

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

18 MARCH 2021

DAY 363



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 18 MARCH 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Are you ready?

ADV SELEKA SC: We are ready Chairperson and we sincerely apologise for the late start.

CHAIRPERSON: Yes.

ADV SELEKA SC: Mr Anoj Singh is represented by
10 Counsel and the attorney they would like to place themselves on record.

CHAIRPERSON: Okay. Counsel can do so from where they are if that is convenient.

ADV VAN DEN HEEVER: Good morning again Chairperson.

CHAIRPERSON: Good morning – good morning.

ADV VAN DEN HEEVER: Advocate Van Den Heever instructed by Mr Tshepo Mathopo of Mathopo Attorneys.

CHAIRPERSON: Thank you very much.

20 **ADV VAN DEN HEEVER:** And we represent Mr Singh in these proceedings.

CHAIRPERSON: Thank you.

ADV VAN DEN HEEVER: Before my learned friend – first of all we are going to apologise we had a little discussion just pertaining to my learned friend's approach today.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: Some points that he brought to our attention sought of compels us at this point to ask you Chairperson if we could have an opportunity to consult with our client just to deal with some of those issues.

CHAIRPERSON: Hm.

ADV VAN DEN HEEVER: And I do not want to go into the details.

CHAIRPERSON: Ja.

10 **ADV VAN DEN HEEVER:** Of what my learned friend said to us but it would be very unfair to my client that we go down that route and he has not had an opportunity to discuss my learned friend's approach. And I mean I am indebted to my learned friend for playing open cards with us.

CHAIRPERSON: Hm.

ADV VAN DEN HEEVER: But we want to place our client in the best position to – to deal with the issues before you.

CHAIRPERSON: How much time would be necessary for
20 that interaction with your client?

ADV VAN DEN HEEVER: My suggestion would be a maximum of thirty minutes. It just depends how long it be up – we might be finished a lot quicker and we will then make sure that that we – we advise your Registrar that we are ready to proceed.

CHAIRPERSON: There are two ways of dealing with it. One is to adjourn now to give you that opportunity. Another one is for us to start on the understanding that Mr Seleka will not pose questions relating to those issues until you have had that opportunity with your client. And if we go that route we could see whether we add time to the tea break or we add time to the lunch break it just depends. I would prefer the latter approach if possible but obviously I do not know whether in terms of your plan Mr
10 Seleka it is possible to deal with other issues until there has been that opportunity for counsel for Mr Singh.

ADV SELEKA SC: Yes. It is possible Chair to put it on the side-line.

CHAIRPERSON: Even up to lunch time?

ADV SELEKA SC: Any time.

CHAIRPERSON: Ja anytime.

ADV SELEKA SC: Yes Chair anytime.

CHAIRPERSON: Okay. Alright.

ADV SELEKA SC: Exactly.

20 **ADV VAN DEN HEEVER:** Chairperson that was exactly our discussion this morning and again I do not want to go into the details.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: Suggested to my learned friend that we start with – with a certain line.

CHAIRPERSON: Ja, yes.

ADV VAN DEN HEEVER: And that we stand – the issues that he wish to start with but down.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: But I understood my learned friend and I am not going to be prescriptive to him he is the evidence leader that he has got his own plan and he wished to start with the issues pertaining to McKinsey and Regiments and it is on that score and some of the issues
10 that he wished to raise that we actually would like the opportunity to just have a discussion with the client. As I said it is – we did try and solve it inter parties.

CHAIRPERSON: Yes ja.

ADV VAN DEN HEEVER: But I do understand Mr Seleka's approach in this right we are not allowed to be prescriptive as to how he approaches.

CHAIRPERSON: Ja. No, no that is fine. Let – let us start.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** And when we come to the tea break I will indicate whether we will take a longer than usual tea break.

ADV SELEKA SC: Yes.

CHAIRPERSON: Or whether we will only do that in respect of the lunch hour so we take more than an hour.

ADV SELEKA SC: Yes, no just for the benefit of my learned friend it is only that limited aspect which I can put on the side regarding the disciplinary action. So the rest I will pursue as planned.

CHAIRPERSON: Hm.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Is – I take it that there is agreement that the issues can be ring fenced and dealt with later?

10 **ADV SELEKA SC:** That is correct.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: Chairperson we indebted to you if we can – if my learned friend can then proceed on the – on the basis that if my client feels that he is not in a position to answer a specific question and if for instance wish to first go and refresh his memory or have regard to certain documents that he be allowed to do that before he commits himself and he have not had regard to certain documents that now excludes the issue that we wished to
20 consult on.

CHAIRPERSON: Hm. Well I guess let us play that by ear.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let us see if we get to any such point and we will take it from there.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Okay alright. Please administer the oath or affirmation please.

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: No Ma'am.

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

10 **MR SINGH:** Yes I do.

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

MR SINGH: So help me God.

CHAIRPERSON: Thank you. You may be seated Mr Singh.

ADV SELEKA SC: Thank you.

CHAIRPERSON: I assume Mr Seleka that there is also a topic that you have raised with Mr Singh's legal team
20 relating to another day for evidence?

ADV SELEKA SC: I did – I did Chair.

CHAIRPERSON: You did and I guess I will be informed in due course.

ADV SELEKA SC: Yes.

CHAIRPERSON: What – what anything came out of that

discussion.

ADV SELEKA SC: Yes. I spoke to the attorney earlier.
My learned friend was not here yet.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: So we will get ...

CHAIRPERSON: You will still continue to talk?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes. Thank you. Mr Singh thank you
10 very much. For the purposes of your evidence Mr Singh we
are using Eskom Bundle 16 Exhibit U37 – Eskom Bundle
16. Please assist Mr Singh there. Exhibit U37. Mr Singh
has submitted two affidavits the first of which is found on
page 591 and I suppose you are familiar Mr Singh with the
pagination. We are using the black pagination.

MR SINGH: Correct.

ADV SELEKA SC: Yes. Page – go to page 591.

MR SINGH: Yes I am there.

CHAIRPERSON: Does that go up to page 637?

20 **ADV SELEKA SC:** That is correct Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: 637 yes.

MR SINGH: That is correct Sir.

ADV SELEKA SC: That is correct. There is a signature Mr
Singh on page 636 above the word deponent you see

that/ingh on page 636 above the word deponent you see that?

MR SINGH: That is correct Sir.

ADV SELEKA SC: You confirm that to be your signature?

MR SINGH: Indeed so.

ADV SELEKA SC: You confirm the contents of the affidavit?

MR SINGH: I do Sir.

ADV SELEKA SC: To be yours as well. Chair I beg leave
10 to have this affidavit admitted as Exhibit U37.1.

CHAIRPERSON: The affidavit of Mr Anoj Singh which starts at page 591 is admitted as an Exhibit and will be marked as Exhibit U37.1.

ADV SELEKA SC: Thank you – thank you Chairperson together with the annexures to the affidavit.

CHAIRPERSON: Yes together with the annexures to it.

ADV SELEKA SC: The next affidavit is on page 749.

MR SINGH: 749.

ADV SELEKA SC: 749 – 49.

20 **MR SINGH**: Correct.

ADV SELEKA SC: Thank you. This affidavit runs up to page 768.

MR SINGH: Correct.

ADV SELEKA SC: You have that. Above the deponent again there is a signature, you see that?

MR SINGH: Indeed Sir.

ADV SELEKA SC: You confirm that to be your signature?

