked on the financial part of the corporate plan, had formed the funding plan chapter which was work that was directly overseen by Eskom.”

Then he refers to the annexures.

“This was an extension of the financial modelling work that Regiments had worked on for Eskom on what I understand was on a *pro bono* basis.

7.5 McKinsey’s decision to proceed with the corporate plan without a formal contract in place with a supply development partner is an example of a mistake that should not have been made.”

10 Mr Singh, I can read the entire paragraph.

“While it appears to have stemmed principally from the fact that Regiments was already working at Eskom on related work streams and was in the process of spinning off its consulting business, it is nevertheless regrettable. Although Regiments’ work on the corporate plan was overseen by Eskom, the ambiguity surrounding the relationship between McKinsey and Regiments with respect to the corporate plan led to confusion among McKinsey team and allowed Regiments to undertake its work with less supervision from McKinsey that it might have received otherwise. This lack of contractual rigor is an example of the type of

20

mistake McKinsey has sought to remedy with updates to its policies described below.”

But I have read this to you, Mr Singh, to show that no way in these paragraphs he refers to Trillian and he is explicit about who was intended to be the SDP, supply development partner, for McKinsey in respect of the corporate plan and that is Regiments.

CHAIRPERSON: Do you want to say anything, Mr Singh?

MR SINGH: Indeed, Mr Chair.

10 **CHAIRPERSON**: Yes.

MR SINGH: Mr Chair, in terms of the passages that were read by Mr Seleka, firstly I would like to point to 7.1. It is disingenuous of Mr Amankwah to say that McKinsey was notified late in the contracting process that Eskom would require and SD partner for work being performed at Eskom. This is not the first piece of work that McKinsey was doing at Eskom, so they know that there is always an SDL portion relating to McKinsey work – I mean, work at a state owned company like Eskom.

20 In terms of late, Mr Chair, he signed – Dr Weiss signed a letter of acceptance for the work I think on the 29 September 2015 which indicated that 30% SDL partner. So before that date they could have not known that they would get this work because it was not approved. So how would we have told them before that? So it could not have been

late in the process. The letter that he signed acknowledged that 30% had to be sub-contracted, an acceptable statement that he made.

In terms of the rest of the paragraphs that Mr Seleka is saying Mr Chair again if you look at paragraph 7.5 for example McKinsey's decision to proceed with the Corporate Plan, without a formal contract in place with any supplier, with a supplier development partner, it doesn't say Regiments, it says a supplier development partner, is
10 an example of the mistake that should not have been made continuous to the last sentence of this paragraph, the lack of contractual rigour is an example of the type of mistake McKinsey has sought to remedy with the updates to its policies described below.

Now they – Mr Amankwah and McKinsey specifically try and obfuscate the obligation relating to the fact that they had a relationship with Trillian, originally with Regiments and it morphed into Trillian and for whatever reason that currently is playing out, whether it be political
20 or reputational or otherwise they are attempting to obfuscate the actual facts that were available at the time, and I will come back to paragraph 27, at 21.7 Mr Chair, because it is now very convenient to say although Regiments worked on the Corporate Plan and was overseen by Eskom the ambiguity surrounding the

relationship between McKinsey and Regiments, with respect to the Corporate Plan led to confusion amongst McKinsey staff and allowed Regiments to undertake work with less supervision.

Mr Chair I can understand if my kids were confused, this is the Legal Head of McKinsey South Africa, it is the head of their Accounts Department, two senior partners from McKinsey are involved in the process. Dr Weiss has two PHD's, not one, two. Now you are trying to tell me
 10 that these individuals that were part of the process, that was involved on a daily basis, that met me almost on a daily basis, were involved in meetings relating to all of these projects, were all of a sudden confused, and had ambiguity in their mind to produce a formal letter that went through the rigour of the process I just explained to you and now McKinsey is of the view that it was ambiguous.

I cannot reconcile the two Mr Chair. If you go back to 21.7 which is on page 702, point 224 Mr Chair such evidence makes it clear that Trillian was not McKinsey's
 20 sub-contractor, because it was not contemporaneous with the information that exist.

Mr Chair I took you through the information that exist, it is just convenient for McKinsey to now state that it was Regiments that was doing the work at the time. There is no ambiguity in my view and I do not believe that

McKinsey can claim ambiguity.

If anything Mr Chair if you look at the process that letter went through for it to be issued, and if McKinsey distance itself from that letter now we should be asking the question who actually committed fraud.

CHAIRPERSON: Well Mr Seleka there may be different points that need to be looked into with regard to the Corporate Plan, Trillian, Regiments, McKinsey, Eskom and the payment that was made but on the face of it if
10 McKinsey gave Eskom a letter that said you may pay our sub-contractor, Trillian, directly on the face of it Trillian can't say McKinsey – I mean Eskom should not have paid except insofar as they say we did say Eskom could pay Trillian directly but we said if certain conditions were met and Eskom was not supposed to pay Trillian directly those conditions were not met, so that – the latter point I understand.

ADV SELEKA SC: Yes Chairperson.

CHAIRPERSON: So I think that to the extent that there
20 may be the question of – to the extent that the letter of 9 February may be seen as relevant to the question whether Eskom should have paid Trillian directly, even assuming Trillian was McKinsey's sub-contractor the real question, it seems to me, would be whether Eskom ensured that the conditions that McKinsey said should be met before Eskom

could pay Trillian directly were met.

So that is – that is how I see, if there are other points one can take it from there. You have indicated that you don't have personal knowledge of whether those conditions were met or not by the time Eskom made the payment. Maybe somebody else would tell us whether they were met.

ADV SELEKA SC: Chair if I may, before we take the lunch adjournment.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: I think Mr Singh to add to what the Chairperson is saying the other factor I think Chair to be looked at is the fact that the letter doesn't appear to have come voluntarily from McKinsey, in the sense of it did not come without a prior request, it came on the basis of a prior request from Eskom and Trillian, and you may want to answer the question Mr Singh why did Eskom make that request to McKinsey. Could you, ja?

MR SINGH: Mr Chair.

20 **CHAIRPERSON:** Yes?

MR SINGH: I will just ask Mr Seleka to repeat the question.

ADV SELEKA SC: Yes.

CHAIRPERSON: Oh, the question is you made the point earlier when you gave the background or the context of the

letter of demand, that Eskom and Trillian asked McKinsey to provide the letter, as I recall what you said, and Mr Seleka's question is why did Eskom ask for the letter?

MR SINGH: Mr Chair I was not the guy – I was not the person that requested the letter but I would assume that the letter was requested as Trillian has indicated that Eskom required confirmation that the main contractor was happy that the sub-contractor would be paid directly in terms of the content of the letter, and if you look at the
10 emails that were attached to it and Mr Amankwah's confirmation that could only be the reason for the letter.

CHAIRPERSON: H'm, h'm, yes, well I – Mr Seleka you can look at it and then pursue what you believe needs to be pursued. On the face of it I would imagine that if Eskom did not have a contract with Trillian and Trillian was supposed to have been McKinsey's sub-contractor Trillian should look to McKinsey for payment and not to Eskom, and if Trillian approached Eskom to say please pay us directly Eskom if it was thinking about agreeing to that first
20 would have been acting prudently to say the least, let us see whether McKinsey, with whom we have a contract, has any problem with that, in which case we would like to have something in writing so when one looks at it in that way one can understand but it may well be, and you would know better, it may well be that there are other issues that you

want to explore in relation to that first, so I just mention that.

ADV SELEKA SC: Yes, Chair, let's finish.

CHAIRPERSON: Ja, but we should take the lunch adjournment now, I just want to say I am keen for us to move away from the Corporate Plan.

ADV SELEKA SC: Yes.

CHAIRPERSON: We have already spent a lot of time last time on it, but obviously if there are passages and
10 affidavits that are important or documents and so on it may be important that at least we place on record which documents or which paragraphs and which affidavits I must have regard to when I come to deal with this matter, so that I can go to those documents, go to those passages in – when I consider the matter.

ADV SELEKA SC: Yes.

CHAIRPERSON: So I am just saying I am keen that we move away to go and deal with other matters but if when we come back somebody feels strongly that there is
20 something that needs to be mentioned other than saying Chairperson when you deal with this matter please remember to look at that paragraph and that affidavit and that document, then let me know, otherwise in the afternoon we could just do that exercise and move on to something else.

Okay, alright.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We will adjourn now, it is ten past one, we will resume at ten past two.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Okay, let us continue.

ADV SELEKA SC: Thank you Chairperson. Chairperson Mr Anoj Singh and his team wanted us to emphasise something that Mr Singh said during the testimony about Dr Weiss, that in his transcript when he was asked whether it was – well the question is:

“If it was Regiments that rendered services in respect of the Corporate Plan, and not Trillian.”

Asked by the Evidence Leader, his response was:

20 “That Chairperson I wish I could give you a razor sharp answer to that question, but I cannot.”

It is to emphasise that Mr Singh in saying to you earlier that Dr Weiss did not have a clear answer to that question.

CHAIRPERSON: Yes, ja.

ADV SELEKA SC: Ja, but from his affidavit I was making a different point.

CHAIRPERSON: Yes.

ADV SELEKA SC: About who McKinsey intended to be the supplier development partner and that it was in respect of the corporate plan, I mean the turnaround program based on that paragraph of Mr Singh's affidavit.

CHAIRPERSON: Okay, alright is there a particular page in the transcript where we will find Dr Weiss answer that you have just told me about, if that could be mentioned on record so one can know where to find it in due course.

10 **CHAIRPERSON:** Yes, that is right.

ADV VAN HEERDEN: Chairperson on – I do not know where exactly it is in the – they are just going to show me on the bundle itself.

CHAIRPERSON: Yes.

ADV VAN HEERDEN: So it is in the transcript on page 29 of the day 323 approximately, line eight, Advocate Chaskalson asked it, and am I correct Justice that the supply development work that was done on that Corporate Plan was work that was done by Regiments not Trillian, Dr

20 Weiss answers:

“Chair, I would love to give you a razor sharp answer onto this question, I am afraid I cannot. I can just tell you what I experienced back at the time.”

CHAIRPERSON: Okay, no that is fine.

ADV SELEKA SC: Just give the date please?

ADV VAN HEERDEN: It is on the 11th of December of 2020.

CHAIRPERSON: 11 of December of 2020?

ADV VAN HEERDEN: Yes, as I said it is day 323 of the transcripts.

CHAIRPERSON: Okay, no, that is fine.

ADV VAN HEERDEN: Thank you, Chairperson.

ADV SELEKA SC: Thank you, Chair. Mr Singh, I am
10 going to move on. Thank you, Chair, the - Chair I am going
to move on to the Master Services Agreement, which is this
Corporate Plan, and I start off by the paragraph Mr Singh
in Dr Weiss's affidavit paragraph 29 and 30.

MR SINGH: What page sir?

CHAIRPERSON: Paragraph 9 of the bundle B or C?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Page number?

ADV SELEKA SC: Eskom bundle 14 (c), page number
690.

20 **CHAIRPERSON:** 390?

ADV SELEKA SC: Six, nine, zero.

CHAIRPERSON: Six, nine, zero?

ADV SELEKA SC: Yes, paragraph 29 and 30.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes, we read it previously but just to

recap and then we move forward. The paragraph 29 reads:

“With the letter of acceptance in place, we had a signed agreement between Eskom and McKinsey, and we began work on the turnaround program in January 2016. At the same time, we continue to work to finalise the Services Level Agreement despite McKinsey’s efforts Eskom delayed signing the SLA. I eventually received a signed SLA from Eskom in late September or early October 2016 by
10 then Eskom had terminated the turnaround program and had compensated McKinsey for our work. At that time, I did not expect that McKinsey would receive any additional compensation from Eskom.”

Paragraph 30:

“The SLA that I received was signed on behalf of Eskom as of January 7, 2016 after consulting with in House Counsel regarding the SLA, I signed the SLA on behalf of McKinsey as of January 11, 2016, which was the approximate date that McKinsey
20 began to work on the project. I understood that Eskom’s preference was that the SLA be signed as of the effective date, which was the date that we began work, I regret any confusion that this may have caused.”

So the SLA is the same as the MSA, Mr Singh, is that

correct?

MR SINGH: It was used interchangeably, that is correct.

ADV SELEKA SC: Say again?

MR SINGH: I said it was used interchangeably.

ADV SELEKA SC: Interchangeably, yes. So from these two paragraphs...[intervene]

MR SINGH: Sorry, Mr Chair, if I just can clarify that point.

CHAIRPERSON: Just Say that again?

MR SINGH: I said, if I can also just clarify that point. It
10 would seem that at some point in time, between Eskom and
McKinsey, they had contemplated concluding a Master
Services Agreement which is the MSA and additionally,
SLA's or Service Level Agreements. So there would be an
overarching Master Services Agreement and then basically
underpinning the Master Service Agreement, there will be
these individual Service Level Agreements, from what I
understand, but eventually it migrated into the SLA.

CHAIRPERSON: So the MSA, would be like an instrument
that would broadly regulate the relationship between the
20 two.

MR SINGH: Yes.

CHAIRPERSON: And then there would be under a specific
agreement relating to specific matters.

MR SINGH: Yes, matters, as I understood it, but I do not
think it actually...[intervene]

CHAIRPERSON: Went that way.

MR SINGH: Went that way.

CHAIRPERSON: Okay.

MR SINGH: And that enhanced the interchangeable use of MSA.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Okay, I am going into approaches this with Mr Singh from what we read in here is that there was a delay on the part of Eskom in signing that Service Level
10 Agreement, that agreement. He then ultimately receives the signed copy in late September 2016 or early October 2016 and when he signs it, he gives it a date of 11 January 2016. The signing of it at the very latest, maybe September or earliest maybe September the latest October 2016. But then, he says:

“By that time Eskom had already terminated the turnaround program.”

And from the evidence in this affidavit, in Mr Amankwah’s affidavit and from Mr Mabelane’s affidavit, that termination
20 was by letter, dated 16 June 2016. So on the evidence, it appears that before this agreement could even have been concluded, it was terminated. Your comment on that?

MR SINGH: Thank you, Mr Chair. Mr Chair, I think in responding, I would, in the interest of time, not want to traverse the whole issue of the 1034 document which I

think you and Mr Koko and Mr Seleka has traversed quite significantly in Mr Koko's last appearance at the Commission.

CHAIRPERSON: Yes, as long as you do not feel that that is unfair on your part.

MR SINGH: No, no I mean, at the end of the day, it was what I had started in my previous sessions and I think it was further amplified by Mr Koko.

CHAIRPERSON: That is fine.

10 **MR SINGH:** And hence, in the interest of time, I will not repeat that but it also does form part of our affidavit that we have submitted into the record or it will be submitted into the record as of today.

CHAIRPERSON: Okay, no that is fine.

MR SINGH: So from that perspective, the sentiments are alike.

CHAIRPERSON: Yes, okay.

MR SINGH: So in response to Mr Seleka's question about an agreement not being in place, in terms of the 1034
20 document, there is a legally binding commitment between Eskom and McKinsey on signing of this, and that was done.

CHAIRPERSON: Just to remind me when you say that is that reliance on the correspondence that was exchanged?

MR SINGH: No, Mr Chair.

CHAIRPERSON: A formal agreement?

MR SINGH: Remember, there was a letter of acceptance that was signed by McKinsey and Eskom dated 6th December 2015. So that creates the legal obligation between Eskom and McKinsey, as of December and that is the basis on which they begin work in January, based on the temporary order, so that's the first response.

ADV VAN HEERDEN: Chairperson, maybe just to assist on the affidavit that we brought today. It is annexure AS3, we took the liberty of attaching it for you with the front
10 page and the relevant provision that deals with it.

CHAIRPERSON: Yes, okay alright. I do not believe I have the affidavit in front of me as yet. So that is fine. So, but my question, Mr Singh was this. When you say there was an agreement whether you mean, there was already a formal agreement, as we know it, or whether you were saying there was an agreement because there was an offer, that is the clarification I was looking for.

MR SINGH: Mr Chair, I am saying there was an offer an acceptance therefore there was an agreement.

20 **CHAIRPERSON:** An agreement, based on the offer and acceptance.

MR SINGH: Based on the offer, which was a letter that was sent on the 6th of December, so, it is the first part of the response.

Mr Chair then he - then if you look at the next part

of paragraph 29 – and actually Mr Weiss concedes that the letter of acceptance was binding on Eskom comment. He then says:

“Despite McKinsey's efforts, Eskom delayed the signing and I eventually received the signed SLA from Eskom in late September or early October 2016, by then Eskom had terminated the turnaround program and had compensated McKinsey for our work.”

10 But let us deal with each one of them. So, Mr Chair in dealing with it, I would have to refer to - let me just check if I am right. Page reference 7, on here, 740 and I hope I am right.

CHAIRPERSON: You mentioned the page you are looking for is it not.

CHAIRPERSON: 743, yes I am right sir so in the same bundle...[intervene]

CHAIRPERSON: 743, in the bundle 14 (c) that we are dealing with?

20 **MR SINGH:** Yes, sir.

CHAIRPERSON: Page 743?

MR SINGH: That is correct, sir.

CHAIRPERSON: Okay, yes I have got it.

MR SINGH: So, Mr Chair I will come to the letter itself, Mr Seleka is correct in that the MSA was terminated via a

BTC resolution, a Board Tender Committee resolution and that then empowered Mr Mabelane to inform McKinsey of the termination via a letter, the letter that was dated 16 June 2016.

Subsequent to that, Mr Chair, there were various letters that were exchanged between Mr Mabelane and Dr Weiss regarding the termination between, let us say, the 16th and the 28th, which is the letter in question, which is at 743.

10 And the letter in question at 743 Mr Chair, is the final letter but our affidavit that we have submitted this morning covers the other letters that transpired before them. But for the purposes of now, let us just cover the issue relating to the issues that appear on 743. Now, if we look at 743 it says:

“Top Consulting Group, MSA reimbursement of costs.”

That is the heading.

CHAIRPERSON: So this is a letter from Mr Vikas Sagar
20 and Dr Weiss, that is from McKinsey and is addressed to Mr Edwin Mabelane, chief procurement officer at Eskom and the subject is:

“Top Consulting Group MSA, re-investment of cost.”

MR SINGH: That is correct, yes.

CHAIRPERSON: Okay, take it from there.

MR SINGH: So you will see or note Mr Chair that the letter refers to a previous letter of 24 June 2016, in the first four lines.

CHAIRPERSON: Ja.

MR SINGH: Mr Chair, the gist of the...[intervene]

CHAIRPERSON: You can read the relevant part, if you want to.

MR SINGH: Just in terms of background, the previous letters that Mr Mabelane had sent to McKinsey and you will
10 see it when you see that, they will deal with it. But just in gist Mr Mabelane terminated the relationship and also in his letters referred to the fact that because of the termination, Eskom will not reimburse them on a risk basis.

But he will reimburse them on a cost, on a time and material basis let us put it that way and the exchange of letters prior to this letter related thereto which culminated in this letter. So, this letter Mr Chair, basically, is McKinsey's, let us call it for a want of a better word, McKinsey's letter of demand vis a vis...[intervene]

20 **CHAIRPERSON:** McKinsey's letter of?

MR SINGH: Demand.

CHAIRPERSON: Ja, okay.

MR SINGH: In inverted commas.

CHAIRPERSON: Yes.

MR SINGH: Vis a vis it is the termination of the Masters

Service Level Agreement.

CHAIRPERSON: Yes.

MR SINGH: So, Mr Chair, I will read the most relevant parts. It says:

“We are very surprised that Eskom is of the opinion that the cost base settlement is a prudent mechanism to conclude a risk based MSA with McKinsey, we have put 100% of our consulting fees at risk and have since six months not received a
10 single payment to cover the risk taken.”

Now six months referring back to December 2015 being the signing of the letter of acceptance:

“We have virtually an army of consultants working across the business at significant cost. This effort has yielded significant results for Eskom and we have delivered and generated impact far exceeding R25billion to date. You will recognise that we dedicated a team for six months starting on 6/12/2015.”

20 Which is the letter of acceptance date:

“To negotiate the Master Service Agreement that we finally concluded in January 2016. This agreement clearly outlines how McKinsey will be reimbursed, including in the case of termination.”

And then they go through each termination clause. If you

would like I would read them.

CHAIRPERSON: Only if it is necessary for the point you wanted to make.

MR SINGH: Mr Chair, the point that I would like to make is that if you take this letter, which is dated June 28, 2016. It is difficult to understand how Mr Weiss in paragraph 30 refers to a date in September when these things are concluded yet he is signing a letter in June, that references a January date.

10 **CHAIRPERSON:** You say there is a contradiction.

MR SINGH: What I am saying either one of these things are not true.

CHAIRPERSON: Ja, one of them is not true, you say?

MR SINGH: Yes, and I am saying this ostensibly is a letter that we received again, I am saying in good faith from McKinsey based on the facts that exist as an existing yet again for matter of convenience or I am not too sure what motivates Mr Weiss to say he signed in October.

20 **CHAIRPERSON:** So the point you are making is there is talk of a termination mid-year 2016.

MR SINGH: Yes, sir.

CHAIRPERSON: But in terms of Dr Weiss's affidavits he said he signed the agreement late in the year.

MR SINGH: In October.

CHAIRPERSON: But backdated it because he believed

that is what Eskom preferred, is that right?

MR SINGH: Mr Chair, I think what I am trying to say is the date on which Mr Weiss backdate or the date on which Mr Weiss asserts or alleges to have backdated the agreement in October, I am saying it cannot be.

CHAIRPERSON: Yes.

MR SINGH: Because he signed a letter that references the January in June, right. So there must have existed an agreement signed on the date of this letter.