MR SINGH: That is correct Sir.

ADV SELEKA SC: You confirm this to be your affidavit?

MR SINGH: It is so.

ADV SELEKA SC: And the correctness of the contents thereof?

MR SINGH: That is correct.

ADV SELEKA SC: The affidavit is dated 18 January 2021.

10 Chairperson I beg leave to have this affidavit admitted as Exhibit U37.2.

CHAIRPERSON: The affidavit of Mr Anoj Singh which starts at page 749 is admitted as an Exhibit and will be marked as Exhibit U37.2.

ADV SELEKA SC: Thank you Chair. Mr Singh.

ADV VAN DEN HEEVER: Chairperson sorry before my learned friend continue for some reason there is a very bad echo and I cannot always hear with clarity what is being said. I have already moved here to keep it not better but I
20 still have difficulties in – in...

CHAIRPERSON: Do you think that might be the aircon?

ADV SELEKA SC: It is the aircon Chair.

ADV VAN DEN HEEVER: It might be that.

CHAIRPERSON: It is the aircon ja. Okay they will – they will attend to it. Thank you.

ADV SELEKA SC: It is still on. Okay it is off now. Thank you. Just by way of introduction and for the purposes of the viewers Mr Singh. Mr Singh is a former employee of Eskom in the position of CFO. He has provided two affidavits to the commission dealing with essentially three aspects of her evidence to the commission. One being his secondment from Transnet to Eskom who approached him and asked him to be seconded. The other is matters that once he was at Eskom he had to deal with – those matters
10 relate to the McKinsey and Regiments contract for McKinsey and Trillian contracts and the payments made pursuant to those transactions.

Mr Singh will outline the role he played in regard to those transactions and what decisions were made. Mr Singh will also deal with – or he gives evidence also on matters pertaining to Tegeta. The pre-payments that were made in regard to Tegeta, the decisions in relation thereto and to the extent he can or I suppose he will also deal with the – the penalties the R2.17 billion penalties. Perhaps let
20 us see how we progress. It is a full plate. Thank you Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Mr Singh let us start off with your secondment to Transnet – to Eskom. I beg your pardon.

CHAIRPERSON: Maybe just so that I do not forget I think

when we take the tea break let both teams see me to discuss the matter that you are still discussing about between yourselves.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: Mr Singh let us start with your secondment to Eskom. Would you please just tell the Chairperson how your secondment came about; who approached you and requested you to make yourself
10 available for secondment and when officially were you seconded to Transnet – to Eskom?

MR SINGH: Thank you Mr Chair. In response to the question I was approached by the then Minister of Public Enterprises Ms Lynne Brown to consider a potential secondment to Eskom.

If memory serves I think it was in the period of sometime in June 2015 or so. And that then resulted in my official secondment to Eskom on the 1st of August 2015.

ADV SELEKA SC: So the – you saying it was the Minister
20 Lynne Brown who approached you?

MR SINGH: Yes Sir.

ADV SELEKA SC: Around June 2015.

MR SINGH: That is correct.

ADV SELEKA SC: And what exactly did he – did she ask you?

MR SINGH: Mr Chair it was basically to understand whether I was willing at that time to consider a potential secondment to Eskom given the issues that Eskom was currently experiencing at the time in terms of financial hardships and load shedding and the issues relating to the new bill.

ADV SELEKA SC: And when did your secondment come into effect?

MR SINGH: 1st of August 2015.

10 **ADV SELEKA SC:** Okay. Now you have – you have read the affidavit of Ms Mateko and I am sure listened to her evidence. She has given evidence before the commission about the meetings she says you had with McKinsey and Regiments including herself during July 2015. She gives dates of 8 July 2015, the date of 24 July 2015 that these meetings were taking place at some hotels and what is the other place – Maboneng and they were discussing what she said was Project Pandora a proposal which McKinsey and Trillian were making at the time in order to offer services
20 to Eskom but you were not at Eskom at the time. What is your comment on her version?

MR SINGH: Mr Chair in context I think the affidavit – my affidavit deals with this aspect in detail. Indeed there were meetings that were held with McKinsey and the version that we have on affidavit is supported by the McKinsey version

in that the – I think it was Doctor Weiss that gave evidence before the commission that stated that the on boarding process that they had undertaken with Mr Molefe and myself was part of those processes and they were processes that they would undertake as the normal part of their engagement with client. In terms of the Regiments component he also confirmed that the on boarding process that was undertaken by McKinsey was at their behest or their initiative and Regiments was invited to those
10 meetings 00:18:39.

ADV SELEKA SC: So you are – you are confirming or are you so that I am clear on your response are you confirming to the Chairperson that the meetings did take place?

MR SINGH: Yes Mr Chair in the context of the on boarding process that meetings he had outlined they did.

CHAIRPERSON: And I take it that – that includes the meetings with as I understood Mr Seleka's question to you. Meetings that allegedly took place before you were – were seconded to Eskom?

20 **MR SINGH:** That is correct Mr Chair and it was on the assumption that the Minister had requested the – of me to provide her an indication as to whether I would be willing to do so and I had given her the indication that I would do it.

CHAIRPERSON: So – so your confirmation is yes there is

certain meetings took place relating to Eskom matters before – in which you attended before you were actually seconded to Eskom.

MR SINGH: That is correct Sir.

CHAIRPERSON: Yes and you say but that happened after the Minister had approached you.

MR SINGH: That is correct.

CHAIRPERSON: Is that what you are saying?

MR SINGH: That is correct.

10 **CHAIRPERSON**: Okay.

MR SINGH: And to – to complete Mr Seleka's questions the issues relating to the matters that were discussed effectively covered the issues of on boarding in terms of the Eskom environment, what are the current issues in the Eskom environment, how did they see the – the solutions for the problems that Eskom currently faced. So that was the context of the meetings.

ADV SELEKA SC: Just keep your microphone on. Ja she testified that this was called Project Pandora.

20 **CHAIRPERSON**: You confirming that term?

ADV SELEKA SC: Do you confirm that?

MR SINGH: I think Mr Chair McKinsey from time to time did put names to projects – if they did at the time maybe it was I do not – I do not recall exactly if there was a name. I think for me it was as I described an on boarding session

that they had arranged which I know you know all client – all service providers from time to time do. I think as a professional courtesy even Ms Mathopo herself would have done that as part of her duties at Regiments.

ADV SELEKA SC: Would have done what?

CHAIRPERSON: Is – is your answer you cannot dispute that the project was called Project Pandora, is that correct? You cannot dispute that. You are aware that McKinsey did put names to projects but you cannot
10 remember whether this project was called Project Pandora, is that what you are saying?

MR SINGH: That is what I am saying yes Chair.

ADV VAN DEN HEEVER: Chairperson before Mr Seleka continues insofar as his dealing with evidence that was given by Ms Mathopo without being prescriptive I think it is quite important that he directs Mr Singh to the portions in the transcript that he – that he relies on otherwise we are going to end up in a situation where there is total confusion as to exactly what my learned friend is referring.
20 If he deals for instance with an affidavit or if he deals with the evidence visa vie the transcript.

CHAIRPERSON: Well it might not be necessary to specify where you base your question on but if there is an issue – there is a dispute whether the witness did say that then we can go to – to the relevant part. But we can move on if

nobody thinks it is not put accurately. Okay alright.

ADV SELEKA SC: Yes. No that is fine Chair but in any event I was intending to show the witness.