10 **CHAIRPERSON:** No, no, I think I understood you, your point clearly, ja. You sought to say, how could he be signing the agreement in October when already mid-year 20 in June, he is talking about the January with the same agreement.

MR SINGH: With the January date.

CHAIRPERSON: Ja, with the January date.

MR SINGH: Which he alleges he inserted in October.

CHAIRPERSON: So you are saying that if he is right, in saying he signed the agreement in October and backdated
20 it to January...[intervene]

MR SINGH: This letter would not have reference to that.

CHAIRPERSON: ...he would not have – there would not have been talk of a termination of an agreement in June.

MR SINGH: With a date that references January.

CHAIRPERSON: Yes, no that is - well, I am not sure if I

understand your emphasis on the date in January,
because...[intervene]

MR SINGH: Mr Chair, what I am saying...[intervene]

CHAIRPERSON: ...my understanding, just hang on one
sec. If he is right, that is I think the point you are making.
If he is right, that he only signed the agreement in October,
then that means as at June, there was no agreement.
There is therefore nobody could talk about the termination
of an agreement that did not exist in June.

10 **MR SINGH**: That is correct, Mr Chair.

CHAIRPERSON: Ja.

MR SINGH: And I am using the date of January to come
to the conclusion you have come to.

CHAIRPERSON: Yes, although I do not follow your part of
referring to that once you accept...[intervene]

ADV VAN HEERDEN: Chairperson.

CHAIRPERSON: Just one second - just because whether
the date was May or whatever, as long as in June, he had
not signed, there was no agreement to terminate.

20 **MR SINGH**: But my point Mr Chair is that he alleges that
he signed the agreement in October and backdated it with
a date of January, in October, okay, yet in June, there is a
letter that is signed by him.

That references the very same agreement that he
says he only signed in October and backdated it to

January. I am saying when he drafted this letter in June, how would he have known the date of January if he only signed it in October.

CHAIRPERSON: Ja, no, I think I am not sure that your emphasis in January makes much difference but I think the importance of your point, as I have said is on his version if he signed in October, then there was no agreement in June, and if there is no agreement in June, how could he be writing this letter.

10 **MR SINGH:** Correct, Mr Chair.

CHAIRPERSON: Ja, okay. Counsel, you are done?

ADV VAN HEERDEN: Chairperson, I just wanted to - I think the points that my clients trying to make specifically refers to paragraph 2 of the letter.

CHAIRPERSON: Yes.

ADV VAN HEERDEN: Where he states emphatically that the agreement, finally was concluded in January of 2016. So his status as a fact that...[intervene]

CHAIRPERSON: Oh, okay no then that is different, jag
20 that different, ja. Then you are not - your reliance should not be about backdating.

MR SINGH: Yes.

CHAIRPERSON: Your reliance should be about what he says here.

MR SINGH: Here, yes.

CHAIRPERSON: Ja, okay no that is fine.

MR SINGH: So I am saying in here Mr Chair instead of...[intervene]

CHAIRPERSON: What he says in his affidavit, when he says he signed the agreement in October, is contradicted by what he says here when he says the agreement was concluded in January 2016 taking in June.

MR SINGH: Yes.

CHAIRPERSON: Because in June, if he had not signed
10 the agreement yet, on his version, he could not talk about the agreement having been concluded in January.

MR SINGH: That is correct, Mr Chair.

CHAIRPERSON: Ja, okay alright Mr Seleka.

MR SINGH: I...[intervene]

CHAIRPERSON: Oh, you were still making – continuing.

MR SINGH: Yes.

CHAIRPERSON: Ja.

MR SINGH: So those are the first two responses to Mr Seleka's question relating to the fact that it would seem on
20 McKinsey's version, that a MSA did not exist the termination, 16 June and I am saying another point to consider coming back to the issue that McKinsey is a global company.

Mr Chair, again, if you look at the testimony of Dr Weiss, Mr Amankwah, Mr Mieszala, Dr Fine I think those

were the guys that testified from McKinsey. And not maybe not too much, Mr Fine but certainly the other three.

They go on record and state the extent to which - and even this letter goes out and states it, the extent to which McKinsey was taking risk, not only relating to the fact that there was no signed contract, or no signed SLA on the fact of the magnitude of the project being 100% risk in terms of a MSA, zero success, zero payment.

Now, imagine in a firm such as McKinsey, you go
10 and take undertake this project. You do not have according to them; you do not have a signed agreement in place. And all of a sudden the client gives you a termination – even the exposure that they had taken Mr Chair, in my considered unprofessional, if it's inconceivable that this thing would have not triggered alarm bells from the people that were sitting at Eskom right through to someone in Globe because of the size, magnitude and risk relating to the standard. So my view would be that when this termination letter landed at Eskom
20 or was given to Dr Weiss, Dr Weiss's first reaction would have been to take it to legal.

CHAIRPERSON: Taken to?

MR SINGH: Take it to legal.

CHAIRPERSON: Ja.

MR SINGH: And say, listen, we have got this termination

thing, this termination letter from Eskom. It is our biggest project in Africa, and it is now been terminated.

The legal guy's response to Dr Weiss would have been to say, fine, bring me the agreement, because what is the legal guy going to do if there is no agreement? So it cannot be, in my view that when this termination notice was served that everyone in McKinsey, just left Dr Weiss in his little corner to do as he pleased with this significant exposure that McKinsey had.

10 **CHAIRPERSON:** I guess, also, you may be making the point in due course if you are not already making it, that it looks like this is at least the second letter from McKinsey where they write one thing in correspondence but in affidavits seems to say something that contradicts what they have written in correspondence.

MR SINGH: It is completely different.

CHAIRPERSON: Because there was the letter of the 9th...[intervene]

MR SINGH: Yes.

20 **CHAIRPERSON:** ...of February that we are talking about.

ADV SELEKA SC: That is correct, Mr Chair.

CHAIRPERSON: Except, insofar as with regard to the letter of the 9th of February, insofar as they may have said our authorisation or agreement that you may pay as Eskom you may and direct subject to the fulfilment of this

condition.

Except for that there are other things in that letter, which you say they seem to want to deny or run away from in the affidavit.

MR SINGH: That is correct, Mr Chair.

CHAIRPERSON: And you say certainly here the correspondence of the time says one thing, but in affidavits that they have signed subsequently they seek to say something else, is that right?

10 **MR SINGH:** That is correct, Mr Chair.

CHAIRPERSON: Okay, alright.

MR SINGH: And, and again Mr Chair, I mean, at the end of the day, if you look at this letter, there is no way that McKinsey would send us a letter like this if it had not gone through corporate legal within McKinsey itself. And basically, they are here saying that they request that Eskom basically applies the termination clauses, which will give rise to the claim of R2.8billion that they would claim under the MSA.

20 **CHAIRPERSON:** Of course, if McKinsey received a letter from Eskom that brought them to terminate an agreement and if they - that is now on 24 June 2016 and if they did not know that there was an agreement between them and Eskom on the particular subject they would have said what are you talking about?

MR SINGH: That is correct Mr Chair.

CHAIRPERSON: We do not have an agreement yet.

MR SINGH: Or they would have said if Dr Weiss' version is correct they would have said we understand that these things are not concluded – they are not...

CHAIRPERSON: Ja.

MR SINGH: They are not – can we find a suitable way to conclude these things an arbitration or an investigation or something.

10 **CHAIRPERSON:** Ja but certainly they would not receive a letter saying we – we are terminating an agreement and they thought there was no agreement but respond as if there was an agreement.

MR SINGH: Was an agreement – exactly.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Well I am assuming Mr – Mr Singh you have completed or you still have some points to make?

MR SINGH: Well Mr Chair if – if Mr Seleka wants me to
20 cover the other aspects of the paragraph I can do that.

CHAIRPERSON: Ja I think you should – you should cover yourself by making sure you have responded to everything that you need to respond to.

MR SINGH: Sorry Mr Seleka that page and the reference again?

ADV SELEKA SC: You want the reference to the paragraph?

MR SINGH: 690ne?

ADV SELEKA SC: 29 and 30.

MR SINGH: Yes. So Mr Chair to go back to paragraph –
page number – page reference 690.

CHAIRPERSON: What page?

MR SINGH: 690.

CHAIRPERSON: Okay. Yes.

MR SINGH: If we then look at the second last sentence of
10 that paragraph Mr Chair which reads:

CHAIRPERSON: Paragraph.

MR SINGH:

“By then.”

CHAIRPERSON: Paragraph 30 – paragraph 29?

MR SINGH: Oh sorry paragraph 29.

CHAIRPERSON: Okay.

MR SINGH: It says second last sentence. It says:

“By then”

Are you there Chair?

20 **CHAIRPERSON:** I am at paragraph 29 I am just looking for
– yes I can see “by then”.

MR SINGH: It says:

“By then Eskom had terminated the
turnaround programme and had compensated
McKinsey for our work.”

So Mr Chair again if Mr – Dr Weiss – actually Mr Weiss is factually correct. We had terminated the agreement and we had paid them because he is referring to a date of October in this affidavit and the first payment we had made to McKinsey under the MSA if my – if I recall correctly was sometime in August. So we had terminated and we had paid.

But the important point Mr Chair is if you look at all of the correspondence whether it be any of the affidavits from Dr Weiss – well Mr Weiss – Dr Weiss refers to it but he
10 does not explicitly refer to the point that I am going to make.

Mr – Dr – M Mzala refers to it but also does not explicitly refer – Mr Amankwah does not refer to it at all.

In the court papers between Eskom, McKinsey and Trillian they do not also raise this point. And the point that I am trying to raise is now Mr – Dr Weiss is referring to the fact that there was no contract then equally just like Trillian was paid without a contract McKinsey then was paid without a contract for the August payment. Yet no-one in any of the legal documents seems to rely on the fact that McKinsey was
20 paid without a contract and therefore they should refund the money.

CHAIRPERSON: Yes. Ja no I mean if you say in August McKinsey was paid in regard to this work and – and Dr Weiss says the agreement was only signed by McKinsey in October it means in August when they were paid there was no

agreement. That is what it would mean and that is the point you making.

MR SINGH: That I am making.

CHAIRPERSON: Yes.

MR SINGH: And nowhere does anyone rely on that specific.

CHAIRPERSON: What is – what is the implication of the fact that in that sentence that you have just read Mr Singh Dr Weiss talks about the termination of the turnaround programme as opposed to the termination of the agreement.

10 Is there – is he using those terms interchangeably?

MR SINGH: Mr Chair I think he is using them interchangeably.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Then as ...

MR SINGH: Chair if I can continue?

ADV SELEKA SC: No can I just comment on this one?

CHAIRPERSON: Ja, yes.

ADV SELEKA SC: Because I think he is not necessarily using them interchangeably.

20 **CHAIRPERSON**: Okay, okay.

ADV SELEKA SC: It is because the turnaround programme Chairperson was going to be rendered pursuant to the SLA.

CHAIRPERSON: Yes.

ADV SELEKA SC: So I think he is using it deliberately.

CHAIRPERSON: Ja.

ADV SELEKA SC: To distinguish between the two.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because on his version in the affidavit this – the SLA had not been concluded. So what got to be terminated was their services as rendered in terms of the turnaround programme. Because he does say they had already started rendering services.

So I think it is a deliberate use of words or choice of words there Mr Singh.

10 **ADV VAN DEN HEEVER:** Chairperson with the greatest of respect to my learned friend if you look at the letters it is specifically refers to the MSA. Now my client has alluded to the fact that there is other letters that precedes this. We have attached them to our current agreement but they all consistently refer to the MSA so there can be no doubt that they did – they are referring...

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: Not to a programme but to an agreement.

20 **CHAIRPERSON:** Okay, okay let Mr Singh be the one to deal with that. Mr Singh what do you say to Mr Seleka's proposition that Dr Weiss is deliberately talking about the termination of the turnaround programme here because he knows that there is no agreement at that stage.

MR SINGH: Mr Chair ...

CHAIRPERSON: Of course I see that in the previous sentence he – he talks about October 2016 and then in the – he then says by then which must mean by October 2016.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Chair sorry Mr Singh. Look at how he starts paragraph 29.

CHAIRPERSON: Hm.

ADV SELEKA SC: He says:

10 “With the letter of acceptance in place we had signed an agreement between Eskom and McKinsey and we began work on the turnaround programme in January 2016.”

He says:

“At the same time”

CHAIRPERSON: That he talks about there. Which was – which agreement is he talking about?

ADV SELEKA SC: Ja.

CHAIRPERSON: On your understanding.

20 **ADV SELEKA SC:** It is this acceptance and I suppose it is the acceptance but because I want to – you will see how he deals with it in the second paragraph – I mean not paragraph but sentence. He says:

“At the same time we continued to work to finalise the services level agreement.”

CHAIRPERSON: So which agreement is he talking about in the first line of paragraph 29 that he says:

“Had been signed.”

ADV SELEKA SC: Yes. According to my understanding he is specifically referring to as Mr Singh is saying to the Chairperson the letter of acceptance.

CHAIRPERSON: Hm. But you – you – he would not – the reference to signing an agreement.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Contemplates as I understand it where there would be a single document that has been signed.

ADV SELEKA SC: Yes.

CHAIRPERSON: As opposed to an agreement that is constituted by the sending of an offer and the sending of an acceptance which are signed separately.

ADV SELEKA SC: Correct. Correct.

CHAIRPERSON: So if that understanding is correct what agreement was he talking about in the first line?

ADV SELEKA SC: That is correct. I will – I mean one will
20 have to see whether they canvass this with him during his evidence.

CHAIRPERSON: Ja.

ADV SELEKA SC: When he was here on the 11th of December 2020 Chair and how it was dealt with.

CHAIRPERSON: Mr Singh what would be your

understanding of what agreement he is talking about in the first line of paragraph 29 when he says:

“With the letter of acceptance in place we had signed agreement between Eskom and McKinsey and we began work on the turnaround programme in January 2016.”

The letter of acceptance would have been – just remind me Mr Singh the letter of acceptance would have come from – from Eskom?

10 **MR SINGH**: Yes Sir.

CHAIRPERSON: And it would have been sent to McKinsey?

MR SINGH: That is correct.

CHAIRPERSON: And when it was – it did have play – two places for signature.

MR SINGH: That is correct.

CHAIRPERSON: By McKinsey and by Eskom. Okay if it had that then one could talk about an agreement being signed. Maybe one could talk because it is – it is a single document, it is signed by both sides – both parties and it may well be
20 that Mr Seleka is right in his understanding that the agreement that he is talking about there is the agreement as constituted by the offer and acceptance. You would go along with that?

MR SINGH: Mr Chair I will.

CHAIRPERSON: Yes, yes. Okay at least that part I

understand. Okay I think you were still wanting to go on to make some points Mr Singh or had you finished?

MR SINGH: I think Mr Chair it was just in response to ...

CHAIRPERSON: Mr Seleka.

MR SINGH: Mr Seleka's or I think it was your question Mr Chair that the termination is there a distinction between terminating the turnaround programme or terminating the SMA? And I said I think it is used interchangeably.

CHAIRPERSON: Ja, ja

10 **MR SINGH:** And I think Mr Seleka then went to ...

CHAIRPERSON: Yes, yes.

MR SINGH: His path to try and explain that is probably not used interchangeably.

CHAIRPERSON: Yes, yes.

MR SINGH: In my view Mr Chair it is a moot point if we accept that the 28th of June letter could not exist as we have just explained it. So whether he is terminating the turnaround programme now in the context of this – of this date which is October it is moot point.

20 Mr Chair in terms of the next sentence where it says:

“I did not expect that McKinsey would receive any additional compensation from Eskom.”

Mr Chair again that is contrary to the actual events that transpired because McKinsey then entered into a settlement agreement with Eskom dated February 2017 that

enabled them to get further payment. So if this was true Mr – Dr Weiss should have not signed the settlement.

CHAIRPERSON: Hm.

MR SINGH: Or engaged with the settlement process that started sometime in – well started with this 28th of June letter – well actually started with the 16 June letter and ended with the 17 February I think it was settlement agreement it was signed between Eskom and McKinsey.

So again I am not too sure why Mr Weiss is stated
10 these things but I guess he can – he can explain if need be.

CHAIRPERSON: Yes.

MR SINGH: You did do Mr 00:13:09 as well Mr Seleka?

ADV SELEKA SC: Ja I did.

MR SINGH: Again Mr Chair if you will see Dr Weiss qualifies
in paragraph 30:

“The fact that the SLA I received was signed
on behalf of Eskom as of 7 January 2016.”

That is the first sentence. And then he says:

“After consulting with in-house counsel
20 regarding the SLA I signed the SLA on behalf
of McKinsey as of January 11, 2016 which is
the approximate date that McKinsey began
the work on the project.”

Now again there is reference to in-house legal
counsel. Now I cannot believe again that he would refer to

in-house legal counsel in October yet he is issued a letter in June saying that there was an agreement or concluded an agreement. It would have been more likely that he actually engaged with legal – in-house legal in June because that is when he actually had the – the – prepared the letter for termination.

CHAIRPERSON: Could it be that there is confusion and confusion is created by the fact that at a certain level McKinsey talks about an agreement had been having been
 10 signed on the basis of – of an acceptance. And then talks about a formal agreement as I understand it a formal agreement not in the context of a – for an offer and acceptance but a normal agreement.

MR SINGH: Mr Chair I find...

CHAIRPERSON: Being signed by McKinsey in October. Is it not two – two transactions or two documents maybe they relate to the transaction but first you have an offer and acceptance which in law could constitute a contract but then there is a desire to have one document that reflects all the
 20 terms and conditions of the agreement and that process comes after the – the signing of the acceptance by both parties and that is what comes later but should the situation arise where for some reason the formal agreement is not signed any one of the parties can still say based on the offer and acceptance with details an agreement and this is what I

did under that agreement and I should be paid this or that and that?

MR SINGH: Mr Chair that is the version that McKinsey prefer you to accept or to believe. And I find that very difficult to – in my own mind accept it. And the reason therefore is Mr Chair if you look the June letter it does not refer to a letter of acceptance. It refers to a signed MSA.

CHAIRPERSON: Hm. But you – you have a version that also goes along with the idea that once there was an offer
10 and acceptance and the signing of the acceptance there was an agreement.

MR SINGH: No, no I agree Mr Chair.

CHAIRPERSON: Ja you agree with that part.

MR SINGH: I gave – I agree that there is a two step vote.

CHAIRPERSON: Yes, yes.

MR SINGH: In terms of Regiments.

CHAIRPERSON: Ja.

MR SINGH: There would have been a legally binding agreement.

20 **CHAIRPERSON:** Yes.

MR SINGH: On the acceptance on the signing of the acceptance letter.

CHAIRPERSON: Yes.

MR SINGH: But the point that Mr Seleka is trying to raise or he is trying to make is that the date on which there was

termination there was termination of a non-existent contract.

CHAIRPERSON: Yes but if – if we were to go along with the idea that a contract came about when there was an acceptance of an offer then in June there would have been an agreement is it not?

MR SINGH: Correct Mr Chair.

CHAIRPERSON: And why do we not look at whether the termination we are talking about that they are talking about in that letter of June is – relates to the termination of that
10 agreement as constituted by the offer and acceptance?

MR SINGH: Let us go there Sir – Mr Chair.

CHAIRPERSON: Hm.

MR SINGH: It is 743 I think.

CHAIRPERSON: So in other words what I am – in trying to establish what really seems to be confusing I want to see whether if we follow that line – that approach the whole thing does not begin to make sense or not.

MR SINGH: Indeed Sir. So we go to 743 Mr Chair.

CHAIRPERSON: 743. Yes.

20 **MR SINGH:** Which is the term – which is the letter of 28 June.

CHAIRPERSON: Ja. Where is the letter of termination?

ADV SELEKA SC: Chairperson Eskom Bundle 14.

CHAIRPERSON: Ja. Let us – maybe I just want to look at that first.

ADV SELEKA SC: Yes.

CHAIRPERSON: So what page?

ADV SELEKA SC: Page 877.26.

CHAIRPERSON: 877.

ADV SELEKA SC: Ja 877.26.

MR SINGH: 877.26

ADV SELEKA SC: 877.26.

CHAIRPERSON: Yes it is a letter from Mr Edwin Mabelane.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Chief Procurement Officer and it is addressed to Dr Weiss of McKinsey and Company and it is dated 16 June. Oh this one is dated 16 June 2016 not 24 but let me see this one. It is a letter of termination it seems.

20 “This letter serves to official notify McKinsey and Company of a board decision taken on 9 June 2016 to terminate the McKinsey Risk Based Contract. You are requested to engage with Mr Prish Govender to discuss the pertinent issue to give effect to the board resolution. In conclusion Eskom will embark on a transparent procurement process to reallocate the activities under the Risk Based Contract. McKinsey and Company is welcome to participate in this process.”

That Risk Based Contract could fall within – I mean

the – the contract if there was one that would have come about as a result of the offer and acceptance could fall within this M – is it not?

MR SINGH: Mr Chair if you look at the heading.

CHAIRPERSON: Ja.

MR SINGH: There is a – it will ...

ADV SELEKA SC: Subject line Chair.

MR SINGH: The subject line it says:

“Termination of Top Consulting Group MSA.”

10 **CHAIRPERSON**: MSA.

MR SINGH: MSA.

CHAIRPERSON: Oh that is...

MR SINGH: So this Risk Based Contract refers to the MSA.

CHAIRPERSON: Refers to MSA?

MR SINGH: MSA.

CHAIRPERSON: Okay. So...

MR SINGH: Because the – so the MSA...

CHAIRPERSON: That is not what we are looking for is that right?

20 **ADV SELEKA SC**: No that is the one Chair.

MR SINGH: No that is the one.