CHAIRPERSON: Ja.

ADV SELEKA SC: Where Ms Mathopo – because there are email invites.

CHAIRPERSON: Ja.

ADV SELEKA SC: Which are sent by – from McKinsey by Mr Thomoebotse Kgoaripe and the subject there is
10 Invitation Project Pandora discussion with CFO. So those emails are attached to Ms Mathopo's affidavit and she said that that was the description of the project.

CHAIRPERSON: I think what I – what I seek to protect.

ADV SELEKA SC: Please Chair.

CHAIRPERSON: Is that if you have got the facts on your fingertips.

ADV SELEKA SC: Yes.

CHAIRPERSON: Of what the witness said.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Whether it is in an affidavit or whatever.

ADV SELEKA SC: Yes.

CHAIRPERSON: You – you can and should be able to just put what you need to put to the witness.

ADV SELEKA SC: I agree.

CHAIRPERSON: Without necessarily referring to where it

is to be found.

ADV SELEKA SC: I agree.

CHAIRPERSON: Until either the witness or his counsel says no I think that might not be accurate then we might need to go there.

ADV SELEKA SC: I agree Chair.

CHAIRPERSON: So – but you – obviously you are free to do it.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** In whatever way but it can be quicker when you have got your facts.

ADV SELEKA SC: That is right.

CHAIRPERSON: On your – in your fingertips.

ADV SELEKA SC: That is correct.

CHAIRPERSON: And you – and the witness is able to just respond

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. Okay.

ADV SELEKA SC: Thank you Chair I – ja and Project
20 Pandora is mentioned and discussion with the CFO so she said it was reference to yourself. So what she said also was that in her testimony that the use of the word Project Pandora – or Pandora Box was kind of a – there was some secrecy about the discussions in regard to what the group was doing. Any comment?

MR SINGH: Mr Chair I have no reason to have thought at the time that there was anything secret about it. As Mr Seleka said there were email invites and I am sure those email invites indicates who was invited thereto and I am sure it must have been an extensive list could have not just been me and one McKinsey person or Ms Mathopo for that matter. So I do not think there was anything secret about these meetings. They were open meetings and as I said there was nothing sinister about the topics that we
10 covered in these meetings.

ADV SELEKA SC: But is there a reason why they were taking place at private hotels?

MR SINGH: Sorry Sir.

ADV SELEKA SC: Is there a reason why they were taking place at a private hotel or one she said that an airport and the other one at Maboneng and not at office premises.

MR SINGH: Mr Chair I think they were – the one was I was told obviously working for Transnet at the time too it would have been when and if there was a schedule or gap in my
20 diary relating to Transnet work that these things would happen and it was McKinsey normally would have done these things because they were in a workshop style that these things were then held and they would then be held offsite and that is the reason. There is again I do not believe anything sinister relating to the fact that they were

offsite.

CHAIRPERSON: Do you recall how many such meetings took place before you were actually seconded to Eskom?

MR SINGH: Mr Chair I would be guessing.

CHAIRPERSON: Many – few – several?

MR SINGH: Mr Chair given the dates I think she met in three dates so I would think it is probably ...

CHAIRPERSON: About three.

MR SINGH: Sorry?

10 **CHAIRPERSON:** About three?

MR SINGH: I think Mr Seleka mentioned three dates.

CHAIRPERSON: Yes.

MR SINGH: I would then hazard to say that that would be in an indication.

CHAIRPERSON: Yes. Yes but you have no independent recollection?

MR SINGH: No.

CHAIRPERSON: Yes.

MR SINGH: But Ja I do not – it is not – it is not ten Sir.

20 **CHAIRPERSON:** Yes not ten.

MR SINGH: Or twenty for that matter.

CHAIRPERSON: Okay alright.

MR SINGH: It is probably..

CHAIRPERSON: So it might be three or four?

MR SINGH: It is probably in the region of three to five.

CHAIRPERSON: To five ja okay alright. Mr Seleka.

ADV SELEKA SC: Yes Okay you say the Minister – this was happening after the Minister had approached you – you know about June 2015 let me put to you what...

CHAIRPERSON: Sorry did you say intervene?

ADV SELEKA SC: No they had this meetings after the Minister has approached her – him in or about June 2015.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Oh alright. So the approach by the Minister to you was it in June 2015?

MR SINGH: That is what I have said Sir.

CHAIRPERSON: Oh okay alright.

ADV SELEKA SC: Now I know you also have Doctor Weiss' affidavit because you make reference to some of what he says in his affidavit. I also want to say – read from his affidavit paragraph 17 where he says:

“Around May 2015 – May 2015 McKinsey began to discuss the possibility of a larger turnaround program with Mr
20 Molefe, Mr Singh and others at this meeting. We eventually agreed with Eskom to conduct this larger turnaround program in conjunction with the ...”

CHAIRPERSON: Just indicate where you reading in his affidavit?

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: What paragraph or what – where we find it.

ADV SELEKA SC: That is the McKinsey – it is Eskom Bundle 15(c).

MR SINGH: Sorry Sir. I did not hear you Sir.

ADV SELEKA SC: Eskom Bundle 14(c)

MR SINGH: I got you there Sir.

ADV SELEKA SC: On page 688.

MR SINGH: 688.

10 **ADV SELEKA SC:** 688. Paragraph 17.

MR SINGH: I am there Sir.

ADV SELEKA SC: Yes. So paragraph 17 it is the one I was reading.

MR SINGH: Yes Sir.

ADV SELEKA SC:

“Around May 2015.”

I will just wait for the Chairperson. Just remember as I said prior to starting that I will put to you the versions of others and let you comment on them, so that we get to see
20 exactly what happened.

MR SINGH: Sure.

CHAIRPERSON: Okay. Page 688. I have got it.

ADV SELEKA SC: Paragraph 17, Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: This is an affidavit of Dr Weiss. He

was with McKinsey and he writes:

“Around May 2015, McKinsey began to discuss the possibility of a larger turnaround programme with Mr Molefe, Mr Singh and others at Eskom...”

CHAIRPERSON: Did you say... I do not know if I... It sounded like you say – you read, he says around late May?

ADV SELEKA SC: Around May 2015.

CHAIRPERSON: Oh, maybe I am hearing things this
10 morning.

ADV SELEKA SC: Is it how I sound? [laughs]

CHAIRPERSON: [laughs] Okay. Ja, around May 2015.

ADV SELEKA SC: Yes. So. Yes, the Chairperson can read. But Mr Singh, he is putting it, even before the Minister approaches him, he puts these discussions in May.

MR SINGH: Mr Chair, I can categorically state that I had not met Mr Weiss specifically. Oh, sorry. Not Mr Weiss, Dr Weiss specifically before these interactions. The interactions that I had up to that point in time was purely
20 Transnet related interactions and the individual that I interacted with at that time, would either have been Dr Fine or....

ADV SELEKA SC: So. You see, he is specifically saying:

“Around May 2015, McKinsey began to discuss the possibility of a larger turnaround

programme with Mr Molefe, Mr Singh and others at Eskom.

We, eventually, agreed with Eskom to conduct this large turnaround programme in conjunction with the Top Engineers Programme and to train a greater number of top engineers than previously discussed...”

So he is specific about this being in relation to Eskom.

10 **MR SINGH**: Mr Chair, I do not deny that that is exactly what he stated.

ADV SELEKA SC: Yes.