CHAIRPERSON: That we are looking for?

ADV SELEKA SC: Yes.

MR SINGH: Yes.

CHAIRPERSON: Okay but – okay no, these contracts have

got different names.

ADV SELEKA SC: No look.

CHAIRPERSON: The one that Dr Weiss says he signed in October.

MR SINGH: Yes Mr Chair.

CHAIRPERSON: Was it the MSA or this Service Level Agreement.

MR SINGH: So Mr Chair as I explained originally when we started the topic. The MSA/SLA.

10 **CHAIRPERSON:** Was over 00:21:27.

MR SINGH: Was usually interchangeable. But what they eventually signed whether it be January or June or ...

CHAIRPERSON: Or October or whatever.

MR SINGH: October.

CHAIRPERSON: Ja.

MR SINGH: Was the SLA.

CHAIRPERSON: SLA?

MR SINGH: A SLA was signed.

CHAIRPERSON: Yes.

20 **MR SINGH:** But they interchangeably use it in conversation.

CHAIRPERSON: Ja they refer to it – ja.

MR SINGH: As SLA, MSA.

CHAIRPERSON: MSA.

MR SINGH: Risk Based Contract.

CHAIRPERSON: Okay.

MR SINGH: But effectively it is there Sir it was signed either in January.

CHAIRPERSON: Yes.

MR SINGH: June or October.

CHAIRPERSON: Okay. So on...

MR SINGH: And there was in December a letter of acceptance that was signed by both McKinsey and Eskom.

CHAIRPERSON: Is December 2015?

MR SINGH: 2015.

10 **CHAIRPERSON:** Yes.

MR SINGH: So Mr Chair those are the only two.

CHAIRPERSON: Ja.

MR SINGH: Let us call it Contractual documents that exist.

CHAIRPERSON: Yes. Okay. Okay so the offer and acceptance also referred to MSA?

MR SINGH: Where is that one?

CHAIRPERSON: You know that correspondence that we talked about.

MR SINGH: We will find it for you now Sir.

20 **CHAIRPERSON:** In other words the subject matter was the same.

ADV SELEKA SC: Page – can I give the Chairperson the page number?

CHAIRPERSON: Ja.

ADV SELEKA SC: 811.

CHAIRPERSON: 811.

ADV SELEKA SC: .111. I see this – Mr Singh you – you might have the signed one by McKinsey. This one is only signed by Mr Adrian Mabelane.

MR SINGH: Oh ja – maybe I did sign it.

ADV SELEKA SC: In your annexures.

MR SINGH: I think we may have...

ADV VAN DEN HEEVER: Chairperson can we just all get on the same page. I do not know what my learned friend is
10 referring to at this stage maybe he can just guide us.

ADV SELEKA SC: The acceptance letter page 811.111.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja Eskom Bundle 14. Eskom Bundle 14(c).

CHAIRPERSON: Yes I have got 811 page – you say 112?

ADV SELEKA SC: No 111.

CHAIRPERSON: 111?

ADV SELEKA SC: Yes. Mr Singh you are there?

MR SINGH: Sorry.

20 **ADV SELEKA SC:** You are there?

MR SINGH: Yes I am.

CHAIRPERSON: Okay. Okay. That is the letter – that is the letter of acceptance. But where is the part signed by McKinsey?

ADV SELEKA SC: Ja I see in the bundle investigators have

this one which is not signed by McKinsey and I was asking Mr Singh whether the one which is attached to his affidavit of this morning is signed by both parties.

MR SINGH: This does not form part of our 00:24:29.

ADV SELEKA SC: Oh you do not reference no.

CHAIRPERSON: Oh okay but do we know whether there is a letter of acceptance that has the signatures of both parties in the same document?

ADV VAN DEN HEEVER: Chairperson maybe just for the
10 record I do not think for purposes of your discussion it would really make a difference if you look at the one that is not signed. I think what you are interested in is what exactly is stated in the letter of acceptance whether it can be construed as an agreement or not visa vie the points that you raise. And I think for that purpose you can look at the one that is signed by only one party.

CHAIRPERSON: Yes. Yes but I am now going back to an earlier point that I had made remember Mr Singh had said to me in response to a question I put to him that the parties
20 had signed the same document in terms of letter of acceptance and that kind of answered by query. But if factually that is not the case it might revive that concern.

ADV VAN DEN HEEVER: Chairperson in fact Dr Weiss refers to it. He says that they have signed the letter of acceptance in December of 2015.

CHAIRPERSON: Yes, no, no.

ADV VAN DEN HEEVER: On the 17th of December 2015. As I say the – my learned friend might not be able to lay his hands on the actual signed one but you can accept it for a fact that is what is stated that there was a signed letter of acceptance by the same date that they got the offer.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: They have signed the acceptance and that is the 17th of December 2015.

10 **CHAIRPERSON:** Ja. Hm. Well maybe somebody will have a look and then we can take it from there. Let us move on in the meantime.

ADV SELEKA SC: Yes Chair the investigator is checking exactly that.

CHAIRPERSON: Ja. Okay alright.

ADV SELEKA SC: The Chairperson's second point or I think Mr Singh.

MR SINGH: Well Mr Chair you were looking to understand whether there was a correlation between the letter of
20 acceptance.

CHAIRPERSON: Ja.

ADV SELEKA SC: And the letter of ...

MR SINGH: Given that it was signed by both parties.

CHAIRPERSON: Hm.

MR SINGH: Equals an MSA or a SLA.

CHAIRPERSON: Yes.

MR SINGH: Or what was conflicted by that.

CHAIRPERSON: Yes, yes.

MR SINGH: So if you then look at basis of acceptance Mr Chair you will see:

“We accept your proposal for the...”

CHAIRPERSON: What was the page of that letter again?

MR SINGH: Sorry Mr Chair you are now at 811.111.

CHAIRPERSON: Oh okay. I have got it yes.

- 10 **MR SINGH:** Yes. If you look at – it is addressed to Mr – Dr Weiss McKinsey and Company Notification of Acceptance for Provision of Consultancy Services Basis of Acceptance.

“We accept you proposal for the provision of consulting services concerning the Top Engineers Programme on the terms and conditions generally agreed in the draft contract recently negotiated between McKinsey and Eskom.”

CHAIRPERSON: Hm.

- 20 **MR SINGH:** You see. So what you will find Mr Chair as a common thing is that whether you refer to MSA or SLA it always – it always encapsulates the Top – the Top...

CHAIRPERSON: Engineers.

MR SINGH: Engineers Programme.

CHAIRPERSON: Ja. Ja.

MR SINGH: So that is a – that is a thing that will string across all of this.

CHAIRPERSON: Okay.

MR SINGH: So when you go back to your termination letter which is at 877.26.

CHAIRPERSON: Ja.

MR SINGH: You will see it says:

“Term – in the subject line it says
Termination of Top Consulting Group which is
10 Top Engineers Programme.”

CHAIRPERSON: Hm.

MR SINGH: And then it says MSA or it could have said SLA.

CHAIRPERSON: Ja.

MR SINGH: Which is basically – and then in the – in the body text it refers to McKinsey Risk Base Contract which again is the other colloquial term.

CHAIRPERSON: Ja MSA.

MR SINGH: That we have used – MSA.

CHAIRPERSON: Ja.

20 **MR SINGH:** Which was the Risk Base Contract.

CHAIRPERSON: Yes.

MR SINGH: So this is what 00:28:16.

CHAIRPERSON: So – so going back to one of my earlier questions what do you say to my thinking that – thinking that the termination of the agreement that both parties Eskom

and McKinsey are talking about in June 2016 could be the termination of the agreement that came about as a result of the acceptance of the offer? What would you say to that?

MR SINGH: Mr Chair then we – we were then going to page reference 743 before you Mr Chair took us to ...

CHAIRPERSON: Ja, ja.

MR SINGH: The letter of termination.

CHAIRPERSON: Yes.

MR SINGH: So I think we have now established that there is
10 a link between the letter of acceptance, between the letter of termination and now we come to this letter of 28 June.

CHAIRPERSON: Yes.

MR SINGH: 2016.

CHAIRPERSON: Responding to the letter of termination.

MR SINGH: Which in essence – which – ja responds to the letter of termination.

CHAIRPERSON: Yes.

MR SINGH: And this I think will be able to answer your questions.

20 **CHAIRPERSON:** Yes.

MR SINGH: As to whether it is one or both or where does it lie?

CHAIRPERSON: Ja I am there what do you say about it?

MR SINGH: So Mr Chair if you look at the second paragraph it says:

“You will recognise that we dedicated a team for a period of six months starting on 6.12 to negotiate the Master Service Agreement that was finally concluded in January.”

So basically one of the two must be false.

CHAIRPERSON: Well, he might, at that stage, have said so but with all the discussions, he might have made up his mind which one is false. [laughs] Mr Singh, have you made up your mind which one is false or not yet?

10 **MR SINGH**: [laughs] Mr Chair, as you quite correctly concluded, Mr Chair, it would seem that, for the sake of convenience, McKinsey moves between versions.

CHAIRPERSON: H’m.

MR SINGH: In terms of affidavit – when it is required to commit to an affidavit versus what was committed on evidence during the previous time.

CHAIRPERSON: H’m. But Mr Seleka says, earlier on you were not sure which one is false of the two versions ...[indistinct] ...[intervenes]

20 **MR SINGH**: No, Mr Chair, on objective evidence ...[intervenes]

CHAIRPERSON: But he says he thinks you are now saying there is a particular one that is false.

ADV SELEKA SC: Yes.

CHAIRPERSON: And I just want you to clarify.

MR SINGH: Mr Chair, on objective evidence, as I have said. If you look at the letter and if you look at the contents of paragraph 29, I am saying this is blatantly false. If you look – and I have said it, not only in terms of the termination, but also to the fact that Mr Weiss says he did not expect any other compensation.

CHAIRPERSON: H'm.

MR SINGH: Yet he then receives compensation and he signs the termination agreement ...[intervenes]

10 **CHAIRPERSON:** Yes, but Mr Singh, if you are not sure yet whether you are choosing which version is false, you do not have to say so now.

MR SINGH: Okay.

CHAIRPERSON: I think Mr Seleka just wanted to have clarification and I wanted to have clarification too.

ADV SELEKA SC: Yes.

CHAIRPERSON: Whether you have reached the point where you say this is the false version or you say: Look, I am not sure yet but one of them is false.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Is that where you are Mr Singh? One of them false. You are not sure which one?

MR SINGH: No, Mr Chair, I am saying that I believe that this one is, based on what I have read in the letter ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...this does not make sense to me and this should be false. It is false.

CHAIRPERSON: And the version that he signed in October?

MR SINGH: Yes.

CHAIRPERSON: Is false?

MR SINGH: Because I do not find any other correspondence, Mr Chair.

10 **CHAIRPERSON:** Ja.

MR SINGH: That either exist in Eskom or exist in all of the plethora of pages that we have gone through ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...that refers to a contract that was signed in October.

CHAIRPERSON: October, ja.

MR SINGH: Mr Mabelane who is the subject matter of signing this document ...[intervenes]

20 **CHAIRPERSON:** H'm?

MR SINGH: ...also does not refer to a date in his affidavit.

CHAIRPERSON: Ja.

MR SINGH: Relating to where he has signed.

CHAIRPERSON: Okay.

MR SINGH: But based on the letters that he has received, Mr Chair, because if Mabelane received this letter and if he was of the view that there was no signed agreement. Again, he would have said that there was no signed agreement.

CHAIRPERSON: Ja-no, that is fine.

MR SINGH: So why he is lying on a termination clause.

CHAIRPERSON: Ja.

ADV SELEKA SC: H'm.

10 **CHAIRPERSON**: Do not motivate further because you have covered the ground.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay Mr Seleka.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: You had completed the points that you wanted to make, Mr Singh, or had you not?

MR SINGH: Mr Chair ...[intervenes]

CHAIRPERSON: In response to Mr Seleka's ...[intervenes]

20 **MR SINGH**: I mean, just the last point in terms of the fact that, again, as you have said, McKinsey moves through these issues and they are critical issues. Yet they write it off as confusion.

CHAIRPERSON: H'm, h'm.

MR SINGH: Mister – Dr Weiss in his last sentence in

paragraph 30, it says:

“I regret any confusion that may have caused...”

Yet it is a fundamental issue that causes great anxiety and reputational damage and everything to people and yet we write it off to confusion.

CHAIRPERSON: Yes. Yes, Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Chairperson, just to envisage the point. I think when you – as you follow the
10 trial of documentation. The acceptance letter is 17 December 2015. And apparently it was counter signed by the parties on that date. What Mr Singh has said in his affidavit is that the Service Level Agreement/MSA was concluded in January 2016.

This letter from Dr Weiss says the same.

“In January 2016, in negotiate the Master Services Agreement that we finally concluded in January 2016...”

Now this is a letter of demand, Mr Singh, by
20 McKinsey. When he, Dr Weiss, puts the facts in the affidavit, he explains how he signed the Master Services Agreement or when he signed it. Now I want to take you to your own letter because the operative date here or month is June 2016.

Remember, we showed you your letter of the

19th of February 2016, last time on your appearance, 19.

CHAIRPERSON: I am sorry, Mr Seleka.

ADV SELEKA SC: Chairperson, I want to go there.

CHAIRPERSON: I am sorry, Mr Seleka. Before you go there.

ADV SELEKA SC: Yes, okay.

CHAIRPERSON: Please do not forget what you want to deal with.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** I just remembered. There is something that I need it to be cleared. You remember when we went to the letter of acceptance?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: No, to the letter of termination. I was – I had asked for the letter dated 24 June 2016 because in McKinsey's letter of 28 June 2016, which is at page 743, they say many thanks for the letter dated 24 June 2016. But you said I would find that letter at whatever page you said but that letter was dated 16 June and not
20 24 June 2016 and yet you said that was the letter of termination.

So I want to raise the question. What is the story between – is there a letter dated 24 June 2016 or was that an error.

ADV SELEKA SC: No, I think I was not answering your

question, Chair.

CHAIRPERSON: Ja.

MR SINGH: Well, Mr Chair ...[intervenes]

ADV SELEKA SC: In so far as it relates to the 24th.

MR SINGH: If I can just add clarity, Mr Chair?

CHAIRPERSON: Yes.

MR SINGH: You – the letter on 743 does refer to the letter of 24.

CHAIRPERSON: Yes.

10 **MR SINGH:** The 24 June letter does exist.

CHAIRPERSON: Yes.

MR SINGH: ...not in the bundle.

CHAIRPERSON: Yes.

MR SINGH: But it is part of our new evidence.

CHAIRPERSON: Yes. Is it the termination letter?

ADV SELEKA SC: No ...[intervenes]

MR SINGH: It – Mr Chair, if you recall when I introduce the subject, I said Mr Mabelane correctly did terminate the MSA through a letter dated 16 June.

20 **CHAIRPERSON:** Okay.

MR SINGH: He then sends subsequent letters between 16 and 28(?) June.

CHAIRPERSON: Ja.

MR SINGH: And there are three letters, I think ...[intervenes]

CHAIRPERSON: Okay.

MR SINGH: That followed the same train of thought.

CHAIRPERSON: Okay.

MR SINGH: In terms of the fact that Eskom has terminated ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...and we are reimbursing you on a cost basis.

CHAIRPERSON: Okay.

10 **MR SINGH:** Not on a ...[intervenes]

CHAIRPERSON: Okay.

MR SINGH: ...risk basis. So the others, really, just ...[intervenes]

CHAIRPERSON: So the termination letter is the one who is dated 16 June.

MR SINGH: 16, Yes.

CHAIRPERSON: But there was subsequent correspondence, one of which is the letter of 24 June.

MR SINGH: 24 June, exactly.

20 **CHAIRPERSON:** But it is more about ...[intervenes]

MR SINGH: The basis of ...[intervenes]

CHAIRPERSON: ...matter ...[intervenes]

MR SINGH: ...the basis of settlement.

CHAIRPERSON: Ja, okay. Okay. Now I understand.

MR SINGH: So now one disputed this.

CHAIRPERSON: Ja.

MR SINGH: No one disputed the termination.

CHAIRPERSON: Okay, okay. Okay Mr Seleka, I think that has been cleared for.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you Mr Singh for that clarity. So Mr Sing, then, talking about this date of January 2016 being the conclusion date and looking at Dr Weiss' 10 affidavit. The last time we accepted to the bundle your letter dated 19 February 2016 which we marked – we paginated as 877.156. So it will be the – at the very end of Eskom Bundle 14(c), Chairperson.

CHAIRPERSON: What page?

ADV SELEKA SC: 877.156.

CHAIRPERSON: what is the bundle?

ADV SELEKA SC: Eskom Bundle 14(c).

CHAIRPERSON: Well, the one I have will not have page 77. You said page 77?

20 **ADV SELEKA SC:** Page 77 ...[intervenes]

CHAIRPERSON: Ja-no, it will not have. So it must be B because I have C.

ADV SELEKA SC: It might be D.

CHAIRPERSON: Is it B?

ADV SELEKA SC: It might be D.

CHAIRPERSON: D?

ADV SELEKA SC: Yes, D.

CHAIRPERSON: Oh, should not be D... Are the numbers not going up?

ADV SELEKA SC: This ...[intervenes]

CHAIRPERSON: Because this is C and it does not have 5 – page 500...

ADV SELEKA SC: 877.

CHAIRPERSON: Oh, I am sorry. Maybe it does. I am
10 sorry. No, no 77 it will not because it starts at six-hundred and something. That is for 1-14-c.

ADV SELEKA SC: Yes.

CHAIRPERSON: So if you are saying Bundle 14, page 77 it must be another bundle and it should be Bundle A, I would imagine.

ADV SELEKA SC: No, Chair, you have the numbers in reverse order.

CHAIRPERSON: I have in front of me Eskom Bundle 14(c).

20 **ADV SELEKA SC:** Yes, go to the very last – at the end of it, Chairperson.

CHAIRPERSON: To the end of...?

ADV SELEKA SC: Of that very same bundle, Eskom 14(c).

CHAIRPERSON: I must go to the end?

ADV SELEKA SC: To the very end of it. 877.

CHAIRPERSON: 877?

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, but I have been saying 77 and you did not say no. You said 877. That is why I am saying it must be an earlier bundle.

ADV SELEKA SC: Oh.

CHAIRPERSON: I thought you said 77.

ADV SELEKA SC: Oh, no. I thought you heard me Chair.

10 **CHAIRPERSON:** No, I say...

ADV SELEKA SC: Sorry. It is eight ...[intervenes]

CHAIRPERSON: That is why I was saying it has to be earlier than Bundle C.

ADV SELEKA SC: Yes. Sorry, I thought ...[intervenes]

CHAIRPERSON: 877.

ADV SELEKA SC: 877.

CHAIRPERSON: Okay. What, point what or only that?

ADV SELEKA SC: Point 156. Yes.

CHAIRPERSON: 156.

20 **ADV SELEKA SC:** You do not have it there?

MR SINGH: [No audible reply]

CHAIRPERSON: Now why is this page not marked, paginated?

ADV SELEKA SC: Yes.

CHAIRPERSON: There is – the last page is 877.155.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And then there is a document that comes after that, Exhibit U-33.1 but it is not paginated.

ADV SELEKA SC: Which is ...[intervenes]

CHAIRPERSON: And that the last document. So it must have been slotted in at some stage but your team – you should have made sure they have paginated.

ADV SELEKA SC: That in fact Chair ...[intervenes]

CHAIRPERSON: Is it the Eskom's formal request for
10 information?

ADV SELEKA SC: Correct, Chairperson. It should have been formally – the bundle should have been formally updated, Chair.

CHAIRPERSON: Will you make sure that it is done after we have adjourned?

ADV SELEKA SC: Yes, I noted that a message has been sent already Chair.

CHAIRPERSON: H'm. Okay, okay. I am – have you got it Mr Singh?

20 **MR SINGH:** Mr Chair, not in the Reference Bundle but I have ...[intervenes]

CHAIRPERSON: But you have got it somewhere ...[intervenes]

MR SINGH: I have got a copy that Mr Seleka has given us, yes.

CHAIRPERSON: Okay. Just make sure, Mr Seleka, that in mine and the witness's one, as well as, of course, yours that we all have the same thing paginated.

ADV SELEKA SC: Oh, yes. Yes, and the Chairperson had requested that the first page be separated.

CHAIRPERSON: H'm?

ADV SELEKA SC: So that you have two – the front is enlarged to have two of these sheets in two pages.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** But Chair I have made the request.
Let me...

CHAIRPERSON: Okay.

ADV SELEKA SC: Let me move on. Mr Singh, in this letter we – we have traversed this letter of 19 February 2016 the last time. The essence ...[intervenes]

CHAIRPERSON: This is a letter from Mr Anoj Singh, CFO of Eskom addressed to Dr Alexander Weiss of McKinsey & Company dated 19 February 2016 and the subject is Top Consultant Programme, Risk Based Contract Proposal and
20 Negotiations.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Ja, okay, continue.

ADV SELEKA SC: And it says:

“In relation to the above, Eskom requests a formal response and the following items.

Eskom understands that they intend to be partner to McKinsey, this Regiments Group(?)...”

Ja, Mr Singh, that itself speaks volumes, that you would have said so in this letter in respect of the MSA.

MR SINGH: [No audible reply]

ADV SELEKA SC: H’m.

10 “We also further note that Regiments Group is in a process of transition and that ultimate BEE partner would be Trillian Group.

Eskom would like McKinsey to provide a response relating to an article published on page 9 of the Financial Mail, February 18 to February 24 regarding allegations associated with Mr Mohammed Bogart, a former employee of Regiments Group...”

Second bullet point:

20 “Further to the above, Eskom seeks a response to key issues raised by myself at a meeting with McKinsey that took place on 9 February 2016, relating to the objectives of the above-mentioned proposed contract.

The issues are as follows...”

And the issues are listed there Chairperson, one to six.

CHAIRPERSON: Ja.

ADV SELEKA SC: And I will not read it. I will go to what should be the next page, the last paragraph. It says:

“Your urgent response within seven days on the above issues will be appreciated.

The signing of the proposed contract is contingent upon the receipt of satisfactory responses to the above request...”

And so Mr Singh ...[intervenes]

10 **CHAIRPERSON:** Yes. [laughs] Mr Singh, these documents and letters and emails that you and McKinsey and them were writing are confusing. [laughs]

MR SINGH: [No audible reply]

CHAIRPERSON: You were just saying that the agreement was concluded in February.

MR SINGH: Yes.

CHAIRPERSON: In January but now in February – on February 19, you are still talking about the agreement still to be signed.

20 **MR SINGH:** Mr Chair if I can add some ...[intervenes]

CHAIRPERSON: Do not add confusion, please.

MR SINGH: No, no confusion.

CHAIRPERSON: [laughs]

MR SINGH: Mr Chair, if you ...[intervenes]

CHAIRPERSON: You give clarification?

MR SINGH: Yes, Chair. If you recall, Mr Chair, when I was traversing this issue of when exactly was the, let us call it the SLA, signed because that is the document that was eventually signed. I said it was either signed in January for the date or it was signed by June or it was signed in October for Dr Weiss. So I gave a range of dates because ...[intervenes]

CHAIRPERSON: Well, you say to – or October on Dr Weiss' ...[intervenes]

10 **MR SINGH**: Dr Weiss's version.

CHAIRPERSON: Version.

MR SINGH: Yes.

CHAIRPERSON: Okay.

MR SINGH: Okay. And Mr Chair, this letter is the letter. It is signed. On this date, there was a draft version of this contract that we had contemplated signing within seven days or whenever. So Mr Chair, I do not concede that there was a backdated – I do concede that there was a backdating of the agreement of some sorts on objective
20 facts.

Whether it was in October, is what we are trying to establish but on objective evidence, there has to be some backdate. And Mr Chair, the other point I would like to raise which is also in our, I think, our new affidavit that we submit, is that you would recall that Advocate Seleka

started the MSA by traversing the happenings at what was called the Steering Committee, okay.

Now I think it was – I think it is the presentation to the second Steering Committee that took place, that there is a slight that effectively envisages the signing of the MSA. I think it was by the 31st of March or some date. I think is the second Steer Co. There is a presentation and there is a table there and it says MSA and I think it says 31 March or something here.

10 So even that Steer Co minutes, Mr Chair, envisages that there was something that was draft and not signed, as of that date of the Steer Co but it envisaged the signing by the 31st of March.

CHAIRPERSON: Well, you see, earlier on your evidence was – your evidence in reaction to Dr Weiss' statement in his affidavit that he only signed the agreement in October, backdated it to January. Your evidence was that the agreement either was or must have been signed in January.

20 I understood that to mean even by him. In other words, this backdating from October, you were rejecting. Is it – was my understanding correct, at that time, that is what you were saying before we came to this letter?

MR SINGH: Mr Chair, what I was saying is that the backdating occurring in October ...[intervenes]

CHAIRPERSON: H'm?

MR SINGH: ...it was not possible ...[intervenes]

CHAIRPERSON: H'm.

MR SINGH: ...giving the letter that existed on the 20th of June that said an agreement had been concluded in January.

CHAIRPERSON: H'm?

MR SINGH: And then they go on to effectively list the termination clauses that they then relay on relating to that
10 agreement that was concluded in January. So that was the point that I was trying to make there, is that, if the agreement was only signed in October, it will be making reference to it, as you have already said.

CHAIRPERSON: H'm.

MR SINGH: If it did not exist on that date, then they would have said but why are you terminating something that does not exist, okay?

CHAIRPERSON: H'm, h'm.

MR SINGH: So it was in reference to the existence of a
20 signed contract by that date being the 28th of June.

CHAIRPERSON: H'm, h'm.

MR SINGH: But ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...I did not say that it was not backdated.

CHAIRPERSON: Ja.

MR SINGH: There was an element of backdating
...[intervenes]

CHAIRPERSON: H'm.

MR SINGH: ...on Eskom's side as well McKinsey.

CHAIRPERSON: H'm. You see, my understanding of what
you were saying, and I thought that that letter of 28 June
...[intervenes]

MR SINGH: Yes, sir.

CHAIRPERSON: ...from Dr Weiss was supporting – was
10 supportive of your version because I understood you to be
saying the agreement was signed in January. This whole
story that he only signed in October is not supporting by
anything, you know. And then you remembered that in the
second paragraph of that letter ...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: ...of 28 June, he himself says the
agreement was concluded in January 2016.

MR SINGH: Yes.

CHAIRPERSON: So that is when I was thinking he is
20 supportive of your version because I had thought your
version was the agreement was signed or must have been
signed in January.

MR SINGH: Okay let me ...[intervenes]

CHAIRPERSON: Then the story about October is really
not good enough

MR SINGH: Okay. So let me ...[intervenes]

CHAIRPERSON: What you are saying, certainly now, is that there must have been some backdating that happened.

MR SINGH: There must have been some back – on both, Eskom as well as McKinsey.

CHAIRPERSON: I was about to ask whether you say on both or only one side.

MR SINGH: No, I am ...[intervenes]

CHAIRPERSON: You say on both?

10 **MR SINGH**: Essentially, that will be on both.

CHAIRPERSON: Yes, okay.

MR SINGH: Because even in the Steer Co ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: ...which was chaired(?)

CHAIRPERSON: Ja.

MR SINGH: It was envisaged that the agreement would have been signed sometime in – end of March.

CHAIRPERSON: Ja, yes.

MR SINGH: And those Steer Co documents were prepared
20 by Mr Govender's and Mr Mabelane's ...[intervenes]

CHAIRPERSON: Yes, yes.

MR SINGH: So they would have known the status of that document.

CHAIRPERSON: Yes. Mr Seleka. [laughs] So the confusion does not get properly clarified but we continue to

try and understand...

ADV SELEKA SC: It would help, Mr Singh, if you tell the Chairperson the facts as you knew them, because clearly, on the basis of the facts, you are now saying the Steering Committee meeting on the 9th of February 2016, this letter of yours and there will be another letter from McKinsey. Two letters, in fact. You would clearly have known that January cannot have been – January 2016 cannot have been the month in which the MSA was...

10 **MR SINGH:** If I can offer my view?

CHAIRPERSON: H'm.

ADV SELEKA SC: Yes.

MR SINGH: As to a response to Mr Seleka's point.

CHAIRPERSON: Mr Seleka, ja.

MR SINGH: You will recall that the SLA required – it was basically in place and was, let us say, agreed to by the parties.

CHAIRPERSON: Agreed to by...?

MR SINGH: Agreed to by the parties.

20 **CHAIRPERSON:** Ja.

MR SINGH: Okay. And the parties operates as if the SLA was in place?

CHAIRPERSON: Was not there?

MR SINGH: No, was in place.

CHAIRPERSON: As if it had been signed?

MR SINGH: As if it has been signed.

CHAIRPERSON: At a time when it had not yet been signed?

MR SINGH: When it had not been signed.

CHAIRPERSON: Okay.

MR SINGH: Okay. The agreement itself contained – the SLA. Let us just use the word SLA. The SLA itself contained two suspensive conditions. And Mr Seleka led evidence, the last time, to say: Do you know whether
10 these things were fulfilled or not? And my personal knowledge at the time was that I did not know.

However, in our affidavit that we will introduce today, we have provided certain evidence to suggest why we believe those two suspensive conditions were fulfilled.

CHAIRPERSON: Were fulfilled?

MR SINGH: Were fulfilled.

CHAIRPERSON: Ja.

MR SINGH: As of the required date to January. And those two suspensive conditions, Mr Chair, was one, that a
20 steering committee should be constituted. So in our view we have provided a VTC minute from July 2015 that in our view constitutes the steering committee, we have provided an email – I think it was dated 26 January, if memory serves, that effectively says listen, these are the steering committee members. There is another email from

McKinsey that says listen, these are the steering committee members that must come from their side as well as two Trillian representatives. Then we attach a terms of reference relating to the steering committee that was agreed to between Eskom and McKinsey.

So in our view those documents indicate that by the steering committee was constituted albeit that it met on the 9 February due to, as they identified in the emails, due to diary constraints.

10 The second point, Mr Chair, was that there needed to be auditors' sign-off in something called a Wave tool. Now the Wave tool is basically a McKinsey proprietary software that basically tracks these let us say risk-based contracts and, Mr Chair, there we offer an email – well, it is actually an email as well as a report. The email basically – I think it is sometime in December 2015 dated, if I recall correctly, and copies the head of IT, Mr Sean Maritz, he copies two individuals from Eskom internal audit and it is from the head of information security, I think, at
20 Eskom IT.

Now the issue is that the suspensive conditions required auditor sign-off on the Wave. So in my view, Mr Chair, you find that Eskom internal audit individuals are copied in the mail, the individual that actually does the work is from IT and he is identified as an individual called

Mr Vimal Nike(?) and he does a whole lot of work, it is in a document that is six pages long and he basically says he is happy with the Wave tool with certain reservations. He then sends that to the head of IT, Mr Sean Maritz and the internal audit individuals are copied in that mail. But for me, my understanding was that is what Eskom relied to say that the suspensive conditions were fulfilled in terms of audit sign-off on the Wave tool.

10 In addition to that, Mr Chair, we attach an audit report that was provided by McKinsey from audit firm Ernst & Young which basically gives also some comfort around Wave tool and security measures and the Wave tool and so on. So that is the basis on which we believed or Eskom believed at the time that the suspensive conditions were fulfilled. I am assuming that that is the same view that McKinsey took at the time because we continued as if the contract existed in terms of our behaviour because we set up the Steercos, we went on to do the work, we did all of these things.

20 So, from that perspective, when we talk about the contract being concluded, so there being a contract that existed, it was on the basis that the suspensive conditions relating to the contract had been fulfilled. What remained thereafter, Mr Chair, may have been the annexures or the schedules to the contract relating to certain initiatives,

maybe the BEE partner because obviously at that point in time Trillian was still going through a vetting process and all of that stuff, so those may be things that were still outstanding which prevented the formal signing of the agreement but the parties operated as if the agreement of the suspensive conditions to the agreement had been fulfilled by the 31 January. So that is the reason why, Mr Chair, we would say that the word concluded in January would be appropriate to use because the suspensive
 10 conditions relating to the contract was concluded in January.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you, Chair. But the preconditions, Mr Singh, do not bear on the conclusion of the agreement so I think your letter of the 19 February is what it is. It was a proposed contract, you say the signing of it was contingent upon them satisfying those requirements. They responded to you in the letter of the 25 February – and Chair, I should again apologise because
 20 the updates have not been done. I do not know whether the Chairperson will have that letter, it goes with – this is one we have read of the 19 February.

CHAIRPERSON: What page did you say we must go to?

ADV SELEKA SC: It is the next page, Chair.

CHAIRPERSON: Oh.

ADV SELEKA SC: Yes.

CHAIRPERSON: Well, it is the same situation.

ADV SELEKA SC: It is the same situation.

CHAIRPERSON: Ja.

ADV SELEKA SC: I have paginated mine, I know because I had to ask for leave to have them admitted as exhibits.

CHAIRPERSON: Ja.

ADV SELEKA SC: But does the Chair have that letter of 25 February 2016?

10 **CHAIRPERSON:** Ja, I have got the letter so it is – and we admitted the document previously as EXHIBIT U33.2.

ADV SELEKA SC: That is correct.

CHAIRPERSON: So what remains is just the pagination.

ADV SELEKA SC: Correct.

CHAIRPERSON: But this is a response from McKinsey to Mr Singh.

ADV SELEKA SC: Correct, Chair, yes.

CHAIRPERSON: Responding to Mr Singh's letter of 19 February.

20 **ADV SELEKA SC:** Correct.

CHAIRPERSON: Okay.

ADV SELEKA SC: Correct. And there are certain relevant paragraphs here which might be of – which are of importance, Chair. And I want to go to page one, two, three, four which has paragraphs (3) and (4) and (5). I

would read (4), Chairperson which is...

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja.

“The development of BEE partners as regards to the vision, aspirations, skills and competency mix.”

Mr Singh, you have that in front of you?

MR SINGH: Yes.

ADV SELEKA SC: Thank you. It says:

“As described...”

10 Ja:

“...competency mix and overall plan for success over the contract duration including a focus on the health of the relationship with McKinsey. As described earlier in this note, the development of BEE partners forms an integral part of the overall programme. As a supplement to the SLA, the whole memorandum was negotiated with the title “Summary SDL discussion results.” In this memorandum it is clearly defined how BEE partners

20 should be development. We are a hundred percent committed to the result of the negotiations between Eskom and McKinsey with respect to the development targets, the following development philosophy management consulting partner had been negotiated.”

And then they talk about philosophy there. Chair, I would like to cut to the chase. If we may go to the next page where it says, after the bullet points:

10 “The selection of the management consulting partners will be fully aligned with Eskom. Besides Letsema, McKinsey pre-confirmed to Regiments and a company advisory as black management consulting partners. McKinsey is happy to qualify additional partners and will seek Eskom’s advice and guidance in this matter. For an instance, black consultancies listed on the Eskom consultancy panel could be considered viable partners in this context. With respect to the abovementioned question, series of discussions between McKinsey and the potential BEE partner have been taking place. The result of these discussion is summarised on slides 15 to 23 of the supplementing slide pack and entails answers to all questions raised by Eskom. We would like to take the

20 opportunity to highlight that Regiments will not be our BEE partner but potentially and subject to completion of further review, Trillian. In addition to this, the SLA leaves the opportunity to add additional BEE partners and/or change partners. In this case, the same criteria apply.”

Then you have paragraph (5) which reads:

“The development of Eskom’s top consultants regarding the intended aspirations, road map and key success measures with a clear goal to minimise the future use of consultants in the organisation. The development of Eskom’s top consultant programme forms the core and centre of the SLA between Eskom and McKinsey and in fact has been the basis for the contract. Therefore, the full details of the process and the achievements has been outlined in the SD and L memorandum that supplements the SLA. In particular, the memorandum outlined the following design criteria.”

And those are set out, which I will not read, Chair, in the interest of time. There is a paragraph which talks about – along the lines of Mr Singh’s letter about the SLA still being a contract to be signed. So the last page, paragraph (6):

“The inclusion into the programme of other key focus areas such as contract management and fraud and corruption.”

Says:

“The conditions of the SLA specifically allow for additional scope to be included in the scope of work and hence can accommodate additional topics like

contract management and fraud and corruption. Specifically on these two topics McKinsey has already worked on setting up a contract management office to build Eskom's claims and management capability. This can be easily extended to interface with or include a fraud and corruption capability. We would welcome the opportunity to discuss any of the issues in this note and how we can best serve you on the programme further with you. We will aim to update you further on the issues relating to Trillian by 4 March 2016 and would be grateful if you could confirm this will be acceptable. We will naturally keep you apprised of any relevant developments in the meantime."

So what we have read there, Chair, relates to the envisaged supply development partner that McKinsey had in mind to subcontract to. Mr Singh, you see that?

MR SINGH: I do, Chair.

ADV SELEKA SC: You see that and I think they too accepted – there was a paragraph I was looking for which also suggests that the proposed agreement to be concluded between you – between Eskom, sorry, not between you, between Eskom and McKinsey was also at a time envisaged that it would be signed. We did read it previously but I cannot find it now, Chair.

Anyway, the subsequent letter, there is another letter, one of the 30 March 2016, where you are advised that they will also not subcontract with Trillian in respect of the MSA. Do you recall that as well?

MR SINGH: I do, but if you can refer me to the letter, it will refresh me.

ADV SELEKA SC: That letter ...[intervenes]

CHAIRPERSON: So, Mr Seleka, what was the – or what were the points that you sought to make by reference to
10 these letters, was it that even in March there was still no signed agreement?

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes because of the letter of the 30 March.

CHAIRPERSON: Yes, okay. And are you going to be taking that a step further and saying that it is likely that even in June no agreement had been signed yet or you are not going to go that far?

20 **ADV SELEKA SC:** No, I am going to take it that far, Chair.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Because Mr Singh, when McKinsey – McKinsey is like a creditor, has on its version rendered services to Eskom. You would understand why they say

the agreement was concluded in January 2016 because they want to be paid. They are demanding payment. But when Dr Weiss puts in an affidavit – because now it is a sworn statement, he has to tell the Commission the true facts as to when he signed this agreement and that is what he says in his affidavit. I do not know whether – because that letter does not say we signed the agreement in June 2016, it says the agreement was concluded in January 2016 which you have said – well, you did not say but on
 10 your version subsequent, that cannot be true because there was delayed from both sides and backdating from both sides.

CHAIRPERSON: I guess that – do not forget your point – I guess, Mr Singh, you must tell me whether you know from what the date is when Eskom signed had backdated and what the date is when McKinsey signed and backdated if in respect of McKinsey you are saying it is not October.

MR SINGH: Mr Chair, within my personal knowledge I cannot say and hence I – the only person that can tell you
 20 when he actually signed was Mr Mabelane.

CHAIRPERSON: Yes.

MR SINGH: But from where I sit in terms of the documents that I see, I could only envisage that by the 28 June, based on McKinsey's letter, that an agreement existed and was signed.

CHAIRPERSON: So but you – are you saying you do not have personal knowledge as to when Eskom actually signed?

MR SINGH: No, Sir.

CHAIRPERSON: And you do not have personal knowledge as to when McKinsey signed but based on what you have seen in the documentation, none of them signed in January 2016 and for sometime thereafter there was – nobody had signed. So you say they must both have signed at some
10 stage after January 2016 they backdated.

MR SINGH: That is correct, Sir.

CHAIRPERSON: As to both, you do not know exactly when but you say that well, in regard to Eskom Mr Mabelane must be able to say. But why would you then dispute Dr Weiss' evidence that look – in the affidavit, that I actually signed in October but the document gives the – reflects that I signed it January because I gave that date but the reason why I did so, because I was – I understood that Eskom preferred that we should put that date. Why
20 are you disputing that evidence?

MR SINGH: Mr Chair, because as I said, other than for the letter itself, had said we concluded an agreement in January. The letter ...[intervenes]

CHAIRPERSON: You do not accept now?

MR SINGH: Yes.

CHAIRPERSON: Ja.

MR SINGH: The letter goes on to rely on the termination clauses that existed within the agreement or the SLA. Now it is inconceivable that you would – you would send a letter of demand to somebody and not say that it is actually based on an unsigned agreement.

CHAIRPERSON: But basically you are saying you challenge it because of your understanding of the correspondence and other documents and your terms of
10 logic but you do not have personal knowledge.

MR SINGH: No, no, I do not have personal knowledge.

CHAIRPERSON: Ja, ja. Okay, alright. Mr Seleka?

ADV SELEKA SC: But, Mr Singh, if the facts are as they are, it would have been Eskom which should have said but we have a defence to this claim, to this legal – to this demand in the sense that we have not signed the agreement or send it to them to sign, they have no leg to stand on. It is you who should raise that as the person to be sued as opposed to the one who is suing you.

20 **MR SINGH:** But that is exactly my point, Sir, I am saying that by 28 June, when the letter arrives, there had to be a signed contract between McKinsey and Eskom else why would Mr Mabelane not raise that defence?

ADV SELEKA SC: Why would?

MR SINGH: Why would Mr Mabelane not raise exactly the

point that you are raising?

CHAIRPERSON: So you are saying if to Eskom's knowledge ...[intervenes]

MR SINGH: Correct.

CHAIRPERSON: ...when McKinsey sent that letter of the 28 June...

MR SINGH: Yes.

CHAIRPERSON: Which you said is a letter of demand.

MR SINGH: Yes.

10 **CHAIRPERSON:** If, to Eskom's knowledge, no agreement had been signed, one would expect Eskom to say but we have no signed agreement.

MR SINGH: Exactly.

CHAIRPERSON: And you say the fact that they did not say that suggests to you that there must have been a signed agreement by that date.

MR SINGH: That is correct, Sir.

CHAIRPERSON: That is what you say.

MR SINGH: That is correct.

20 **CHAIRPERSON:** And that is the basis on which you say by that time the parties must have signed and backdated.

MR SINGH: That is correct.

CHAIRPERSON: You no longer say in January there was a conclusion of the agreement to say – it must have been later than that but not later than 28 June.

MR SINGH: That is correct, Mr Chair.

CHAIRPERSON: Somewhere in between both of them must have signed but they backdated?

MR SINGH: That is correct.

CHAIRPERSON: That is what you are saying.

MR SINGH: That is correct.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Chair, just by way of reference, the letter of the 30 March 2016, is in the same bundle, Eskom
10 bundle 14C, page 876.

CHAIRPERSON: Page 876?

ADV SELEKA SC: Page 876, 877 and Chair you will see on 877 the penultimate paragraph still refers to a draft of the service level agreement.

CHAIRPERSON: You said I must go to page 876?

ADV SELEKA SC: Yes.

CHAIRPERSON: I am there but maybe we are at ten past four, maybe we should take a short adjournment. We can take it either now or you can complete the point you
20 wanted to make with reference to this letter.

ADV SELEKA SC: No, the point is made, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: In what you said to me, I am just giving you the reference.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: To where you will see even McKinsey says:

“We acknowledge that the draft of the service level agreement between Eskom and McKinsey entails...”