MR SINGH: What I deny is the fact that he engaged with me at that time relating to Eskom related matters.

ADV SELEKA SC: H’m.

MR SINGH: The reason why he is stating that is because of the time. If you look at the events that occurred which is related to, it is the time at which the, I would say, the request for confinement for McKinsey was being prepared
20 by Eskom.

At the time I had no influence, nor input or knowledge of the fact that that was happening. It is just post that that I then got to know that these things were occurring at that time.

CHAIRPERSON: Well, he, in paragraph 17, might not

necessarily intent to say he was personally involved in the discussions that involved you and Mr Molefe, as I understand it. It is open to an interpretation that would mean that he was also involved but it is also, it seems to you, open for interpretation that he is talking about McKinsey representatives having these discussions with you and Mr Molefe which may or may not have included him.

MR SINGH: Mr Chair, as I have stated, at that time my
10 only interaction with McKinsey was relating to Transnet.

CHAIRPERSON: Or ...[intervenes]

MR SINGH: [Indistinct]

[Speakers intervening each other – unclear.]

CHAIRPERSON: Yes. Okay. So to the extent that he means that there were meetings between yourself and Mr Molefe or there were discussions involving you and Mr Molefe and representatives of McKinsey in May. You say, no, that is not true insofar as his talking about discussions relating to Eskom.

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

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Mr Singh, I know that you have quoted some of the paragraphs from his affidavit when addressing certain aspects of the McKinsey/Trillian payment and transactions. Is there a reason why you did not deal with

this allegation in your affidavit, this particular one?

MR SINGH: Mr Chair, I am not sure. I think it was just an oversight on our – on my part.

ADV SELEKA SC: It was... Sorry, it was what?

MR SINGH: I said it was probably an oversight on my part.

ADV SELEKA SC: Oh. Now you got seconded effective August 2015. Prior to that, you have had these meetings with the McKinsey/Regiments' teams. Ms Mothepu says:

10 "These meetings, not only did they entail your plan for the first hundred days but they also dealt with this Top Engineering Programme and the services that were intended to be rendered in terms of a Service Level Agreement..."

Is that correct?

MR SINGH: Mr Chair, at that time I would have not known the difference between what was hundred days for Top Engineers because at that time it was just an induction.

20 **CHAIRPERSON**: Let me go back to the meetings. I am sorry Mr Seleka ...[intervenes]

ADV SELEKA SC: No, Chair.

CHAIRPERSON: ...for interrupting your plan. But I want to go back to the meetings that you have admitted that took place and before your secondment to Eskom with

McKinsey that related to certain proposals or plans that McKinsey had in mind for Eskom. Did those meetings involve the person who was acting CFO of Eskom?

MR SINGH: Sorry, Chair, at the time?

CHAIRPERSON: At the time.

MR SINGH: No, sir.

CHAIRPERSON: H'm. Are you able to say why meetings that were discussing Eskom matters which it was thought required your presence as somebody who was possible
10 going to be seconded to Eskom as CFO? Do you have an idea why the person who was then the current acting CFO of Eskom was excluded from those meetings?

I would have thought that if the idea was that you needed to be briefed about matters that you will have to deal with once you were seconded, I would have thought that the presence of the then current acting CFO of Eskom would be important.

MR SINGH: Mr Chair, the meetings were called at the instance of McKinsey. I, actually, did not consider that at
20 the time.

CHAIRPERSON: H'm.

MR SINGH: I think the first time that I consider it is now that you mention it. I guess, when ... McKinsey did not deem it necessary at the time.

CHAIRPERSON: But it is just not McKinsey, it is also you,

h'm?

MR SINGH: Yes.

CHAIRPERSON: I would have thought that - and you must tell me if your thinking is different. I would have thought that, firstly, you might be – if you were called by a service provider or a potential service provider to Eskom to a meeting to discuss Eskom matters at a time when you were not part of Eskom but on the understanding that you possible would be seconded to Eskom.

10 I would have thought that you would insist that the person who was occupying the position that you would be occupying should be there because that is the person that those matters actually that that person should be seized with those letters at that time because you are not part of Eskom.

 And those matters relate to or affect his or her portfolio and that you will say: Well, I am not comfortable. He must be here or she must be here. After all, if I get seconded, I will take over from him or her. What do you
20 say to that?

MR SINGH: Mr Chair, I think as the purpose of the sessions, as described, were on boarding sessions to the extent that the sessions were, as we discussed for on boarding, it was really McKinsey's view of the world in terms of what they believed that needed to be done. And

where they believed the, let us call it pain-points in Eskom, as it stood at the time.

Now, and that was really just to provide information about the environment that I was going into and as we have also stated, that it may have included maybe of what the next hundred days would look like.

It is not to say that was the be all and end all of the input. When I eventually got there, I then got also my direct report to basically brief me on what the exact state
10 of each of the environments was.

And that provided me to a better insight into the exact state of the organisation visa vie what, let us say the health check that McKinsey had presented, visa vie the actual state that my direct reports would effectively give me at that time.

So I would exactly know what is the expectation in terms of where McKinsey pictures it versus where the organisation actually is visible the assessment that each individual would give me at the time.

20 **CHAIRPERSON:** But it seems to me that that may be all the more reason why you should have insisted that the then current CFO should be present because does it not look strange that you get briefed by an outside to Eskom before you are briefed by the organisation itself by the person whose position you will be taking?

MR SINGH: I ...[intervenes]

CHAIRPERSON: I would have thought that, first, you would rather be briefed by this person or whoever else from Eskom or at least when you are briefed by an outside, that person should be here so that you get a full picture of what is the current position, what is his or her attitude on some of these matters.

Obviously, when you get seconded, you will make your own decisions but I would have thought that you
10 will say: No, no. It is important that the current person should be present. I do not want to be seen to be having discussions behind his or her back on matters that affect Eskom when I am not even at Eskom yet. That is what I would have expected.

MR SINGH: Well, Mr Chair, maybe also by way of background. I think, I guess at the time there was a lot of media reporting around the state of Eskom and the reasons for the state of Eskom... And I think the then board instituted an investigation relating to the veracity of
20 information that emanated from Eskom itself.

I think also the War Room was seized with issues relating to the information flow and the accuracy of information that was being shared between the board, the War Room, Public Enterprises, Ministry of Finance and all. So there was an issue associated with the credibility of

information that emanated from within Eskom at the time.

And maybe in hindsight, you are correct, maybe it would have been better to have the person but given the situation that existed at the time, in my view, it would have – in my view today and I certainly did not think of it then, as I have said, but in my view today, given what we know about the information flow and the accuracy of the information, I would so say, that it would probably have been better for me to have an independent view from
10 McKinsey or any consultant for that matter, relating to the state of Eskom.

I mean, we talked about McKinsey today, for example, but there was Deloitte, there was JP Morgan, there was Citibank. There were, you know... reports. All of that information I utilised to be able to get myself appraised of what that current state of Eskom was independently of what the environment was before I got there.

CHAIRPERSON: H'm. And prior to you actually being
20 seconded, did you have any similar meetings with any Eskom officials, particularly, the person who was acting CFO?

MR SINGH: I ...[intervenes]

CHAIRPERSON: Or you got the chance to hear what they have to say about what was going on at Eskom?

MR SINGH: Mr Chair, I do not recall specifically the finance people or any of my direct reports that reported to me when I got there.

CHAIRPERSON: H'm, h'm.