Even as at 30 March 2016 they refer to it as a draft.

CHAIRPERSON: Where are you reading from on page 876?

ADV SELEKA SC: Okay.

CHAIRPERSON: Are you reading from page 876?

10 **ADV SELEKA SC:** No, Chair, sorry, please turn to 877.

CHAIRPERSON: Okay.

ADV SELEKA SC: The penultimate paragraph:

“We acknowledge that the draft...”

CHAIRPERSON:

20 “..of the service level agreement between Eskom and McKinsey entails the requirement of outsourcing a percentage of the total resulting fee a supply development but now we are fully committed to giving effect to this obligation despite the termination in light of the previous subcontracting relationship with Trillian which under the current conditions would not be possible. We would appreciate an opportunity to develop options with Eskom to ensure that meet our supply development obligations.”

So they – two points are made in this paragraph. One, is there is a draft service level agreement between Eskom and McKinsey, which means it has not been signed as at the end of March 2016 but they say:

“We are fully committed to giving effect to this obligation despite the termination...”

The termination that they are talking about there is obviously earlier than the termination that is contained in the letter of 16 June 2016. So which termination are they
10 talking about there?

ADV SELEKA SC: Is it in the same paragraph, Chair?

CHAIRPERSON: Yes, same paragraph, after the first sentence, the second sentence says:

“We are fully committed to giving effect to this obligation despite the termination.

ADV SELEKA SC: Oh yes, okay, I see. Not that is the termination of McKinsey’s further discussions with Trillian for Trillian to become their subcontractor.

CHAIRPERSON: Oh, the termination of those
20 discussions?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: So then they decide here that Trillian will not be McKinsey’s supply development partner.

CHAIRPERSON: So I guess is the point you are making

that as we look at when it is that the agreement was signed, we must accept that as at 30 March 2016 it had not been signed otherwise they would not talk in these terms. That is the point you were making.

ADV SELEKA SC: Correct, correct.

CHAIRPERSON: Okay. You accept that point, Mr Singh?

MR SINGH: That is correct.

CHAIRPERSON: You accept it?

MR SINGH: Yes.

10 **CHAIRPERSON:** Ja, Okay, alright. Was there another point in regard to this letter that you were making other than...?

ADV SELEKA SC: No.

CHAIRPERSON: No.

ADV SELEKA SC: I think – I wanted to follow up on that demand.

CHAIRPERSON: Follow up.

ADV SELEKA SC: Can I follow up on the demand, Chair?

CHAIRPERSON: Ja, ja.

20 **ADV SELEKA SC:** Mr Singh, you see, it seems to – it seems on the documentation that the payment or the decision to make a payment to McKinsey came from Eskom and McKinsey only reacted pursuant to the letter of termination and I would you like you to quickly, before we take the adjournment to turn to the same bundle, page

829.19 which is a submission to the BTC. Eskom bundle 14C, 829.19.

CHAIRPERSON: I have got it, it is dated 9 June 2016.

ADV SELEKA SC: Thank you, Chair.

MR SINGH: 829 point?

CHAIRPERSON: 829.19.

MR SINGH: Point 19.

CHAIRPERSON: It is submission document from Eskom to the board tender committee and it is dated 9 June 2016.

10 **ADV SELEKA SC:** Yes, so that is before McKinsey's letter of demand and the resolution required is:

“It is resolved that the BTC grant approval to cancel McKinsey's risk-based process.

2.1 Allow ...[intervenes]

CHAIRPERSON: Before you deal with that, Mr Seleka, let us just for the sake of completeness say who signed the submission.

ADV SELEKA SC: Yes.

CHAIRPERSON: It was – it is not clear who compiled it
20 but on page 829.22 it says:

“Supported by Prish Govender, Programme Director”
And he has signed on 6 June 2016. And then below that says:

“Approved by Edwin Mabelane, Chief Procurement Officer”

And he has signed and that is on the same date and then you can tell us what it says.

ADV SELEKA SC: Yes, thank you, Chair. Now Mr Singh would you have had sight of this before?

CHAIRPERSON: Let's say the title of the submission is given as "Briefing on McKinsey risk-based contract".

ADV SELEKA SC: Yes.

CHAIRPERSON: And that is under one, under two it says resolution required and it says:

- 10 "It is resolved that the BTC grant:
- 2.1 approval to cancel McKinsey risk based process;
 - 2.2 allow all cost to be negotiated and finalised to be approved by the relevant tender committee.
 - 2.3 approval of activities to be redirected to existing contracts where appropriate with the incorporation of similar SDL objectives and the option of contracting on risk-based
- 20 approach."

Okay, you can continue

ADV SELEKA SC: Yes, so in this submission Mr Singh it ...[indistinct – coughing] the BTC it appears that the willingness to make a payment, negotiate and finalise on cost came from the part of Eskom, even before the letter of

demand, even before the purported termination of the MSA or SLA. Your comment?

MR SINGH: Mr Chairman ...[intervenes]

CHAIRPERSON: I am sorry, would you just repeat, I am sorry I was looking at something that I raised just now.

ADV SELEKA SC: So it appears from this document, this submission to the BTC, that the willingness to make a payment under the MSA, even before it is terminated, purportedly terminated, even before the letter of demand
10 you have referred to of McKinsey, that Eskom was willing to negotiate and finalise on the cost with McKinsey.

CHAIRPERSON: Yes, you may comment Mr Singh.

ADV SELEKA SC: Your comment?

MR SINGH: Mr Chair I think the first question that Mr Seleka asked was would you have had sight of this document. Mr Chair I would not have had sight of this document, and I did not sign it.

CHAIRPERSON: Yes.

MR SINGH: But the nexus of this document, or the origins
20 of this document originates from the Steering Committee meeting, was it the second or the third Steering Committee – at one of the Steering Committee meetings there was a closed session where there was a discussion held, and I think it was I think either the June, I think it was the June meeting, but anyway, there was a Steering Committee

meeting where we held a closed session to decide on the future of the MSA, and at that meeting the Steerco resolved that it would probably be best for the reasons discussed at the Steerco, that it would recommend to the BTC to consider cancelling the MSA for the reasons that it had discussed as well as the reasons that are set out by Mr Mabelane and Mr Govender in this submission.

So that is the nexus we hand this document Mr Chair. In that meeting Mr Chair I also requested, given
10 the fact that Steerco had come to the conclusion that there would need to be a termination of the MSA I requested Mr Mabelane and Mr Govender consult legal as well as commercial, now commercial was another word for procurement within Eskom, to understand the consequences of the said termination, and once they were satisfied with that they would proceed to the BTC who at that stage did the required approval or submit a recommendation to get an approval as to what they had thought would be appropriate in the circumstances.

20 So that is the background, so Mr Chair in terms of responding to Mr Seleka's comment directly no I would not have had sight of this specific document but I would have known of it, because of that, yes.

Secondly Mr Chair I am not too sure how Mr Seleka comes to the conclusion that Eskom had mooted us before

the termination of the SLA, because the termination is contemplated in the document, so they would have taken a decision to terminate if they thought it appropriate and if so I would assume that Mr Mabelane had gotten advice to understand whether there was cost implications relating to termination and again Mr Chair if there was a signed contract between McKinsey and Eskom at the time the termination clauses of that contract would result in these costs that are requested, so as it relates to Eskom being
 10 willing to pay again it would rely and relate to the contractual agreement between Eskom and McKinsey at the time.

CHAIRPERSON: Well I see that in this document, the first page of this document in bullet or under bullet point – the second bullet point it just said:

“the contract was signed in January 2016.”

Before that it says:

“A letter of acceptance was issued to McKinsey in December 2015 allowing work to commence until
 20 the contract was fully developed and finalised for signature.”

It then says:

“The contract was signed in January 2016.”

And then next bullet point:

“Eskom submitted a letter to McKinsey on 19

February following a problem kick-off. The committee were in key concerns on the programme. Mechanics were raised.”

In June 2019 a document signed by among others Mr Prish – well signed by Mr Prish Govender and Mr Adrian Mabelane signed on the 6th of June 2016 says that the contract between Eskom and McKinsey was signed in January 2016.

The confusion does not stop.

10 **ADV SELEKA SC:** Evidently Mr Chair.

CHAIRPERSON: Ja, okay. Let us take the short adjournment, it will be ten minutes.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Okay thank you Chairperson. Chair we will ask Mr Singh about allegations made by the travel agent
20 in due course.

CHAIRPERSON: By?

ADV SELEKA SC: By the travel agents in due course.

CHAIRPERSON: Yes.

ADV SELEKA SC: But Mr Singh has indicated in an affidavit the supplementary affidavit that he wishes first to have – for

his team – legal team to engage with the legal team for Mr Essa before he responds to those allegations. But we have agreed that he could deal with some of the aspects relevant to or arising from that affidavit.

CHAIRPERSON: Well if he is still going to respond I was hoping that if we did not finish Mr Singh's evidence today we would finish tomorrow.

ADV SELEKA SC: Yes.

CHAIRPERSON: I know he is due to come back on Transnet
10 later – later in the month so how far is that process?

ADV VAN DEN HEEVER: Chairperson I think maybe it is also prudent to place on record that we were also over the weekend served additional documents etcetera.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: And based on that I have informed my learned friend I do not want to go into the details is that we most probably going to do another affidavit to deal inter alia with some of the issues that is now being raised in respect of McKinsey and the witness' which would most
20 probably make incriminating statements with reference to people but time will be needed to actually serve it on the relevant persons.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: So the – even if we come to the end of Mr Seleka's examination by tomorrow we cannot take

it further.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: We have however when it comes to the issue of the travel agent agreed Mr Seleka can ask him about the various invoices.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: But what my client has done he has gone and he has analysed it and he has drafted a little spread sheet to be able to deal with those issues.

10 **CHAIRPERSON:** Yes.

ADV VAN DEN HEEVER: So he can to that extent.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: He feels comfortable enough to with reliance on this deal with the various invoices etcetera.

CHAIRPERSON: Okay. Okay.

ADV VAN DEN HEEVER: And that we think would also assist in speeding things along.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: At this stage.

20 **CHAIRPERSON:** No that is fine. I guess what I am looking for is that there ought to be an understanding of where or when the process of obtaining or preparing his further affidavit will be completed or when the affidavit would be available. Obviously if it has got to be served by way of a Rule 3.3 on certain people may be implicated in it that would

have to be done. So maybe at some stage either at the end of today's proceedings or tomorrow let us – let us try and have finality on the dates. But if Mr Singh is able to deal with some of the issues connected with that then whatever can be done should be done in terms of covering as many issues as possible. And those that he might not yet be able to deal with until he has done the affidavit then he would deal with them then hopefully if we have to find to make time for him at some stage or other after tomorrow then the time
10 would be limited just to come with these specific issues.

ADV VAN DEN HEEVER: Chairperson it would even go a little bit further in lieu of spending a lot of time on re-examining.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: We will take care of those issues.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: And literally just highlight it.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: Under oath say we refer to this
20 issue, this issue and I think that would save a lot of time.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: Because I think you can see there is going to be a number issues to be dealt with in re-examination.

CHAIRPERSON: Ja. No that is fine.

ADV VAN DEN HEEVER: Thank you.

CHAIRPERSON: That is fine. Okay Mr Seleka.

ADV SELEKA SC: Thank you Chair. Chairperson before I proceed during the adjournment my learned friends made a request to me in regard to that letter of the 28th of June 2016 which is in Eskom Bundle 14(c) page 743. A request which I am not going to do I am told is that...

CHAIRPERSON: Which you are not going to?

ADV SELEKA SC: I am not going to do what they are asking
10 me to do.

CHAIRPERSON: Oh okay ja

ADV SELEKA SC: But I need to place it on record.

CHAIRPERSON: Ja.

ADV SELEKA SC: What they are asking could be done is to have the letter the bullet points in that letter read to the record because the letter seeks to quote clauses of the – of the contract and we produced them in this letter and they wanted me to give Mr Singh the opportunity to comment on them.

20 **CHAIRPERSON:** Well he – he could comment even if they are not read into the record if that was necessary.

ADV SELEKA SC: Ja.

CHAIRPERSON: Is what you were not inclined to do reading into the record or allowing Mr Singh to comment or not.

ADV SELEKA SC: No the former.

CHAIRPERSON: Ja.

ADV SELEKA SC: The reading into the record.

CHAIRPERSON: Yes.

ADV SELEKA SC: Because...

CHAIRPERSON: Okay ja

ADV SELEKA SC: Ja because the question is where would Dr Weiss and Mr Vikas Sagar have obtained these clauses if he says in his affidavit that the contract was only sent to him in late September early October 2016?

10 **CHAIRPERSON:** Do you not want to ask Mr Singh to comment on those – those parts without reading them into the record.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then if you want to question him on his comments then you do that.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. Mr Singh you have referred the Chairperson to that letter – the letter from McKinsey which is
20 a letter essentially of demand and the – I suppose you know what your legal representatives wish to have done are you able to comment on the clauses that are quoted in that letter?

MR SINGH: Yes Mr Chair. The – the clauses as quoted in the letter refer to clause 24.14 of the SLA. 13.1 of the SLA.

7.3, 7.31, 7.32, 7.33, 7.35, 7.33 again 7.34, 7.35 and 7.6 lastly. You see the point again is as Mr Seleka has raised that these clauses come verbatim from the Service Level Agreement that we have said has been signed. So the issue is if Mr Weiss only received a copy of this agreement in October as he alleges where did these clauses actually emanate from?

CHAIRPERSON: Yes. I am just going to 7.7 – 74.3. Now this is the letter which says the Master Services Agreement
10 was finally concluded in January 2016.

MR SINGH: That is correct.

CHAIRPERSON: Which you dispute – which you challenge?

MR SINGH: No Mr Chair what we are challenging is when this agreement was actually signed.

CHAIRPERSON: Yes but when we conclude we are talking about signing – you and I understand that – we are on the same page on that.

MR SINGH: Mr Chair as I tried to explain to you before in the contract contained two suspensive clauses.

20 **CHAIRPERSON:** ja.

MR SINGH: And those suspensive clauses needed to have been fulfilled by the 31st of January and Eskom's – well our version is that those conditions were fulfilled and therefore the contract was concluded.

CHAIRPERSON: Well you remember when we were talking

earlier about whether the agreement was concluded in January or later we were talking out when it was signed and – and you said at a certain stage nobody signed the agreement in January as far as you are concerned.

MR SINGH: If we were...

CHAIRPERSON: Everybody signed it later but backdated it.

MR SINGH: Okay if you define concluded as the date of signature.

CHAIRPERSON: Ja that is – that is – ja, ja.

10 **MR SINGH:** Then it is.

CHAIRPERSON: Because if it is meant to be signed until both sides have signed it is not concluded. Okay. You accept that? An agreement that requires to be signed is not concluded until both sides have signed.

MR SINGH: Well Mr Chair in signing it would (laughing so not audible).

CHAIRPERSON: Okay. Alright but – but you and I agreed earlier I thought that if we find a time in 2016 when the parties had not signed the agreement then there was no
20 agreement between the parties yet. I leave out the issue of the offer and acceptance which we discussed earlier. But I thought that we – we understood each other that as long as Eskom had not signed McKinsey had not signed there was no agreement yet.

MR SINGH: Mr Chair.

CHAIRPERSON: Did I misunderstand?

MR SINGH: Well Mr Chair if we look at it right legally there was an obligation through the letter of award.

CHAIRPERSON: Letter?

MR SINGH: From – through the letter of award.

CHAIRPERSON: Ja.

MR SINGH: There was a binding agreement.

CHAIRPERSON: Ja.

MR SINGH: Between Eskom and ...

10 **CHAIRPERSON:** Yes but remember I said let us leave that (speaking over one another).

MR SINGH: Part that 00:12:02 and partner.

CHAIRPERSON: Yes and the letter or an offer and acceptance.

MR SINGH: Offer and acceptance.

CHAIRPERSON: Ja.

MR SINGH: Flowing there from is the Service Level Agreement.

CHAIRPERSON: Yes.

20 **MR SINGH:** Now the Service Level Agreement itself has two suspensive conditions for it to become effective.

CHAIRPERSON: Yes. That I understand you have explained that so I know that.

MR SINGH: Yes so from what I understand is if the suspensive conditions are fulfilled the contract becomes

effective notwithstanding when it is signed.

CHAIRPERSON: Yes but too when you say that you are relying on the offer and acceptance is it not?

MR SINGH: No even – even the agreement itself Mr Chair.

CHAIRPERSON: Well if it has not been signed.

MR SINGH: Unless – unless...

CHAIRPERSON: If it has not been signed I would (speaking over one another).

MR SINGH: Unless there is an express clause in the
10 agreement that says this agreement only becomes effective on date of signature.

CHAIRPERSON: No remember we are talking about an agreement here which we both understood or understand to have required both parties to sign.

MR SINGH: Yes.

CHAIRPERSON: That is why they signed and that is why they even backdated it because it was important that it be seen to have – that from a certain date.

MR SINGH: Okay.

20 **CHAIRPERSON:** Or am I confusing you?

MR SINGH: I think you are Mr Chair.

CHAIRPERSON: Okay alright let – let us take it – let us take it step by step. Do you accept that there was no Service Level Agreement or MSA before both Eskom and McKinsey signed?

MR SINGH: Mr Chair no because in my...

CHAIRPERSON: You say – you say it was that?

MR SINGH: It – when the suspensive conditions were fulfilled.

CHAIRPERSON: Yes.

MR SINGH: Mr Chair the agreement became effective.

CHAIRPERSON: Yes.

ADV SELEKA SC: And Mr – Dr Weiss even agrees.

CHAIRPERSON: Yes.

10 **MR SINGH:** That it became effective or there was a desire to backdate the agreement to the date on which it became effective.

CHAIRPERSON: So ...

MR SINGH: Which is sometime in January.

CHAIRPERSON: So is your – is your position that even in February remember you have a letter – you letter to McKinsey dated 19 February.

MR SINGH: Yes.

CHAIRPERSON: Saying – talking about signing that was
20 still to happen.

MR SINGH: Yes.

CHAIRPERSON: On the contract.

MR SINGH: Yes.

CHAIRPERSON: Are you saying even on the 19th of February as far as you are concerned if the two suspensive

conditions had been met already and I cannot recall whether they had been met – if they had been met then as far as you are concerned there was a Service – a Master Service Agreement between McKinsey and Eskom as at that date?

MR SINGH: Was effective.

CHAIRPERSON: It was there.

MR SINGH: Yes.

CHAIRPERSON: And it was binding.

MR SINGH: Yes Sir.

10 **CHAIRPERSON:** And so you say the signing was neither here nor there?

MR SINGH: It was good for – for governance purposes to have it signed.

CHAIRPERSON: But it was not important?

MR SINGH: It was not important.

CHAIRPERSON: Yes. So – so when – when the termination happened you remember you said earlier on there must have – there must have been – they must have signed by the 28th of June.

20 **MR SINGH:** Yes Sir.

CHAIRPERSON: Because otherwise if anyone or if Eskom talked about termination McKinsey should have said termination of what because we have not even signed.

MR SINGH: Agreed or when the letter of demand came.

CHAIRPERSON: Yes.

MR SINGH: Transnet – Eskom should have said but why you issuing a letter of demand?

CHAIRPERSON: But then if signing was not important then it would not have been open to Eskom to say why – what are you talking about because we have not signed? Because the answer would be we do not have to sign we already have the agreement on your version.

MR SINGH: Yes Mr Chair I think maybe when I said signing is not important it is probably tongue in cheek but the – there
10 is a requirement for contracts to be signed within Eskom.

CHAIRPERSON: Mr Singh it was not in tongue in cheek.

MR SINGH: No Mr Chair okay seriously I think there was a requirement for the – for the contract to be signed in terms of if you look at the 1034 document as well.

CHAIRPERSON: Yes.

MR SINGH: There is a requirement for the contract to be signed.

CHAIRPERSON: Yes. So – but once you accept that then you have got to change your earlier evidence that there was
20 a Master Services Level Agreement even before the parties signed. Once you say they – it was a requirement to sign and at a time when that requirement had not been met there could not be a Master Service Agreement between the parties.

MR SINGH: Well Mr Chair my understanding is that if the

conditions of the contract are the suspensive conditions of the contract are fulfilled the contract becomes effective on the date on which it was fulfilled.

CHAIRPERSON: Yes leave out the suspensive conditions because we have talked about that. Just talking about signing.

MR SINGH: Okay if there was no – if there was no suspensive conditions and there was no other agreement between the parties to say listen this thing is effective other
10 than the fact that we have not signed then signature is required.

CHAIRPERSON: Well you just said to me a while ago that when you said signature – signing was not important that was tongue in cheek okay and you said seriously signing was required, do you remember that? And in response to that I said to you but if signing was important – was a requirement then you cannot say that there was a Master Services Agreement between the parties at a time when they had not signed. In other words when they had not met that
20 requirement.

MR SINGH: But Mr Chair again I think we talking about hypothetical.

CHAIRPERSON: No, no, no before we get there – before we get there remember that there is an issue here.

MR SINGH: Yes Sir.

CHAIRPERSON: That Mr – Dr Weiss says in effect in his affidavit in June the McKinsey had not signed the agreement – I am saying in June but for many months before October there was no – no agreement because McKinsey had not signed.

MR SINGH: Yes.

CHAIRPERSON: And he says he signed in October but backdated ...

MR SINGH: To January.

10 **CHAIRPERSON:** His – to his signature to January. So the question of whether – of when it was that there was an agreement between the two parties is important because whatever payment gets made we want to find out was it made at a time when there was an agreement and what was the – what was the effect of the agreement. So we have letters that say the agreement was concluded in January but you have said no it cannot be. So – but on what I understand you to be saying now you accept that

20 1. The signing by the parties of the agreement was – or was a requirement here and you accept that if we find at any time that they had not signed we can accept that therefore at that time there could not have been a Master Services Agreement between the parties.