MR SINGH: But I certainly remember interacting with Mr Freddie Dahl(?) and he was the – I think he was the group – I think he was the division – the title of either Divisional Executive or General Manager in the Office of the CEO or relevant information and stuff like that.

10 **CHAIRPERSON:** H'm. Well, Mr Seleka will proceed. I just want to say. There is something that appears, from the face of it, to be a bit unusual where somebody who is not part of the organisation, even if it is seconded later, he possible may be part of the organisation as usual, has a number of meetings about that institution with an outsider not involving anybody within the situation.

And then if I take what you have said, never has any similar meetings with people from within the institution until he is seconded. But I just wanted to put to you what
20 is in my mind but it may be that it will be clarified as we proceed.

MR SINGH: I think, Mr Chair, in the context of clarifying.

CHAIRPERSON: Ja.

MR SINGH: I think I have also tried to clarify that in the context of what existed at the time. In my view, there was

a need to separate an independent assessment of what was happening visa vie what was actually happening. And I think when Mr Seleka leads us further ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...you will see an example, which I will try to remember to highlight, at the time.

CHAIRPERSON: Yes, okay alright. Mr Seleka.

ADV SELEKA SC: I think you can tell the Chairperson.

MR SINGH: Sorry?

10 **ADV SELEKA SC:** You can tell the Chairperson.

MR SINGH: Oh, okay. I think... The example that comes to mind, Mr Chair, is the issue of Eskom being in a liquidity crisis in January or in around January 2015, for example. Now in that case, you try and understand why is that the case, okay. And if you go to Eskom and asked them why were you in this position, you are going to get three hundred different reasons as to why they were in that position. And then some of them might be legitimate, some of them might not be legitimate.

20 Yet if you ask an independent person from the outside, why did you – why did Eskom have liquidity crisis, you will get a very concise answer that may or may not be biased. And then in the end it is up to you to decide whether it is so or not so.

And in this case, Mr Chair, if you then go to

trying to understand why that was the case, it goes back to the Funding Plan that was prepared. The Funding Plan that was prepared for that year, would supported a, I think it was a two or three hundred borrowing billion borrowing programme all of two pages.

So that is the environment in which – or that was this type of environment that was there at the time. So in order for us to get to that answer, for example, with the Eskom environment at the time, would have taken a month
10 of Sundays to get it.

Having had input from the McKinsey's of the world or the Citibank's of the world of JP Morgan's of the world, you very quickly get to that answer. And it is not on the basis that you accept that answer completely. It is on the basis that it is a very quick answer to understand why there was a problem to get to a root cause.

CHAIRPERSON: But it is sounds a very – sounds a strange proposition to me. Say, if you want to know exactly what is happening to Eskom, you do not go to
20 Eskom.

MR SINGH: In the context ...[intervenes]

CHAIRPERSON: To go to somebody else from outside.

MR SINGH: In the context of what was happening at Eskom at the time, sir.

CHAIRPERSON: Because, you see, I think if you spoke to

the CFO of Eskom, acting CFO at the time, even before you were seconded, on the basis, if all that was left was the formality of the paperwork but the decision to second you had been made.

If you said to the acting CFO: You know, I will be coming there. All stakeholders have approved, the Transnet Board, the Minister and the Eskom Board. So I would like to begin to understand what is going on.

It is seems to me that if you wanted certain
10 documents from within Eskom, that you believed he would give you the true picture. That in all probability you would be given those documents by that person as long as he or she was informed definitely you would be coming over.

MR SINGH: Mr Chair, that was process was undertaken through ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: Yes.

CHAIRPERSON: Yes, yes. And those documents might be documents that they would not give to an outsider,
20 some of it, but could give to you because in those circumstances. So I am mentioning this to say, for me, there is still a question mark of, why not go to Eskom even if you listened to an outsider but also listened to Eskom and preferable listen to Eskom first and then listen to an outsider.

But even if you start the other way but then come to Eskom while you are listening to whatever they say, rather than exclude Eskom or the relevant Eskom officials all together prior to your secondment and have about five – three, four, five meetings with an outside without any input from within the institution.

So that – but that is what I wanted to mention. You have given me that example but as we go along, there are questions, you know, maybe the picture might be
10 different that emerges. Okay alright. Mr Seleka.

ADV SELEKA SC: Yes. Ja-no, it... Mr Singh, are you saying, during these meetings there was nobody from Eskom who attended these meetings?

MR SINGH: Not that I recall, sir.

CHAIRPERSON: H'm.

ADV SELEKA SC: Did Mr - Dr Eric Wood attend these meetings?

MR SINGH: I think so. Yes, Mr Chairman.

ADV SELEKA SC: Did Mr Salim Essa attend these
20 meetings?

MR SINGH: No, sir.

ADV SELEKA SC: Ja, but you did know him at that time?

MR SINGH: Mr Chair, as I have testified before, I had two interactions with Mr Essa.

ADV SELEKA SC: Yes.

MR SINGH: One or two interactions with Mr Essa but it was certainly in my Transnet days, not...

ADV SELEKA SC: H'm.

MR SINGH: No.

ADV SELEKA SC: Did those interactions also refer to the meetings you had to attend with Mr Henk Bester?

MR SINGH: No, sir.

ADV SELEKA SC: But do you know of those meetings?

MR SINGH: I do know – well, I do know of the meetings
10 via Mr Bester's affidavit which we have denied in my previous session ...[intervenes]

ADV SELEKA SC: Oh. Oh, I see. Yes. So when did you get input, if you did at all, from Eskom officials in regard to your on boarding? Did you get input at all, information from them on what is happening within Eskom, what are the issues that trouble you and why are they there and what can we do to resolve them?

MR SINGH: Mr Chair, as I have said, there were two processes that were utilised by me to then engage with
20 Eskom. One was through Mr Ndo prior to me arriving at Eskom to get the relevant information as Mr Chair has indicated.

And the second process was to actually have a one-on-one session with each of them and then a workshop with the finance team in its entirety to understand what

was the state of each of the, how can I say, sections within finance was at the time.

CHAIRPERSON: I am sorry. Please do not forget your question Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: Can I take you back to when Minister Brown approached you ...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: ...with the idea of your secondment to
10 Eskom?

MR SINGH: Yes, sir.

CHAIRPERSON: Did she indicate or did anybody, subsequent to that, indicate to you whether there was anything wrong with the then current acting CFO of Eskom?

MR SINGH: No.

CHAIRPERSON: In other words, why were they going outside of Eskom to get a CFO when there was an acting CFO? Did anybody ever tell you that whether there was any problem?

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

CHAIRPERSON: Nobody told you?

MR SINGH: H'n-'n.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you. Ja, and when did you say that was, when you got – did you say the finance persons

from Eskom?

MR SINGH: Yes.

ADV SELEKA SC: When was that?

MR SINGH: I would assume that would have been in the course of the 1st of October.

ADV SELEKA SC: Yes. Just remind me. In your affidavit, did you not deny that these meetings took place with McKinsey and Trillian before you were seconded to Eskom?

10 **MR SINGH**: Mr Chair, I will have to go and check. I think those are one of the issues that we – counsel was requesting us time to canvass but ...[intervenes]

ADV SELEKA SC: Yes.

MR SINGH: ...if you can point me to those paragraphs, we can have a look at it.

ADV SELEKA SC: Ja, your affidavit... Well, I cannot recall. I am trying to remember how do you deal with these meetings. Page 615 of Eskom Bundle 16, paragraph 65. So 62 you say – I have read the statement made by
20 Mothepu. 615.