MR SINGH: Mr Chair I still do not see how the suspensive conditions are not relevant in that 00:20:22.

CHAIRPERSON: Sorry just repeat that?

MR SINGH: I said Mr Chair what I find difficult in agreeing to your last proposition is in the absence of the fulfilment of the suspensive conditions.

CHAIRPERSON: No, no what I am saying is I – I am not dealing with the question of the fulfilment of the suspensive conditions now but I am simply saying assume that the conditions – the suspensive conditions were met.

MR SINGH: Yes Sir.

10 **CHAIRPERSON:** If the agreement had not been signed and you say the signing was a requirement I am expecting that you will accept that as long as the agreement was not signed we cannot say there was an – a Master Services Agreement between the parties because you say signing was a requirement in this case.

MR SINGH: Okay let us maybe answer the question differently.

CHAIRPERSON: Yes.

MR SINGH: So let us agree that on your version...

20 **CHAIRPERSON:** Not my version.

MR SINGH: Or on your – on your proposition.

CHAIRPERSON: Proposition ja.

MR SINGH: On your proposition.

CHAIRPERSON: Ja.

MR SINGH: That there would be no agreement with no

signature that is your proposition.

CHAIRPERSON: Ja you say if there is no signature.

MR SINGH: Then there is no ...

CHAIRPERSON: There is no agreement.

MR SINGH: There is no acceptance.

CHAIRPERSON: That was your – that is what you said ja.

MR SINGH: So my – all I am distinguishing Sir is I am saying there might be no signature and therefore there is no agreement.

10 **CHAIRPERSON:** Yes.

MR SINGH: As you – as you proposed.

CHAIRPERSON: Ja.

MR SINGH: But why I am taking that one step further to say by virtue of the fact that there was no signature it does not mean that there is no liability.

CHAIRPERSON: Ja well you introducing liability now we are talking about whether there is an agreement or there is no agreement.

MR SINGH: Because – because Mr Chair...

20 **CHAIRPERSON:** When there is no signature.

MR SINGH: You prefaced this by saying that the signature is important to understand whether the payments were made in terms of an existing liability.

CHAIRPERSON: No, no I said in terms of an existing agreement.

MR SINGH: But that is the point Mr Chair where does the – where is the liability – where does the liability come from?

CHAIRPERSON: You see if you talk about liability you might talk about liability that comes from the contract; you might talk about liability that comes from something else okay. So that is why I am just saying let us talk about the contract but my understanding of what – where you are now on your evidence is that you are saying in this case the signing of the agreement by both parties was a requirement and as
10 long as they had not signed one cannot say there was an agreement. But it is a different situation where the signing is not a requirement. I am now going back to something you said earlier as I understood. That is where I understand you to be. Is it not what you intend conveying?

MR SINGH: Okay Mr Chair let us just put it this way. For ease of reference my version is a signed version of this contract existed.

CHAIRPERSON: Ja.

MR SINGH: Sometime between March and June.

20 **CHAIRPERSON:** Ja. Ja.

MR SINGH: Based on the evidence that I have seen.

CHAIRPERSON: Ja. Okay.

MR SINGH: So that puts...

CHAIRPERSON: You going back to the – to the facts.

MR SINGH: Yes so...

CHAIRPERSON: Or to the version that you put.

MR SINGH: Yes.

CHAIRPERSON: I am saying not necessarily to the facts because – because we are trying to establish when ...

MR SINGH: The contract is signed.

CHAIRPERSON: The contract is signed.

MR SINGH: Yes.

CHAIRPERSON: But I have told you what I make of your evidence now. Mr Seleka.

10 **ADV SELEKA SC:** Yes, no thank you Chair because – because Mr Singh your letter of the 19th of February would not have been drafted the way it was drafted if you believed that the fulfilment of the suspensive conditions went about the existence of the agreement.

MR SINGH: Mr Chair again we go back to this issue of whether there was an agreement – the parties for all intents and purposes if the parties did not believe that there was an agreement and the suspensive conditions were fulfilled there would have been no need for a stakeholder – there would
20 have been no need for mobilised people.

ADV SELEKA SC: No I am talking about you Mr Singh. You wrote a letter on the 19th of February.

MR SINGH: Yes.

ADV SELEKA SC: 2016 and you said the –

“The signing of the proposed agreement”

Not the coming into effect you specifically say:

“The signing is contingent upon the receipt of
satisfactory responses to the above request.”

You were very specific.

MR SINGH: Yes. Of the proposed agreement. I did not say
of the fact that we did not have an – an effective contract
because the parties behaved as if there was an agreement in
place. There was...

ADV SELEKA SC: There was 00:25:38.

10 **MR SINGH**: Yes there was only the mere fact of actually the
physical signature of the contract and that was the only thing
that was outstanding and therefore we referred to a draft
contract. It does not say if that was the case Mr Chair the
letter would have been drafted very differently.

CHAIRPERSON: Well I am – I am not sure what the answer
– what effects of the answer that you are giving to Mr Seleka
is but I just remain on what I think has come out clearly from
your evidence namely the signing of this agreement by the
parties was a requirement in this case therefore if the parties
20 – if we talk about any time in 2016 when factually the parties
had not signed we cannot say as at that time there was a
Master Services Agreement between Eskom and McKinsey.
So that is the one set.

You have said something about the suspensive
conditions. For now for my purposes in terms of what I have

been asking you for me that is neither here nor there for present purposes you know. What was important is to – to establish what your understanding was. So that is where I am.

ADV SELEKA SC: Yes. Thank you Chair I – and the letter is what it is is the signing of the proposed contract is contingent or if you want to use a simple word is dependent upon the receipt of satisfactory responses to the above question. It is a proposal but I am going to leave it there Mr
10 Singh. If you want to comment you may comment but I am going to leave it there.

CHAIRPERSON: I think he has said enough.

ADV SELEKA SC: You have already said to the Chairperson – ja.

CHAIRPERSON: I do not think he wants to say anything further.

ADV SELEKA SC: Ja.

CHAIRPERSON: Ja.

ADV SELEKA SC: But based on this letter Mr Singh and you
20 were expecting a response I suppose from McKinsey is it not fair to say it would be expected of you to know when exactly was this SOA signed?

MR SINGH: Mr Chair I think we have also traversed this issue the previous time that we gave testimony. The delegated authority relating to signing of contracts.

CHAIRPERSON: Was it not in relation to the corporate plan?

MR SINGH: No Mr Chair.

CHAIRPERSON: It was in regard to this one?

MR SINGH: No it was relying on this one.

CHAIRPERSON: Okay. Okay.

MR SINGH: Was and eventually signed by Mr Mabelane and as I mentioned before that the second stakeholder did indicate that the contract was going to be signed by the 31st
10 of March. So for all intents and purposes I was under the impression that the agreement was signed by the 31st of March and if you look at 00:29:06 evidence in terms of you go back to the letter 743 for example Mr Chair again it would be rather how can I say - bizarre for McKinsey to send a letter of demand as the letter of 28 June 2016 is and let us say we dispute it Eskom dispute the fact that a contract existed and we went into a court process we would either have produced a document that does not exist or was not signed for this thing, and that is McKinsey because they are
20 claiming that there is this contract that exists, yet we prove that it does not exist. And I do not think McKinsey would have taken a potential risk such as that to issue a letter of demand knowing that a letter of – that a Service Level Agreement is not signed.

MR SINGH: Now, you see, Mr Singh. I do not have any

difficulty with that point you make, namely, one would expect that McKinsey would not issue a letter of demand based on an agreement that had not been signed. I do not have a difficulty with that point in principle.

Obviously, Mr Seleka can canvas issues further around that but I do not have a difficulty. One – that is what one would expect equally, I think, as Mr Seleka said earlier on, one would have expected Eskom, upon receiving that letter of demand, which was based on an agreement,
 10 to have taken the point or have taken the position that: But we do not have an agreement with you. If that was the – if the position was that there no...

MR SINGH: Exactly.

CHAIRPERSON: I do not have difficulty with that, you know. But it makes it all the more important to establish as to exactly what the position is because Dr Weiss has said: I signed this agreement in October and backdated it. Now when you look at that, it would not – it was not to McKinsey's benefit or advantage for Dr Weiss to disclose
 20 that, to disclose that he signed it in October and backdated it.

It does not help them to explain that but if it is the truth, it is the truth, as far as they are concerned, which is the truth, as Mr Seleka was saying, maybe to... said: Well, it is a fact. That is what happened. So you

ask yourself. Why would Dr Weiss have said he signed the agreement in October and backdated it to January if he actually signed it earlier?

Because actually a version that showed that he signed it earlier would have been – may have put them in a better light then, saying we signed in October and backdated it to January. You see what I am talking about?

It may well be that you might say or somebody else might say: No, Chair, there is something that you
10 have missed. This is how it would happen to say it was signed in October instead of admitting that it was signed during the first six months of 2016. But then if there is such a thing, somebody must have ...[intervenes]

MR SINGH: Well, Mr Chair, I will attempt to clarify(?). Mr Chair, if – I mean, McKinsey has gone on record on a number of times. At the Parliamentary Inquiry, making announcements on their own relating to the billion or so that they paid back.

Have gone through an extensive exercise in – on
20 their own version, looking at thousands of records, emails and investigating I do not know how many of their employees. Look, that entire process, no one actually discloses that this agreement was actually – did not exist. Yet in December 2020, Dr Weiss decides to say but this agreement did not exist.

So during that entire process and that entire and that entire investigation, what was mister – Dr Weiss' view and what was McKinsey's view, during that entire process. It was not actively(?) approaches if you understand how and what they did.

In the Eskom application, Mr Chair, itself, they do not rely on the fact that an agreement did not exist, that they paid(?) the money(?). [Speaker not clear.] They go to this entire process of saying, now they understand that
10 Eskom mislead them relating to the fact that the National Treasury approval was not welcomed.

Even on that version, the truth(?) say but listen it would be really easy for them to say: Well, you know what, we made a mistake. There was no agreement and therefore we are repaying the money. It would have been an easier way to explain the reason as to why they are repaying the money.

CHAIRPERSON: But do you not accept in all of these circumstances they would not have sought to advantage
20 themselves in any way by saying they signed the letter in October if in fact they signed it much earlier? But ...[intervenes]

MR SINGH: Mr Chair, if that is the case. I come back to my original point that I made this morning, is, if that is the case then the 28th of June letter is either made in bad faith

or is fraudulent.

CHAIRPERSON: H'm.

MR SINGH: But it was because – the truth of the matter is, Mr Chair.

CHAIRPERSON: H'm?

MR SINGH: Eskom relied on this document.

CHAIRPERSON: No, but that is fine. Remember, my question is. Do you accept or do you know that – I mean, normally – from what you have said, I think you are
10 suggesting that Dr Weiss is being untruthful in saying that he signed the agreement in October. He must have signed before or during the second – the first half of 2016.

So my question is whether you do not accept that he or McKinsey would not derive any benefit from saying they – he signed the document, the agreement in October if, actually, he signed it in the first six months of 2016.

MR SINGH: Well, Mr Chair, I think they derived substantial...

20 **CHAIRPERSON:** What is that?

MR SINGH: By getting Eskom to believe that the agreement was signed.

CHAIRPERSON: Sorry?

MR SINGH: By getting Eskom to believe that the agreement was signed if indeed it was not signed but not

disclosing the ...[intervenes]

CHAIRPERSON: No, what benefit do they get by saying that?

MR SINGH: Mr Chair, if you did not have regard for all of the facts that we now know around the issue of the – okay my letters are referring to a draft contract, for example, and all of that.

CHAIRPERSON: H'm?

MR SINGH: And you just had these letters that came from
10 McKinsey.

CHAIRPERSON: H'm?

MR SINGH: What would your view be? Your view would be there is an agreement that is in place ...[intervenes]

CHAIRPERSON: No ...[intervenes]

MR SINGH: There is termination clauses that are relevant to this. Let us engage.

CHAIRPERSON: No, no. You are dealing with a different point and I know the point you are dealing with because you have told me about it and I have indicated to you that I
20 understand the point. I am simply saying, if McKinsey actually signed the agreement during the first six months of 2016.

MR SINGH: Yes.

CHAIRPERSON: It does not appear that there would be any benefit for them if they said instead untruthfully the

signed it in October. Normally, people become, you know, tell untruths when they seek to protect themselves or to gain benefits. So I am saying that for them to be paid, it would be in their interest, actually, to say we actually signed in January.

So as we were doing work there was an agreement in place, you know. Rather than saying – rather than effectively disclose that there was no agreement until October and then would backdated it. So as we were doing
10 work for Eskom, we had no agreement with Eskom. That was not beneficial to them to disclose that.

MR SINGH: Look, Mr Chair, I can then only assume that the position is that Dr Weiss and Mr Sagar took the 28th of June letter and took in the interest of McKinsey.

CHAIRPERSON: You see, I – I have said to you I understand your point about that.

MR SINGH: Yes.

CHAIRPERSON: And about saying – but the letter, the letter talks about the agreement had been concluded
20 already because it says January but talks about then being concluded. That might need explanation from their side, from Dr Weiss' side and so on and so on. I understand that but I was saying, let us look at the – that part of the evidence that was simply to the effect that they signed in October but they backdated, if we look at that.

MR SINGH: Ja, I was trying to explain that, Chair.

CHAIRPERSON: Ja.

MR SINGH: So in my view.

CHAIRPERSON: H'm?

MR SINGH: The only way I could explain this is, if, as I said. Dr Weiss and Mr Sagar acted, let us call it, in their professional capacity issuing this letter and in December when Dr Weiss gave the affidavit, he probably gave it in his personal capacity.

10 **CHAIRPERSON**: H'm?

MR SINGH: And wanted to, I do not know, disclose that okay this is what – this the actual truth(?) that existed at the time.

CHAIRPERSON: H'm, h'm.

MR SINGH: But in the capacity of the partner of McKinsey, this is what I had to do.

CHAIRPERSON: H'm.

MR SINGH: That is the only explanation I can...

ADV SELEKA SC: H'm.

20 **CHAIRPERSON**: Yes. I guess we have ...[intervenes]

ADV SELEKA SC: Ja.

CHAIRPERSON: ...canvassed it sufficiently, Mr Seleka.

ADV SELEKA SC: Ja, I am not going into it, Chair.
[laughs]

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: My question was about Mr Singh's knowledge as to – well, that, would it not be fair, based on his letter of the 19th, to expect that he would know when is the MSA signed because there you say: The signing of this proposed contract is contingent upon you coming back to me on these points. Your answer was you assigned that it was signed the 31st of March 2016.

MR SINGH: No, Mr Chair, I said it would be incumbent upon Mr Mabelane to ensure that the agreement was
10 signed in that he was the delegated authority to sign it.

ADV SELEKA SC: Oh.

MR SINGH: My expectation would have been – it would have been signed by the 31st of March.

ADV SELEKA SC: Yes.

MR SINGH: Given the presentation that was done.

ADV SELEKA SC: Yes.

CHAIRPERSON: H'm.

ADV SELEKA SC: But by ...[intervenes]

CHAIRPERSON: But maybe... maybe ...[intervenes]

20 **ADV SELEKA SC:** I hope ...[intervenes]

CHAIRPERSON: ...it will just – do not forget your point, Mr Seleka.

ADV SELEKA SC: Okay.

CHAIRPERSON: The issues that you set out in your letter in respect of which you said the signing was contingent

upon those ...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: ...being satisfied. To your knowledge, were they satisfied all of them and if so, when?

MR SINGH: Mr Chair, I think the Steer Co minutes do go, to some extent, to indicate that we were not completely satisfied ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: ...with the responses ...[intervenes]

10 **CHAIRPERSON**: Yes.

MR SINGH: ...that McKinsey had given.

CHAIRPERSON: Yes.

MR SINGH: But in principle, if you look at the letter that McKinsey's response was. They accepted each of the issues that were raised in terms of – how can I call it? Let us say, for example, changed management.

CHAIRPERSON: H'm?

MR SINGH: They accepted the changed management should form part of the master services – or the Top
20 Engineering Programme.

CHAIRPERSON: H'm.

MR SINGH: For interruption, for example.

CHAIRPERSON: H'm.

MR SINGH: Contact management will form part of the...
So each of the issues that we raised, in principle, they did

not reject it.

CHAIRPERSON: H'm.

MR SINGH: Right. So the – basically, I think the actual timing out of how it would form part of the actual underlining Master Services Agreement was the issue that was outstanding...

CHAIRPERSON: H'm, h'm.

MR SINGH: And that is recorded in the minutes of the...

CHAIRPERSON: But up to when was it outstanding?

10 Because based on what you say in your letter, as conveyed by Mr Seleka because I am relying on what he just said now.

MR SINGH: Yes.

CHAIRPERSON: There would be no signing until those issues were – those requirements were sorted out. So until when did it remain outstanding, that issue?

MR SINGH: Mr Chair, I am not too sure ...[intervenes]

CHAIRPERSON: To your knowledge.

MR SINGH: ...what the date of that Steer Co was where
20 we recorded that ...[intervenes]

CHAIRPERSON: The date of...?

MR SINGH: The date of the Steer Co.

CHAIRPERSON: Ja.

MR SINGH: That recorded the fact that McKinsey had responded.

CHAIRPERSON: Yes.

MR SINGH: Yet we were not completely satisfied
...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: ...with the responses.

CHAIRPERSON: Okay.

MR SINGH: So I ...[intervenes]

CHAIRPERSON: But would it be correct to say you had no
personal knowledge of whether or not it was, that
10 outstanding issue was ultimately satisfied?

MR SINGH: I would not, Mr Chair.

CHAIRPERSON: Yes.

MR SINGH: Because Mr Mabelane – I do not recall that
Mr Mabelane had come and engage with me ...[intervenes]

CHAIRPERSON: Yes, yes.

MR SINGH: ...regarding this letter.

CHAIRPERSON: Yes.

MR SINGH: And the contents thereof.

CHAIRPERSON: Yes. So Mr Mabelane might be the
20 person who can clarify this?

MR SINGH: Who can clarify. From what I can understand,
Mr Chair, I think there was some discussion at one of the
Steer Co's.

CHAIRPERSON: H'm?

MR SINGH: To say: Listen, that we did send this letter.

We did respond. And there are some issues relating to the response.

CHAIRPERSON: H'm.

MR SINGH: But we never then said that it should not - the contract should not be signed or anything like that.

CHAIRPERSON: H'm.

MR SINGH: It might have been one of the reasons that were mooted around the ultimate termination of the agreement ...[intervenes]

10 **CHAIRPERSON:** H'm, h'm.

MR SINGH: ...at some point. But I was not – I have no personal knowledge relating to Mr Mabelane coming to me and saying: Listen, we sent this letter. This was the response. Can or cannot. Or can I or can I not sign.

CHAIRPERSON: H'm. Okay.

MR SINGH: Yes.

CHAIRPERSON: Now, that of course, what you have just said now and the contents of your letter insofar as it said the signing can only take place after you have satisfied
20 these requirements.

MR SINGH: Yes, sir.

CHAIRPERSON: Depending on what the evidence is as to whether all of those issues were addressed or those requirements were satisfied, it may well be that as long as one of them was not satisfied, no signing took place which

may explain why the signing might have taken place in October on the part of McKinsey because they would – there was this issue that remained unsatisfied.

But it depends on whether there is somebody who can come and say: Yes, it was satisfied or no it was not satisfied. Because if there was a signing of the agreement without those issues having satisfied, that would be contrary to your letter.

MR SINGH: I agree, Mr Chair.

10 **CHAIRPERSON**: H'm.

MR SINGH: But if that was the case, Mr Chair, when Dr Weiss was presented with the document for signature, he... if that was the reason why they had not signed by then.

CHAIRPERSON: I am sorry, just repeat the earlier sentence?

MR SINGH: I am saying, on your proposition Mr Chair of let us call it these issues, being the reason for non-signature or delays in the signature.

20 **CHAIRPERSON**: Ja, h'm.

MR SINGH: I would then have expected Dr Weiss to be aware that these were the reasons and then once he was confronted with the document for signature, he would have said but we cannot because Mr Singh still needs to be satisfied which is not what he said.

CHAIRPERSON: H'm. Of course, that is if they were still not satisfied, those issue. If by October, when he signed, they had all been satisfied then he would not have raise any issues.

MR SINGH: Well, Mr Chair, if there was this delay ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...then I would assume so.

CHAIRPERSON: Ja.

10 **MR SINGH:** And if it were for the reasons that you said.

CHAIRPERSON: Ja, ja, okay. Mr Seleka.

ADV SELEKA SC: Yes. But Mr Singh, if you wanted these aspects to be satisfied, you, Eskom. It would be you, Eskom if they are not met and satisfied that you would not sign the contract. I mean, McKinsey stands to be benefit. It can ignore this thing and signs the contract, render services and get paid.

MR SINGH: No, mister ...[intervenes]

20 **ADV SELEKA SC:** But it is to your benefit because the demand or the request for these conditions or these aspects to be met, it is – it comes from you.

MR SINGH: I agree, Mr Chair.

ADV SELEKA SC: And I want to deal with one of them but let me give you a chance to just address the Chairperson. What do you say to that?

CHAIRPERSON: Well, he says he agrees.

ADV SELEKA SC: Okay.

MR SINGH: I agree.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. And one of them, it seems, was never fulfilled which is:

10 “The development of a BEE partner
(Regiments Group) as regards the vision,
aspirations, skills and competency needs and
overall plan for success over the contract
duration including a focus on the health of the
relationship with McKinsey...”

They told you in the letter of 25: We are not taking Regiments as a partner but we are contemplating taking Trillian but subject to the due diligence. And then on the letter of the 30th, they said: We are not taking even Trillian because they failed our due diligence process. That condition was never fulfilled.

MR SINGH: And I agree.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: In which case, then have you got any reason why Eskom would have signed the agreement with McKinsey even if one of those requirements, as part in your letter, including that one was not satisfied?

MR SINGH: Well, Mr Chair, as I have said. I have no

personal knowledge as to when this document was signed.

CHAIRPERSON: H'm, h'm.

MR SINGH: And under what conditions it was or it was not signed.

CHAIRPERSON: H'm, h'm.

MR SINGH: All I can say is, factually yes, I did sign the letter. Yes, it had a condition in it.

CHAIRPERSON: H'm, h'm.

MR SINGH: But if you look at the specific condition that
10 Mr Seleka refers to. In their letter they do say, as you said, the relationship is under review and the annexure to the SLA allows for multiple or additional – how can you call it - ...to be considered.

CHAIRPERSON: H'm.

ADV SELEKA SC: H'm.

MR SINGH: That is the first point. The second point is. When they did inform us that it was going – never – it was not going to be Trillian, they came with other options in terms of an SDL partner.

20 **CHAIRPERSON:** H'm, h'm.

MR SINGH: It was not on the basis that because that thing was not fulfilled that there would no agreement.

CHAIRPERSON: H'm, h'm.

MR SINGH: Because they came with other options, right. According to Dr Weiss, I think, they came with the

proposals right up to September, I think. August or September with proposals.

CHAIRPERSON: But what do you say to this proposition that... Or let me put it this way. Is the position not that you as Mr Singh, as the author of that letter of 19 February 2016, you would have been surprised if Eskom or Mr Mabelane signed the agreement even if one of those requirements, such as the one that Mr Seleka has named, has not been satisfied?

10 **MR SINGH:** Mr Chair, ordinarily, I would probably be surprised.

CHAIRPERSON: Yes.

MR SINGH: If in the absence of this table(?).

CHAIRPERSON: Ja, ja.

MR SINGH: So the letter of the 19th was issued.

CHAIRPERSON: H'm, h'm.

MR SINGH: McKinsey responded. Then there was subsequent... Now these, the letters were, as I said, or the responses were discussed and the Steer Co took
20 certain positions. So as I said, ordinarily, if I had issued a letter and if I was dealing directly, then I would expect a response and I would be the one that decides or makes a decision. But in this case, Mr Chair, there was a Steer Co.

There was additional information that was discussed at this table. And then there was Mr Mabelane

that decided to sign or not sign. And in my view, given the context of the discussions of the Steer Co, Mr Mabelane must have signed or decided to sign with whatever date. I am not sure.

But I do not recall Mr Mabelane expressly coming to me and say: Listen, these five things we have problem with. Must I or must I not sign?

CHAIRPERSON: H'm, h'm.

MR SINGH: So that did not happen.

10 **CHAIRPERSON**: Yes, but ...[intervenes]

MR SINGH: Well, if it happened, I do not recall it.

CHAIRPERSON: Yes.

MR SINGH: Ja.

CHAIRPERSON: You would have – you expected him to come to you and deal with that question if there was one or more of the requirements that had not been met, is that right?

MR SINGH: No, no. Mr Chair, I am saying.

CHAIRPERSON: I accept that you are saying you cannot
20 recall whether ...[intervenes]

MR SINGH: No, I – what I am trying to convey is that. In the absence of the Steer Co where these things were then canvassed that allowed Mr Mabelane to understand what was happening, I would not expected him to sign without engagement.

CHAIRPERSON: Yes.

MR SINGH: Because he would have not known.

CHAIRPERSON: With or without seeing the – you see Steer Co or whatever.

MR SINGH: No, no. I am saying. In the absence of the Steer Co ...[intervenes]

CHAIRPERSON: Ja, you would have expected ...[intervenes]

MR SINGH: ...I would have expected him to come to me
10 and say: Listen, we have issued(?) this thing. Can I or
can I not sign?

CHAIRPERSON: Okay alright.

MR SINGH: Yes. But because the Steer Co was in operation and these issues were discussed at the Steer Co and Mr Mabelane was part of the Steer Co, we would have either discussed them and decided on them and that would have formed Mr Mabelane's mindset at the time regarding whether he could or could not sign.

CHAIRPERSON: H'm, h'm. Without coming back to you.

20 **MR SINGH:** Without coming...

CHAIRPERSON: Ja, okay. But you have no personal knowledge of ...[intervenes]

MR SINGH: I do not... One, I do not recall.

CHAIRPERSON: You have no knowledge whether he signed with them having been satisfied, all of them, or

without them – without one of them or maybe more being satisfied? Or is the position that you accept that one of the – one or more of the requirements set out in your letter was not satisfied but there may have been a reason that persuaded Mr Mabelane to sign even if that was – that one was not satisfied because of the discussions that happened at Steer Co?

MR SINGH: Mr Chair, I think it is the latter proposition.

CHAIRPERSON: Ja, okay. Mr Seleka.

10 **ADV SELEKA SC**: Thank you, Chair. Mr Singh, I am sure Mr Mabelane, he is going to tell – to you as to whether or not this requirements were met because you heard the matter, they wrote it back to you. You need to tell us what you know because you communicated directly to McKinsey and not ...[intervenes]

CHAIRPERSON: Well, I thought he accepts that he has no knowledge – he is not in a position to say they were all met.

ADV SELEKA SC: Okay.

20 **CHAIRPERSON**: Am I right?

MR SINGH: Well, Mr Chair, if you – well, let me put it this way.

CHAIRPERSON: H'm?

MR SINGH: If you read – if you have a reading of the letter, the response. There are no issues – McKinsey does

not take issue with any of the requests, okay?

CHAIRPERSON: H'm, h'm.

MR SINGH: S on face value, they – all the requirements were met, okay?

CHAIRPERSON: H'm, h'm.

MR SINGH: When we go into Steer Co, there is one of the Steer Co minutes that reflects that we do not believe that McKinsey has addressed all of the issues holistically. So I think that is something – there are some minutes to that
10 effect.

CHAIRPERSON: Ja, h'm.

MR SINGH: But if you had to go and read the letter, all of the requirements were met. So they have not ...[intervenes]

CHAIRPERSON: No ...[intervenes]

MR SINGH: They have not ...[intervenes]

CHAIRPERSON: No, no, no. You cannot answer the question like that Mr Singh.

ADV SELEKA SC: H'm.

20 **CHAIRPERSON**: Well, there is the question of what your personal knowledge is, okay?

MR SINGH: Okay.

CHAIRPERSON: Whether they were all met or they were not all met. And then there is a question of what your source of knowledge is, okay?

MR SINGH: Okay.

CHAIRPERSON: If you say: I am only relying on this document and this document and I interpreted it to say they were all met. That is one thing. But you might say: I do know that irrespective of this document, they were all met. I understand you to be saying – I do not understand you to be saying that from your personal knowledge you know that they were met.

MR SINGH: No, Mr Chair, I mean, the letter is addressed
10 to. So this letter ...[intervenes]

CHAIRPERSON: Leave out the letter for now. In terms of just knowing what happened. Do you or do you have knowledge whether all those requirements were met? And then you can go to the letter. Or in terms of what was happening, were you sufficiently involved to have personal knowledge whether they were met?

MR SINGH: That is what I was getting to Mr Chair. I mean ...[intervenes]

CHAIRPERSON: Ja, okay alright.

20 **MR SINGH**: The letter that was signed by me ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...obviously I have got some knowledge of that.

CHAIRPERSON: Yes, ja.

MR SINGH: And then the response would have come to me.

CHAIRPERSON: Yes.

MR SINGH: In terms of the response from McKinsey(?).

CHAIRPERSON: Yes.

MR SINGH: So I have personal knowledge ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...of the fact that I – the letter will come to me.

10 **CHAIRPERSON:** Yes.

MR SINGH: Because it is addressed to me.

CHAIRPERSON: Yes.

MR SINGH: As I then said. If you have regard to the response in terms of each of the issues that was raised. In principle, they did not reject any of them.

CHAIRPERSON: H'm?

MR SINGH: So from that perspective, Mr Chair, I am saying that they have acceded to each of our requests.

CHAIRPERSON: H'm?

20 **MR SINGH:** First point. Second point, at some Steer Co thereafter, we did raise the concern that in the responses that McKinsey had given us notwithstanding the fact that I agree that they in principle agreed to each of the issues, there will still be a need for us to understand how this thing will holistically fit into the – let us call it master

services or top engineers programme and that concern was raised, I understand. So that is what I have personal knowledge.

CHAIRPERSON: So you are saying to me at a certain stage after you had received the response, their response, Eskom was not satisfied that they had met all the requirements.

MR SINGH: That is correct, Sir.

CHAIRPERSON: Okay.

10 **ADV SELEKA SC:** Thank you, Chair. And on the one, Mr Singh, on which you agree with me was never met, Dr Weiss, which is the BEE partner, Dr Weiss – Chair, I am just going to refer to paragraph 74 of Eskom bundle 14 page 700.

CHAIRPERSON: Do we need to go there or not really?

ADV SELEKA SC: I will read it to you, Chair.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Because he talks about ...[intervenes]

MR SINGH: Sorry, where is it?

20 **ADV SELEKA SC:** Okay, page 700, of Dr Weiss' paragraph 74, maybe the Chairperson can go there as well.

MR SINGH: Paragraph?

ADV SELEKA SC: Paragraph 74. Essentially what he is saying is:

“The contract was ultimately terminated without

McKinsey being able to appoint another supply development partner.”

So you will see it is right towards the end of the paragraph.

I will read:

“The proposal and discussions we had with Eskom about this fund...”

They established a fund.

“...anticipated that McKinsey and Eskom would decide together on new partners on the allocation of the fees that had accrued. Given the short period of time ...[intervenes]

CHAIRPERSON: What page, Mr Seleka?

ADV SELEKA SC: 700.

CHAIRPERSON: 700, okay, continue.

ADV SELEKA SC: Paragraph 74.

“Given the short period of time between McKinsey’s proposal of the SD and L fund and the termination of the turnaround programme by Eskom’s board in June 2016, we ultimately were not able to identify any new partners prior to the termination of the turnaround programme.”

So that requirement was in fact never ever fulfilled. Do you see that?

MR SINGH: Mr Chair, the issue of the letter spoke ...[intervenes]

ADV SELEKA SC: Is it a yes or no to my question?

MR SINGH: No, in the context of the way that you are presenting it, Chair ...[intervenes]

ADV SELEKA SC: No, the way he is, not me.

MR SINGH: Ja, well, the way that he is presenting it, Chair, no.

ADV SELEKA SC: Yes.

MR SINGH: Let us get this right, you are putting to me that the condition was not fulfilled because of what he is
10 saying.

ADV SELEKA SC: Yes.

MR SINGH: And I am saying what he is saying does not equal what you are asking. So you are putting a proposal to ...[intervenes]

ADV SELEKA SC: Okay, what is your answer?

MR SINGH: And I say ...[intervenes]

CHAIRPERSON: Give your response, yes.

MR SINGH: And I am saying the letter that we wrote on the 19th start to understand certain issues relating to BEE
20 ...[intervenes]

CHAIRPERSON: Which letter are you talking about now?

MR SINGH: Sorry?

CHAIRPERSON: Which letter are you talking about?

MR SINGH: The 19 February letter.

CHAIRPERSON: The 19 February, your letter?

MR SINGH: Yes, my letter.

CHAIRPERSON: Ja?

MR SINGH: Sought to understand certain issues relating to BEE and how they were going to integrate and what benefits will come out of it for them, okay?

CHAIRPERSON: I thought – I did not – I did not – I am not sure that I understood you to seek a clarification, I thought it put requirements to say this is what we as Eskom wants.

10 **MR SINGH:** Yes, Mr Chair.

CHAIRPERSON: Ja.

MR SINGH: So what I am trying to get to is that it was not Trillian specifically, it could have been any BEE partner that we were engaging in, in terms of the February 19 letter and therefore, when we – when the decision was made by McKinsey to say there is going to be no Trillian, the discussions around the BEE partner so confused because it was not as if that condition specifically related to Trillian.

20 **CHAIRPERSON:** But I think what Mr Seleka is saying to you is Dr Weiss is saying in paragraph 74 at page 700 that by June 2016 they had not been able to identify any partner who could have taken the place of Trillian.

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: Therefore Mr Seleka is saying that

means that if one follows the requirement of your letter of 19 February, that one of those requirements which you said in the letter had to be met before the agreement to be signed had not been met as at June 2016. That is the point he is making and he is inviting to say whether you disagree.

MR SINGH: Mr Chair, I think you cannot go from here to the proposition that you are making because the agreement may have still been signed.

10 **CHAIRPERSON:** No, no, no, remember the proposition that he is putting to you as formulated by me is ...[intervenes]

MR SINGH: Which is in [inaudible – speaking simultaneously]

CHAIRPERSON: Your letter – is your letter of 19 February.

MR SINGH: Yes.

CHAIRPERSON: Said there cannot be signing of an agreement unless all these requirements are met.

20 **MR SINGH:** That is correct.

CHAIRPERSON: And now we see that on Dr Weiss' version as at June one of those requirements had not been met according to him. Therefore, if your letter was to be complied with, Eskom could not have signed unless they were to act in breach of your letter.

MR SINGH: No, I agree, Mr Chair, and ...[intervenes]

CHAIRPERSON: You agree with that, ja.

MR SINGH: And, Mr Chair, it is – again, let me come back to this point and say it is common cause that the letter was signed because there is a physical signature ...[intervenes]

CHAIRPERSON: The agreement.

MR SINGH: Ja, I mean, sorry, was signed because there is a physical signature that appears there.

CHAIRPERSON: Ja. Ja, ja.

10 **MR SINGH:** Okay? Of both Dr Weiss and Mr Mabelane.

CHAIRPERSON: Yes.

MR SINGH: So whether the conditions relating to my letter with either fulfilled or not, is immaterial because the contract was actually signed. The question, when was it signed? Was it signed in October or was signed sometime in the first six months?

CHAIRPERSON: Well, the signing of the – whether the agreement was signed in breach of the requirements as set out in your letter, probably would not be immaterial but for
20 present purposes, that is hard fact, okay? Is the position not that if the requirements in your letter had not been met as at June then based on your letter – and not on something else and maybe we can look at whether other factors might override this but based on your letter, one would expect that no agreement had been signed by Eskom

because your letter had been clear, those requirements must be met. But that is separate from saying are there other factors or events that happened which might have overridden your requirements in your letter. You understand that? In terms of simply looking at your letter, one would expect Eskom not to have signed by June if one of those requirements had not been met but it may well be that certain developments had occurred which might have persuaded Mr Mabelane to sign even if that requirement

10 had not been met.

MR SINGH: Agreed, Mr Chair.

CHAIRPERSON: You agree, ja. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. And just to clarify this, Mr Singh, that one requirement says the development of a BEE partner (Regiments Group) as regards the vision. So it appears to have been very specific. It may not have been to Trillian but it was definitely to Regiments, specific to Regiments.

MR SINGH: Where are you reading from, Sir?

20 **ADV SELEKA SC:** Your letter of 19 February, number 4.

CHAIRPERSON: Mr Singh, we are all going to remember your letter of 19 February for a long time.

MR SINGH: It seems so, Mr Chair. It seems so, Mr Chair.

CHAIRPERSON: As well as ...[intervenes]

MR SINGH: It is becoming an infamous letter.

CHAIRPERSON: As well as Dr Weiss' letter of 28 June.

MR SINGH: Of 28 June, yes. So the question is?

ADV SELEKA SC: No, I am saying you were saying earlier your requests were not specific to Trillian, the BEE partner request but it is in fact specific to an entity, Regiments Group.

MR SINGH: As in this – as that was applicable at this point in time.

ADV SELEKA SC: That was?

10 **MR SINGH:** Sorry, Sir, as it is relating to this point in time because it says ...[intervenes]

ADV SELEKA SC: Okay ...[intervenes]

MR SINGH: If you look at it, I mean, at the end of the day we are also recognising Trillian, at the end of the day in the opening paragraph, so it could also refer to Trillian but my raising of these issues, Mr Chair, in this letter or what my intention was behind raising these issues, was to understand how was or what was the actual plans to give effect to the intention that an SD partner partnering
20 McKinsey would result in a let us call it an empowered consultancy firm, right? And the reasons these issues are raised here, Mr Chair, comes from the issues that Ms Goodson has raised in the past relating to how McKinsey had treated, either you want to call it Trillian – well, Goodson was Trillian, so relating to the complaints that Ms

Goodson had raised vis-à-vis McKinsey and the way that McKinsey had been engaging with Trillian as their subcontractor for potential supply. So that is the intention behind raising it. The issue was to get a very clear and concise answer in terms of how our objective relating to SD would actually realise at the end.

ADV SELEKA SC: No, no, all I wanted to place on record because you were saying your requests were not specific to a particular BEE partner.

10 **MR SINGH:** Yes.

ADV SELEKA SC: I am saying that your letter was. That is all I wanted to place in record.

MR SINGH: Yes and I am giving you a response as to why it was specific because it was specific to the company at that point in time but had it changed over the life of the MSA, the point would still be, I want to know, as Eskom, how are you going to develop these people, whoever they may be but at this point in time it is either Regiments or Trillian as the letter is alluding to.

20 **ADV SELEKA SC:** Chair, should we carry on until half past six or less?

CHAIRPERSON: Well, we should have talked at four o'clock, actually. You know, we normally talk at about four o'clock. I would like us to go as far as we can today so that – to the extent that we do not finish today, we should

finish tomorrow.

ADV SELEKA SC: Yes.

CHAIRPERSON: Obviously I am interested in hearing what you have to say, what Mr Singh has to say and what this counsel has to say but particularly because of the time that we lost in the morning I would like us to go as far as possible. You know, Mr Singh has been coming here for quite a few times. I know he will still come back for Transnet and he might still even if we do cover a lot of his
10 evidence tomorrow, there might still be a little bit that he comes back for but we are in April and the intention was to finish all oral evidence by end of March, so we – so I am trying to push as much as possible so that he can finish because I do not want to go into May.

ADV SELEKA SC: Yes.

CHAIRPERSON: I may – well, there is already one or two witnesses in regard to [indistinct – dropping voice] a date or two for May, but I do not want to go into May with oral evidence, I want us to finalise. So counsel for Mr Singh,
20 you have heard what I say.

ADV VAN DEN HEEVER: Chairperson, I would be the last person to indicate to you that you should not use as much time as you do but my – I have already placed on record that over the weekend we were served with extra papers. Reading those papers I understand from my client took

most of yesterday because then I think on a Saturday evening he got a whole bundle of annexures. Based on that, the client then had to go and read other documents to place it in context. If you work throughout the weekend, and in fact he started on Friday, I do not think it is fair to a witness and Chairperson, you know it yourself from practicing, to keep a person that is tired in a box and keep on pushing, pushing, pushing, people lose their concentration and was it dependent on me I would have
10 said it is – let us try and push through but at this point I would rather let us start tomorrow early. I think we have made up two hours of the hour and a half we lost this morning. I would much rather that we start tomorrow morning early and give my client an opportunity to – ja.

CHAIRPERSON: Well, you see, even if we had started on time, my plan was that we were going to go into the evening, so there is that part but if and when a witness says I am tired, I am not so [indistinct – dropping voice] I will stop but I do not think Mr Singh will say that if he is
20 not really tired [indistinct – dropping voice]. So I am quite happy to say if and when Mr Singh says look, I am tired, I am happy that we adjourn, that we will because it would be unfair to continue.

ADV VAN DEN HEEVER: Chairperson, may we take maybe two minutes of your time, if we can adjourn for two

minutes, let us just confirm with our client.

CHAIRPERSON: Yes, yes. So but it is important that we all do the best. I know that certainly there has been cooperation in terms of us working into the night to try and finish but we have been – we have sat for about close to two hours since the last break so maybe it is fine, let us take a break and then we will talk about – we will finalise the subject when we come back. Okay, let us take a ten minutes adjournment.

10 **ADV SELEKA SC:** Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay.

ADV VAN HEERDEN: Chairperson, Mr Seleka undertook to deal with two questions. He said he is going to be finished before half past and we conceded to that.

CHAIRPERSON: Well, I must decide. You said if it depended on you we could go on for some time.

ADV VAN HEERDEN: But the client is tired, he actually
20 wanted ...[intervenes]

CHAIRPERSON: Are you, what is your situation Mr Singh?

MR SINGH: Mr Singh, I would appreciate ... sorry, Mr Chair. I would appreciate ...[intervenes]

ADV VAN HEERDEN: You see, he is really tired.

MR SINGH: If we could adjourn early today.

CHAIRPERSON: Yes.

ADV VAN HEERDEN: And tomorrow is probably, you know we could go on a bit later tomorrow.

CHAIRPERSON: Ja, so you - how much else do you need to deal with with regard to Mr Singh in terms of issues?

ADV SELEKA SC: Yes Chair, I ...[intervenes]

CHAIRPERSON: Other than the MSA?

ADV SELEKA SC: Ja, no I thought we could finish the McKinsey matters when I was saying at half past six
10 enquiring with the Chairperson at that time.

CHAIRPERSON: Ja.

ADV SELEKA SC: Exactly during that space of time.

CHAIRPERSON: Ja.

ADV SELEKA SC: Which was about 25 minutes.

CHAIRPERSON: Ja.

ADV SELEKA SC: That would have left us with the Tegeta matters, the Tegeta transactions which we have led evidence on them previously before the commission and I envisage that we could run quite fast with her on those
20 matters in the morning tomorrow.