MR SINGH: H'm?

ADV SELEKA SC: Ja. 62, as I have read the statement by Ms Mothepu dated October. Paragraph 65, then you say:

“I deny that McKinsey was negotiating the LSA

with me in June 2015, as asserted by Ms Mothepu for the following reasons.

- I only joined Eskom on 1 August 2015.
- The BTC approved the mandate to negotiate a contract with McKinsey in July 2015. I was not the delegated authority...”

MR SINGH: Mr Chair, that paragraph is correct.

ADV SELEKA SC: No, 65.

MR SINGH: Yes, 65.

10 **ADV SELEKA SC**: 65 is correct?

MR SINGH: Yes, because Ms Mothepu was – and it is again, like, mister – in paragraph 17 of Mr Weiss’ statement.

ADV SELEKA SC: Yes.

MR SINGH: Ms Mothepu makes the allegation that she – that we, sorry, in these meetings, we are negotiating there on the site(?) but they were clearly not MSA’s negotiations. They were on boarding sessions as Mr Weiss clearly stated. So that is the denial. The allegations relating to
20 the fact that we were negotiating the MSA in those meetings.

ADV SELEKA SC: H’m. But both of them do add the turnaround strategy, the Top Engineers Programme, as having been discussed.

MR SINGH: Mr Chair, as I – originally when I approached

the subject around the meetings, it was the current state of Eskom, the issues at Eskom and potential solutions to Eskom. Whether those potential solutions included the MSA or not at that stage, I was not aware.

CHAIRPERSON: Well, the – in this paragraph of your affidavit that Mr Seleka has read in part you talk about negotiations relating to I think the MSA. Now what you have said earlier is that certain meetings did take place between yourself and McKinsey prior to your secondment
10 to Eskom and you said those you believe started in June 2015. Now are you making a distinction between those meetings and negotiations or are you talking about same thing?

MR SINGH: Mr Chair, I think Ms Mothepu is referring to the same meetings.

CHAIRPERSON: Ja.

MR SINGH: Vis-à-vis June and now the dates that Mr Seleka refers to as July.

CHAIRPERSON: Yes.

20 **MR SINGH:** So the affidavit that we had to respond to at the time, referred to June.

CHAIRPERSON: Yes.

MR SINGH: I think she has now clarified it further and I stand under correction, I have not seen those dates.

CHAIRPERSON: Ja, ja.

MR SINGH: She clarifies it further to be these dates, as the ones in July.

CHAIRPERSON: Yes.

MR SINGH: So the meetings that I referred to are the July meetings.

CHAIRPERSON: Negotiation.

MR SINGH: The July meetings.

CHAIRPERSON: Yes.

MR SINGH: Which she refers to as June in her affidavit.

10 **CHAIRPERSON:** Yes but I think what I want to establish is whether you are saying the meetings that you attended with McKinsey about which you talked earlier were not negotiations or whether you are saying no, really, whether there was negotiations or not negotiations is really neither here nor there for me, there were discussions in which I attended with McKinsey and as far as Ms Mothepu may because talking about negotiations or meetings where negotiations took place, as far as I am concerned, those were discussions, those were meetings so I am not making
20 a distinction or I can make a distinction between meetings that not involve negotiations and meetings that involve negotiations.

MR SINGH: Mr Chair, I state that no meetings that I engaged with McKinsey prior to me arriving at Eskom entailed negotiations of any sort regarding the MSA or any

other contract and that is what I state in relation to these meetings that Ms Mothepu refers to.

CHAIRPERSON: So the ones that you talked about earlier and said you attended am I right to say you said you think that was June?

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

CHAIRPERSON: Or when they started it, you said.

MR SINGH: My discussions with Minister Brown was in June.

10 **CHAIRPERSON:** Ja, was in June. Okay.

MR SINGH: These meetings, according to Ms Mothepu now according to Mr Seleka occurred in July.

CHAIRPERSON: Okay, okay.

MR SINGH: But her affidavit that I responded to them referred to meetings in June.

CHAIRPERSON: Okay, alright, but your recollection is when? Is when did these meetings that you attended with [indistinct – dropping voice]

MR SINGH: Mr Chair, it could not have been in June
20 because that is the time I only had an engagement with the Minister.

CHAIRPERSON: Ja.

MR SINGH: So it would have had to have been some time in July.

CHAIRPERSON: I would have to be after June.

MR SINGH: Yes.

CHAIRPERSON: So you would say July.

MR SINGH: July.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Just to confirm, Mr Singh, she also wrote in her affidavit 8 July 2015 and 24 July 2015. So Regiments and McKinsey met regularly with Anoj Singh in his capacity as Acting CEO of Eskom at various hotels within the Gauteng Province and discussed this and
10 programmes and prepared priorities in an action plan for his first 100 days, funding plan and the utilisation of R350 billion government guarantee. When specifically we met 8 July 2015, 24 July 2015 at conference facility at Maropeng in Johannesburg, Boutique Hotel in Rivonia and the Airport Hotel at Oliver Tambo at a conference facility in Maropeng. So the dates are the same. I think the person who puts meetings earlier is Dr Weiss, he says around May 2015.

MR SINGH: But, Mr Seleka, you are asking me to respond to Ms Mothepu's affidavit which I have responded to in
20 paragraph 65 that states:

“I deny that McKinsey was negotiating the MSA with me in June 2015.”

So I am assuming that in her affidavit she mentioned June 2015. This affidavit that you are referring to is probably an updated affidavit.

ADV SELEKA SC: No, it is updated. No, I see what you are saying there but I am saying her dates are the same in her affidavit and during her testimony saying 8 July and 24 July 2015.

MR SINGH: Mr Seleka, I am not sure what we – I have agreed to the dates of 2015 and I am agreeing to a date of June 2015 which was in an affidavit that I responded to as well.

ADV SELEKA SC: Sorry?

10 **MR SINGH:** I am saying I am not sure what we are debating or what conclusion we are trying to reach because I concede that those meetings are more likely to have happened.

ADV SELEKA SC: Yes, no that a June meeting.

MR SINGH: Yes.

ADV SELEKA SC: No, no, because my point was on the negotiations. Well, the meetings, not the negotiations.

MR SINGH: Yes because I am categorically stating there were no negotiations.

20 **ADV SELEKA SC:** No, no, no, sorry, let me clarify my question. My question was I seem to recall that you are denying that there were these meeting prior to you starting at Eskom on the 1 August.

MR SINGH: No.

ADV SELEKA SC: That is when we went to your affidavit.

MR SINGH: No, no, the July meetings are correct as Ms Mothepu has stated.

ADV SELEKA SC: Okay.

MR SINGH: The context within which she states it relating to the negotiations...

ADV SELEKA SC: Yes.

MR SINGH: That is which I deny.

ADV SELEKA SC: That is?

MR SINGH: That is which I deny because of the meetings
10 as we have explained, was on boarding session.

ADV SELEKA SC: Yes, but Dr Weiss – I am saying then, Dr Weiss and Ms Mothepu, they seem to agree on what was discussed which was not only the on boarding which is, I suppose when you say on boarding, you referring to your first hundred days plan?

MR SINGH: Indeed.

ADV SELEKA SC: But they talk about other things. The turnaround strategy which you deal with in paragraph 66.1 of your affidavit.