CHAIRPERSON: Okay. Look, we have reserved for tomorrow to try and finish Mr Singh's evidence, but last week I did postpone to tomorrow Ms Norma Gigaba's evidence for the evening session. So we do have some time but if indications are that we should finish with Mr

Singh's evidence by lunch time, then there might be no need for us to try and go too far this evening, because then we will finish early and maybe still have some hours.

So what is your assessment if we finish the issues that, two issues that you talked about to council for Mr Singh, how much time do you think we would need?

ADV SELEKA SC: I think we will need the whole morning Chair.

CHAIRPERSON: A whole morning?

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Okay, alright. No, that is fine. We are at quarter past six now. We go on until half past or you would like, provided Mr Singh agrees and his counsel to go up to quarter to, so that you finish those two issues and then tomorrow we start on Tegeta or what is the position?

ADV SELEKA SC: Yes, so now it will be well, I should not only mention Tegeta, because the travel agent ...[intervenes]

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** Issue should also be touched upon.

CHAIRPERSON: Ja.

ADV SELEKA SC: But I can finish, I think we can finish the McKinsey matters now.

CHAIRPERSON: Ja.

ADV SELEKA SC: In, I have anticipated 30 minutes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Roughly, I do not know whether ...[intervenes]

CHAIRPERSON: Can we try that counsel for Mr Singh, 30 minutes? Mr Singh, would that be fine?

MR SINGH: Ja, let us give it a try.

CHAIRPERSON: Let us give it a try. If you feel that you have become too tired, let me know. There is no intention to force you to testify even when you are tired because you
10 are the only one on that hot seat.

MR SINGH: No Mr Chair, 30 minutes would be alright.

CHAIRPERSON: Is that fine counsel? Okay, alright. So let us continue. Maybe we might finish around quarter to seven.

ADV SELEKA SC: Ja, we might finish earlier than that.

CHAIRPERSON: Okay.

ADV SELEKA SC: Mr Singh, Eskom bundle 14 Mr Singh, page 769 ...[intervenes]

MR SINGH: Sorry Mr Chair, I do not know if that light has
20 moved or something has happened, because ...[intervenes]

CHAIRPERSON: Oh, is it interfering with you?

MR SINGH: It was not before.

CHAIRPERSON: Ja, okay. Can somebody adjust it or ...[intervenes]

MR SINGH: That is fine.

CHAIRPERSON: Will that be fine?

MR SINGH: Yes, thank you.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Ja, back upon that service level agreement.

MR SINGH: What page reference was that?

ADV SELEKA SC: Page 769. This is going to go fairly fast Mr Singh.

MR SINGH: Maybe I should take long to turn to the page.

10 **ADV SELEKA SC:** 769.

MR SINGH: Yes.

ADV SELEKA SC: Are you in the right bundle?

MR SINGH: I am there sir, ja.

ADV SELEKA SC: Paragraph 22. The PFMA requirement. So the clause reads, Chairperson you are there? Is the Chairperson there as well?

CHAIRPERSON: Yes, 769 I am there, yes.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: What document is this?

20 **ADV SELEKA SC:** It is the same service level agreement Chair.

CHAIRPERSON: Oh, okay alright.

ADV SELEKA SC: Clause 22 of this agreement, PFMA:

“The parties acknowledge that the employer is obliged to comply with the provisions of the PFMA.

In light thereof, the parties acknowledge that the employer will not require, will not be required to (and the employer warrants and represents to the contractor that it shall not take) it shall not take any steps contemplated in this agreement including the execution of this agreement, unless and until it has secured any approvals or consent that may be required in terms of the PFMA.”

Now when Mr Koko was here Mr Singh

10 ...[intervenes]

MR SINGH: Sorry, who is that?

ADV SELEKA SC: Mr Koko.

MR SINGH: Yes.

ADV SELEKA SC: When he was here he said this MSA or SLA should never have been concluded because Eskom did not obtain the national treasury approval to conclude, to appoint McKinsey on a risk basis as opposed to a tariff basis. I suppose you do not disagree with him.

MR SINGH: The question is?

20 **ADV SELEKA SC:** The question is ...[intervenes]

CHAIRPERSON: Do you agree or disagree with Mr Koko’s evidence that this agreement should not have been signed because the approvals contemplated in Clause 22 approvals in terms of the PFMA were not obtained.

MR SINGH: Mr Chair, in terms of I have not seen Mr

Koko's evidence in detail regarding this aspect, but from what I can recall, again Mr Chair, these issues were not within my personal knowledge as I have explained before to my interactions at the parliamentary enquiry. I had to gather this information.

So one of the annexures that we have submitted through the affidavit that we received this morning is actually an email from national treasury that confirms that the practice norm that was applicable at the time, allowed
10 for this base contract.

So that is what Eskom had relied upon at the time to ensure that the basis on which this contract had been included, was appropriate.

CHAIRPERSON: I am not sure if I follow. Did you, what is your answer to the proposition that if the approvals required in terms of the PFMA were not obtained, the agreement should not have been signed?

MR SINGH: Mr Chair, if having regard to paragraph 22, as I understand it would normally apply Mr Chair. These
20 approvals would reference either Section 54(2)B I think it is, of the PFMA where you would require specific approvals in terms of capital projects.

Else it would reference mitigality and significance frame that would either deal with capital projects, procurement contracts and the like. I do not specifically

recall that there was a requirement, well basically the PFMA says you must comply with all legislation and to the extent that the prescripts of national treasury form part of legislation we would require to comply with.

Hence I am saying if it is contemplated that the remuneration model of the agreement is contemplated in this Section 22, then I am saying Eskom relied on the email that it received from Mr [indistinct] of national treasury. He was I think at the time the chief director in governance and
10 monitoring in the office of the chief procurement officer that indicate the required schedule was applicable at the time and enabled this type of agreement to be entered.

CHAIRPERSON: Without approvals?

MR SINGH: From my reading of the email ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: He did not require, he did not say ...[intervenes]

CHAIRPERSON: Subject to approval.

MR SINGH: Subject to approval.

20 **CHAIRPERSON:** Okay.

MR SINGH: It said the practice note is applicable and therefore this contract can be, this type of contract can be entered into.

CHAIRPERSON: Okay.

MR SINGH: It then went on to say listen, you must make

sure of certain things, but he did not say you know what, send me a formal approval request that I would then approve for you to do this.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Thank you Chair. Mr Singh, what transpired in Court is consistent with what Mr Koko said. Which is that in order to appoint McKinsey on a risk basis contract that Eskom required to have the approval of the national treasury.

10 He distinguished that appointment from what Eskom did in regard to McKinsey in relation to their corporate plan. He said the corporate plan was specifically on a confinement but on a fixed rate. Well, the amount was agreed or the contract price was agreed.

 In this case it was on a risk basis. That you are paid only if you achieve the outcome of the contract. He said to the Chairperson the conclusion of the contract without the national treasury approval, was wrong, it should not have been done.

20 What exactly are you saying to what he is saying?

MR SINGH: So Mr Chair, maybe we should just clarify firstly. The issue relating, when you say Mr Seleka that the court relied on the same assertion that Mr Koko is making.

ADV SELEKA SC: No. I say what was said in the court

papers where Eskom sued McKinsey and Trillian
...[intervenes]

MR SINGH: This is Mr Radebe's affidavit.

ADV SELEKA SC: Say again?

MR SINGH: This is Mr Radebe's affidavit?

ADV SELEKA SC: Yes.

MR SINGH: Okay.

ADV SELEKA SC: It carried the same theme that there
was no national treasury approval. Mr Koko came here and
10 said the same thing. So I am trying to understand just in
response to that what are you saying?

MR SINGH: So firstly let me respond to your issue around
Mr Radebe's court papers. Mr Chair, Mr Radebe does
indicate that national treasury approval was required, but
not for the same reasons that Mr Koko alludes to, or I am
understanding Mr Koko to allude to.

Mr Radebe in his court papers and maybe we can
refer to it if it is in the reference bundle.

ADV SELEKA SC: Yes.

20 **MR SINGH**: We can go there, but from my recollection in
the interest of time, references, the email that I have just
referenced, but basically what is down there, the emphasis
that is placed on that email by Eskom in that it says it is
arbitrary, right and also it is received from Mr Didifango
and we do not know his position and we do not know if he

was empowered to issue the email.

Now Mr Chair, a simple Google search of who Mr Didifango is, would tell you as I have just told you, that he was the chief director in governance and monitoring in the office of the chief procurement officer of national treasury. So that is the weight of the position that he carried.

Secondly, if you read the email as I said, it is quite clear that he does not say you require an approval for this. He says you can actually do it. so the issue of the court
10 papers is a separate matter *vis-a-vis* what Mr Koko has allegedly assented, and I am not privy to the basis on which Mr Koko has made this assumption and maybe if you give us some time I will go and refer to it and I can come back to you and refer to it, but I know Mr Radebe does allude to the fact that national treasury approval is required.

The basis on which they rely on the fact that national treasury approval is required, is the ambiguity between which schedule was applicable at the time. so
20 from an Eskom perspective Mr Chair, Eskom did engage with the council in terms of understanding which remuneration model is acceptable, given the applicable practice note, and there was some ambiguity in terms of the opinion that was obtained but it eventually said you know, just ask treasury because treasury is the authority.

Okay, and there was then a second opinion that was obtained, if I am not mistaken. It was actually obtained by McKinsey themselves, that effectively said actually the practice note is applicable and therefore you do not need approval.

Okay, but notwithstanding that, Eskom thought it prudent to actually engage with National Treasury and they engaged with National Treasury in the form of a meeting, and the outcome of that meeting was this email that then
10 was received from Mr Didikane on the 4th of February I think, 2016.

So that is the basis upon which Eskom relied on the fact that it had the necessary authority to enter into this space.

ADV SELEKA SC: Thank you Chair. Mr Singh, the starting point in regard to the requirement for national treasury is exactly the appointment on a risk basis in Mr Radebe's affidavit. That affidavit is in Eskom bundle, 14D. Eskom bundle 14D.

20 I will give you the page reference. 11, page 1194.

MR SINGH: Sorry Mr Seleka, you are at?

ADV SELEKA SC: Paragraph 79, on paragraph 79. Well, Chair sorry can we start so that it makes sense. Let us start on page 1193. I will read from the last paragraph 78.4.

CHAIRPERSON: Just for the record. State whose affidavit we are looking at and obviously the page.

ADV SELEKA SC: Sorry Chair?

CHAIRPERSON: I am saying for the record, state whose affidavit we are looking at.

ADV SELEKA SC: Oh, yes.

CHAIRPERSON: And the page.

ADV SELEKA SC: Sorry Chair, thank you.

CHAIRPERSON: And obviously in what proceedings.

10 **ADV SELEKA SC:** Yes. This is an affidavit Chairperson of Mr Phakemani Radebe. There is a founding affidavit which was filed in the court case, number 22877/2018. The applicant there being Eskom Holdings against five respondents; firstly McKinsey and company and the second being Trillian Management Consulting, the third being Capital Partners and then the National Director of Public Prosecution was also cited, as well as the fifth respondent, MMS Nxumalo and oh, the affidavit starts on page 1161 of Eskom Bundle D, and it runs all the way to page 1132 and
20 is dated 29 March 2018.

CHAIRPERSON: Ja, okay. You said we must go to 1193.

ADV SELEKA SC: Yes. Yes, yes Chairperson. Page 1193. There are a couple of issues but I want to concentrate on this one of the national treasury requirement. I will start Mr Singh rather at paragraph 78.3.

It says:

“There was no cap or limit placed on what could be paid out under the master services agreement. This is particularly concerning in light of the PFMA requirements mentioned above.”

7.8, 78.4:

10 “Finally there was also a current awareness that this agreement would trigger the duty to report this transaction to the minister in terms of Eskom’s significance and materiality framework and the relevant PFMA provisions. The minutes record that a number of questions were raised with regard to the PFMA implications for this transaction. In response the team advised that they were aware that the transaction falls within the materiality framework and that discussions around PFMA were in progress. However, the minister was never notified of this proposed master services agreement either before or after its conclusion.”

20 Paragraph 79:

“These was a further and a far more significant difficulty with this decision. There was a further and far more significant difficulty with this decision to approve the conclusion of the master services agreement. Eskom had not obtained national

treasury's approval for the intended deviation from the national treasury instruction 01/2013/14 on cost containment measures (the national treasury instruction)."

Then it reads, 79.1:

10 "At all relevant times, the national treasury instruction was in operation and it had been specifically incorporated into Eskom's own internal policies through the Eskom position paper PPO3, signed by Mr Koko in August 2015. As explained above, the national treasury instruction and the Eskom position paper PPO3, required that external consultants may only be appointed as at prescribed rates, based on a clear business case and following a gap analysis, any deviations required national treasury's approval under Section 79 of the PFMA. From early on in the negotiation process with McKinsey, Eskom officials raised the concern that the national treasury instruction did not permit risk
20 based remuneration."

Then we carry on, the next page, paragraph 80.1:

"On 29 June 2015 Ms Veletti, the then acting CFO specifically recorded that the national treasury instruction must be complied with in relation to consultant rates and if an alternative methodology

such as incentive based is used, we need to verify that it is permissible.”

This letter appears at item 25 of the record bundle, and then on 2 September 2015 Mr Singh you would be there by that time, Mr Aziz Laher, Eskom group compliance manager and PFMA corporate specialist, addressed an email to a number of Eskom officials, including amongst others Mr Martin Bryce, Mr Prish Govender, Ms Mayabana, Mr Charles Kalima and various parties from legal compliance
10 and professional services.

In that email Mr Laher specifically recommended that Eskom would need to apply to the national treasury for approval of the deviation from the national treasury instruction. The email is in the record bundle. Mr Laher raised this issue, yet again in an email dated 14 September 2015.

On or about 27 October 2015 Mr Laher was called to a meeting in Mr Koko’s office. the meeting was attended by Mr Edwin Mabelane, Eskom’s chief procurement officer
20 of Eskom, Mr Prish Govender, Eskom’s then project director of Blue Capital and two representatives of McKinsey, Mr Vikus Saga and Dr Alex Bryce.

At this meeting Mr Laher was told to explain why he was holding up the conclusion of the master services agreement with his view that national treasury approval

was required. Mr Laher explained the restrictions imposed by the national treasury instruction and advised that the only way forward was to apply for approval.

Mr Koko stated his intention to obtain an external legal opinion on the matter. McKinsey also stated that he would provide their own view about whether the remuneration model was in line with national treasury instructions.

If I may stop there, Mr Singh. What we have read
10 so far specifically deals with the national treasury requirement if you were to appoint McKinsey on a risk base or risk basis. So it is very clear and consistent with what Mr Koko said before the commission here.

Your comment?

MR SINGH: Mr Chair, as I have mentioned none of these issues that Mr Seleka raises, was within my personal purview at the time.

ADV SELEKA SC: Okay.

MR SINGH: In terms of my response, I have given my
20 response in terms of the reliance that Eskom had placed on the two opinions as well as the email that was received from national treasury.

ADV SELEKA SC: And ...[intervenes]

CHAIRPERSON: So I take that to be, I take that to mean that you are saying look, I do not have personal knowledge

of these matters so I am not in a position to agree with them or disagree, but all I am saying is that my understanding is that a 75 note was obtained or email was obtained from national treasury which I understood not to say we needed approvals in terms of the PFMA for the agreement at the time.

That is what you are saying, is that correct?

MR SINGH: That is correct.

CHAIRPERSON: Okay.

- 10 **ADV SELEKA SC**: Thank you Chair. The allegations go further with the opinions that are obtained by Eskom, which says approval is required and then by McKinsey where it says well, we are not sure but let us take a chance, let us proceed without an approval. But of course McKinsey Mr Singh alluded earlier that they have come on record, saying they were misled by Eskom.

Eskom said to them they had obtained the approval when in fact they had not obtained. Is that correct Mr Singh, that is what McKinsey is saying?

- 20 **MR SINGH**: Well Mr Chair, if we are going down this road we are not going to finish before eight o'clock.

CHAIRPERSON: Is that because you are going to say no, that is not your understanding?

MR SINGH: Well, it is not my understanding.

ADV SELEKA SC: Of McKinsey's version?

MR SINGH: Well, Mr Chair this is the reason ... if we are going, let me say this.

ADV SELEKA SC: Whether or not they are right is another matter, but I was saying but you understand what I am saying.

MR SINGH: No.

ADV SELEKA SC: Because you can come back and explain it tomorrow, whether or not they are right that they were misled, is another matter. All I am saying is you
10 alluded to that version that earlier that they said they were misled into thinking that Eskom had obtained the national treasury approval.

That is all I am saying now.

CHAIRPERSON: So you wanted him to confirm whether your understanding of what he said was correct.

ADV SELEKA SC: Yes.

CHAIRPERSON: That McKinsey said they were misled.

ADV SELEKA SC: Yes.

CHAIRPERSON: Whether that they were right in saying so
20 or not, you are not going there now?

ADV SELEKA SC: No, I am not going there. We can deal with it tomorrow.

CHAIRPERSON: Okay.

ADV SELEKA SC: But you know that version of theirs.

MR SINGH: Yes I do Mr Chair and for the record I do not

agree with it.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes, okay that is all.

CHAIRPERSON: Okay.

ADV SELEKA SC: We will deal with it tomorrow, because then on page 1199 Chairperson, paragraph 87.

MR SINGH: 1199?

ADV SELEKA SC: 1199, paragraph 87. Then the affidavit reads:

10 “Despite these concerns over the lawfulness of the agreement, Mr Mabalane proceeded to issue an acceptance letter to Dr Weiss on 17 December 2015.”

So I mean, you know in this affidavit because of what you have said you have read it, where there is an exchange with an official from national treasury and a concern is raised as Mr Singh has said Chair, that where ... this is just an email.

Whether it is a ...[intervenes]

20 **MR SINGH:** It is here somewhere.

ADV SELEKA SC: Ja, I know it is somewhere there. We can go into it tomorrow, but first and foremost is the issue of the approval. Does it mean you knew, or you said it was not within your purview? So then Mr Koko had knowledge because he was in that meeting.

The policy was signed by him, dated August 2015. I suppose well, let me ask you this whether you can dispute what he is saying about the requirement of the approval?

MR SINGH: Well Mr Chair, as I said I am not too sure what Mr Koko said in evidence, but if I just had to have reference to paragraph 81.4, Mr Koko stated his intention to obtain an external legal opinion on the matter. McKinsey also stated they would provide their own view about whether the remuneration was in line with national
10 treasury instruction.

Now if it is alleged as Mr Seleka is saying, that Mr Koko signed the instruction, I mean signed the policy document knowing that approval was required, in my view then an instruction would have followed from Mr Koko, from this meeting, to do the necessary that is requiring him to comply with the policy.

Yet, his response here is his intention to obtain an external legal opinion on the matter, which then led to the opinions that Eskom had received, so in my view this
20 indicates that notwithstanding the fact that he signed the policy, there was some doubt in Mr Koko's mind as to whether it was applicable or not, hence he sought legal opinion.

ADV SELEKA SC: Ja, but I think ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: He has cut a long story short Mr Singh, when he came here he was unequivocal, he was very clear to the Chairperson, Chair you will recall I even said that helps, that saves us three hours of going into the MSA, so if you go to his transcript the 29th of March 2021 that is when he testified.

MR SINGH: Mr Chair I said at the end of the day I can only go on what is here and based on what is here it would seem that at that point in time there was some ambiguity in
10 his mind, hence he is requesting a legal opinion, because if he was, as in fact it is what Mr Seleka says when he sat in this Chair then the logical thing to have done was to say Mabalane get the approval, or Bridge get the approval because Mr Nene is right.

CHAIRPERSON: Ja, not that is fine.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Oh, you are not done yet, okay
...[intervenes]

ADV SELEKA SC: Well that was the first point.

20 **CHAIRPERSON:** Oh that was the first point, well we will respect the arrangement, Mr Singh can he go into his second point?

MR SINGH: On the second point.

CHAIRPERSON: Okay, alright, okay.

ADV SELEKA SC: The second point Mr Singh is on page

811, point 416.

MR SINGH: Of this bundle?

ADV SELEKA SC: Of that – no sorry, sorry Chair. That is on Bundle 14.

MR SINGH: Mr Chair I think Mr Seleka requires some rest.

CHAIRPERSON: You think he needs some rest?

MR SINGH: I think Mr Seleka requires some rest.

CHAIRPERSON: You know he is the only one who has
10 been standing the whole day.

MR SINGH: That is true Mr Chair.

CHAIRPERSON: But he ...[intervenes]

ADV SELEKA SC: I envisaged Chair, I think I am going to propose we adjourn, I envisage there is going to be a lot of questions from this.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay then that is fine, let us adjourn then. I think that it would be good if Mr Singh could get a
20 chance to have a look at Mr Koko's evidence that has been referred to because in answering he has emphasized that he has not seen that evidence, so that tomorrow if he has picked anything that makes him qualify his evidence or add it he can do so, so I guess that you would be able to indicate where he will find it, the relevant evidence.

ADV SELEKA SC: Yes, it is already on the website. That would be 9 March 2021.

MR SINGH: Are you giving me a date, okay that is fine, no I will find it.

CHAIRPERSON: Okay thank you very much to everybody for your cooperation, let us adjourn now and tomorrow we could start earlier than ten but there is no point in starting earlier than ten if we are going to finish on time anyway, so should we make it ten o'clock?

10 **ADV SELEKA SC:** I think so ten o'clock is fine.

CHAIRPERSON: Okay, alright, we will adjourn then until tomorrow at ten.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 13 APRIL 2021