20 **MR SINGH:** Mr Chair, I think it is going to be he said, she said for the entire day. As I said in my view there were on boarding session that dealt with the current state of Eskom, the challenges that Eskom faced and potential solutions. If those potential solutions ended up in an MSA or a Top Engineers' programme then that you know

subsequent to those meetings.

ADV SELEKA SC: Okay, it is fine, so ...[intervenes]

CHAIRPERSON: Well, let me put this to Mr Singh. It would appear from what you are saying and from what is written in your affidavit, paragraph 65 and 66, that if one has regard to have both what you have said and what is written here, that one, you do say negotiations between Eskom and McKinsey did happen or start in July, is that correct?

10 **MR SINGH:** That is correct, Sir.

CHAIRPERSON: Ja. Two, you deny that you took part in such negotiations.

MR SINGH: That is correct, Sir.

CHAIRPERSON: Nevertheless you admit that in July you had a series of meetings with McKinsey.

MR SINGH: That is correct, Sir.

CHAIRPERSON: And that those meetings concerned McKinsey's proposals or plans in regard to Eskom.

MR SINGH: That is correct, Sir.

20 **CHAIRPERSON:** Is that right? Now the question arises whether in circumstances where in July McKinsey was negotiating with Eskom, whatever they were negotiating was also not what they were discussing with you in separate meetings.

MR SINGH: But, Mr Chair, yes, that would have to be

confirmed by the negotiating team [inaudible – speaking simultaneously]

CHAIRPERSON: Yes, but obviously from you because you became CFO or acting CFO initially in August, later CFO, you would have known what they had been negotiating in July, is it not?

MR SINGH: No, Chair.

CHAIRPERSON: After you came on board, you – and you, because you say here, those negotiations between Eskom
10 and McKinsey it started in July, went on up to November 2017 which is when you were there.

MR SINGH: Yes, Mr Chair, but I was not part of the negotiating team relating to the MSA.

CHAIRPERSON: But I would imagine you would have been briefed, you would have been getting reports, is it not?

MR SINGH: I think as I have said in the affidavit, Mr Chair, as and when required, I would be consulted.

CHAIRPERSON: Yes.

20 **MR SINGH:** Because of the impact of the initiatives.

CHAIRPERSON: Yes.

MR SINGH: Having an impact of the financial environment.

CHAIRPERSON: Yes.

MR SINGH: Or financial outcomes.

CHAIRPERSON: But if they were – if McKinsey and Eskom were negotiating in July the MSA, obviously that was about the future, is it not?

MR SINGH: Indeed, Sir.

CHAIRPERSON: And that future, to their knowledge was going to be when you would be around as either acting CFO or CFO.

MR SINGH: Yes, Mr Chair. But as I have mentioned, Mr Chair, the discussions in the meetings were centred
10 around on boarding, which dealt with the current state, where they believed there were problem areas and what they believed needed to be done to resolve it. He did not go into procurement discussions or any of those type of things.

CHAIRPERSON: H'm. It is just difficult to think that here they were negotiating with Eskom what it seems to be was quite a big project, contract, seems strange that they would be so keen to discuss Eskom matters with you about the future of Eskom even before you could get to Eskom
20 but not talk about such an important project that they were busy negotiating with Eskom when they know you were, so to speak, the future as far as the finances of Eskom was concerned.

MR SINGH: Well, Mr Chair, in my view it is not unreasonable.

CHAIRPERSON: Yes.

MR SINGH: At the end of the day they knew that I had no executive powers at Eskom.

CHAIRPERSON: Yes.

MR SINGH: So anything that they had discussed with me or not discussed with me would not pull any weight at the time, so – and I think, Mr Chair, to be quite honest, the correct person to have resolved this issue would have been Mr Weiss when he was here.

10 **CHAIRPERSON:** Yes, yes.

MR SINGH: He would have canvassed those issues and given you a very candid answer as he is.

CHAIRPERSON: Yes. Oh, so your final position is you had discussions with McKinsey during July and during the same month they were having negotiations with Eskom about the MSA but they never discussed the MSA with you in those meetings which you attended. That is what you are saying.

MR SINGH: That is correct, Sir.

20 **CHAIRPERSON:** Thank you. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. I understood you differently, Mr Singh. I understood you to be saying it was the procurement issues you did not discuss. However, whatever was discussed, you would not have known whether it falls under MSA or not.

MR SINGH: Which is what I think Chairman is saying.

ADV SELEKA SC: No, it is different.

CHAIRPERSON: Ja, it is different.

ADV SELEKA SC: It is different.

CHAIRPERSON: Because you specifically say to me they never discussed MSA issues with you.

MR SINGH: So when is say MSA issues, as – okay, maybe ...[intervenes]

CHAIRPERSON: Or the MSA.

10 **MR SINGH:** Yes.

CHAIRPERSON: Ja. I said the MSA.

MR SINGH: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: So but – ja because you need to be clear to the Chairperson. What you are saying is, as I understand you...

MR SINGH: Yes.

ADV SELEKA SC: These issues were discussed but I do not know whether they were MSA issues or not.

20 Procurement you know it was not discussed.

MR SINGH: Well, let us put this way...

ADV SELEKA SC: Yes.

MR SINGH: The MSA included initiatives, okay? Those initiatives would have resulted in commercial [indistinct] for Eskom and McKinsey and [indistinct]. Okay? Those

initiatives ...[intervenes]

ADV SELEKA SC: Face the Chairperson.

MR SINGH: Sorry. Those initiatives, Mr Chair, as I have alluded to, I did not know whether they are MSA or non-MSA.

ADV SELEKA SC: Yes, so they were discussed?

MR SINGH: Sorry?

ADV SELEKA SC: So they were discussed at the meetings?

10 **MR SINGH:** Well, as I am saying to you, Mr Chair, I did not know whether they were MSA or not MSA and to be quite honest, as I have said to you now, the outputs of those meetings were challenges, current state challenges and potential solution. They did not go into MSA, non-MSA, this stream, that stream as the MSA was constructed. Okay? Procurement-related issues which I term as let us say the terms and conditions of the MSA, were never discussed.

CHAIRPERSON: Ja, you see, as I see it, to be able to say
20 they never discussed the MSA you need to know what the MSA issues were or what was – what the MSA entailed, that would be my inclination. So that if you do not know what the MSA was at that time, your answer would be we had some discussions, I know what we discussed, whether that falls under MSA or not, I did not know and I still do not

know or I did not know at that time but subsequently I realised that what they were discussing with me included MSA issues or I know now that MSA issues were not included because I now know what the MSA issues were. That would be my expectation.

MR SINGH: So I think, Mr Chair, so that everyone is on the same page, I think it is your third summary.

CHAIRPERSON: Ja, ja, which is you – they discussed various issues with you. You are saying at that time you
10 did not know what was MSA, what was not MSA, subsequently you got to know what ...[intervenes]

MR SINGH: Some of them may have found its way into the MSA.

CHAIRPERSON: Ja, some of the MSA issues may have been discussed but at that time you did not know they were MSA issues. That is your financial position.

MR SINGH: Yes.

ADV SELEKA SC: Adjournment for tea.

CHAIRPERSON: Okay. Maybe this is the right time for
20 the tea break.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: I am inclined to let us a longer lunch for purposes of the consultation that counsel for Mr Singh needs with Mr Singh so that our tea break would be the normal 15 minutes. Is that fine?

ADV SELEKA SC: That is fine, Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: When do we see the Chairperson?
Now?

CHAIRPERSON: Well, I would suggest you see me now.

ADV SELEKA SC: Okay.

CHAIRPERSON: If – because you spend few minutes with
me, we need to add a few minutes more on the tea break,
then we will do that just – ja, okay, alright, we adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you Chair. Yes, just to clarify I
think Mr Singh there is a paragraph which I think you had
in mind, which refers to June 2015 in Ms Matsepo's
affidavit and you may have had that in mind. You can take
off your face mask and put on your microphone, where she
says:

20 “Regiments and McKinsey were negotiating the
master service agreement with Arnold Singh in
his capacity as chief financial officer when I
joined Regiments in June 2015.”

I think that is what you had in mind. Is that
...[intervenes]

MR SINGH: That is correct.

ADV SELEKA SC: And that was an affidavit in October 2017.

MR SINGH: Yes.

ADV SELEKA SC: So you do have two affidavits from Ms Matsepo.

MR SINGH: Ja.

ADV SELEKA SC: So she said when she joined. It seems to tie in with what Dr Vice is saying, if he is to be the authority as you say, he would be the one to conclusively
10 answer the question because he is saying in May already we were discussing, which included the you, Mr Molefe and others at Eskom, what he refers to as the turnaround strategy which ultimately got to be incorporated in the top engineer's program.

MR SINGH: Mr Chair, I cannot talk about or to the assertions that Mr Vice has, Dr Vice has made. All I can say is that I deny the contents of his affidavit that is related to paragraph 17. Relating to the meetings that happened in May.

20 **CHAIRPERSON:** But I think Mr Seleka is saying you said earlier the right person to answer the question would be Dr Vice. So he is saying Dr Vice says you were involved in discussions with McKinsey and you were involved with Mr Molefe already in May.

So if we are to take what you said that is the right

person who can deal with that, is Dr Vice. Mr Seleka is saying that is what Mr Vice, Dr Vice is saying.

MR SINGH: Well, Mr Chair, with all due respect. The contents within which I made the reference to Mr Vice was who was he negotiating with post the 1st of July. He could be able to tell us that. I cannot, because I was not there.

In the context of the meeting that happened in May, I was obviously not there.

CHAIRPERSON: So you are saying with regard to
10 negotiations that is what you were talking about as to who was there.

MR SINGH: Indeed.

CHAIRPERSON: So you say that in regard to that you think he would corroborate your version that you were not part of the negotiations, but with regard to the meetings, you were in the meetings and therefore you are able to say who was there and who was not there and when did they start those meetings that you attended.

ADV SELEKA SC: Indeed sir.

20 **CHAIRPERSON:** Mr Seleka.

ADV VAN DEN HEEVER SC: Chairperson, there is one further issue. I approached my learned friend during the break and it relates to the start of my learned friend's questions to Mr Singh and he referred to two emails that were attached to an affidavit, and Chairperson would recall

at that stage my client says is this a new affidavit.

I in fact approached my learned friend, because either I am growing old or my memory is failing me, but I could not recall seeing such emails attached to the affidavit that came to us in terms of the regulation 10(6) directive.

As Chairperson was coming in we were trying to ascertain ...[intervenes]

CHAIRPERSON: Oh, okay.

10 **ADV VAN DEN HEEVER SC:** So maybe to save time.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER SC: If my learned friend can go to those emails with reference to the affidavit, the date of the affidavit and the annexure numbers. That might just assist us so that Mr Singh can look at those and he can see in what context and when these affidavits were presented.

Ag, not the affidavits, the emails ...[intervenes]

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER SC: Were presented to the
20 Commission.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Yes, I know my learned friend was trying to do that during ...[intervenes]

CHAIRPERSON: The break.

ADV SELEKA SC: The break, could I make a suggestion

Chair that we do that when we take the lunch adjournment.

CHAIRPERSON: Ja, that is fine. You could finalise your discussions ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: During the lunch adjournment ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: To establish where those emails are.

ADV SELEKA SC: Correct, correct.

10 **CHAIRPERSON:** Ja, okay alright.

ADV SELEKA SC: Mr Singh, so you were at Eskom. The Eskom officials, McKinsey officials, Regiments officials have had these discussions. They have I suppose by this time, 1 August 2015 or thereafter I have given you your first 100 days plan, correct?

But I would like you to talk about what we see from the interaction between Eskom and McKinsey Regiments as the corporate plan and the MSA will make a distinction between the two to the Chairperson and if you recall what
20 the one entails and what the other entails, just before we go further into that.

MR SINGH: Mr Chair, in terms of the corporate plan it was really the development and preparation and finalisation of the corporate plan that was required to be submitted to the Minister of Public Enterprises by the 25th of May, on the

28th of February each year in terms of the PFMA.

The MSA, basically that was a very I would say shorter time assignment with a very specific deliverable which was the corporate plan. The NSA was more of a turnaround program as I understand it and that entailed longer term initiatives that were specifically identified to, as the word suggest turn around Eskom in various aspect.

CHAIRPERSON: Was it a kind of a global plan? When I say global I mean looking at Eskom as a whole, in terms of
10 its main challenges that needed to be addressed?

MR SINGH: Well Mr Chair, not holistically.

CHAIRPERSON: Ja.

MR SINGH: But it certainly dealt with the burning issue such as the New Build program, the energy availability factor which you would have dealt with Chair. New Build would also have dealt with load shedding. The, on the finance side it was the cost of planning the energy and claims reduction.

So those were the main elements that I remember if
20 I recall correctly at this point.

ADV SELEKA SC: Which one of the two, corporate plan or MSA / service level agreement involved balance sheet and cash unlocking initiatives?

MR SINGH: Mr Chair, the MSA would have also included that under the finance tree.

ADV SELEKA SC: Let us deal with the corporate plan first. Did you, can you recall when was who was appointed in fact to render services in respect of the corporate plan?

MR SINGH: I think Mr Chair, it was McKinsey and company.

ADV SELEKA SC: McKinsey and?

MR SINGH: McKinsey and company.

ADV SELEKA SC: McKinsey and company was appointed.

MR SINGH: Yes.

10 **ADV SELEKA SC:** Was Regiments appointed to do this also?

MR SINGH: Mr Chair, the if I recall correctly, the appointment required a BEE or empowerment partner and if I recall correctly at the time Regiments or Trillian was the, well at the time that it was awarded I would assume that it was McKinsey and Regiments that was intended to be [indistinct].

ADV SELEKA SC: I want you to tell the Chairperson, I am asking you these questions we can free flow, giving the
20 Chairperson the facts and face them. I do not think we heard you. So you are saying McKinsey and Co was appointed to render the services.

McKinsey and, the contract required McKinsey and Co to have a BEE partner.

MR SINGH: That is correct.

ADV SELEKA SC: Yes, and that BEE partner which McKinsey and Co brought on board which one was it?

MR SINGH: Mr Chair, I think again as Mr Vice put it in his affidavit which I concur with at the time, they had engaged with Regiments and I think it was the intention that they would conclude a subcontractor agreement with Regiments.

During that period of time, the Regiments Trillian transition as I would put it, was occurring. So the ...[intervenes]

10 **CHAIRPERSON:** Was?

MR SINGH: Occurring.

CHAIRPERSON: Ja, thanks.

MR SINGH: And the ultimate eventual payment that was then made, was made to Trillian.

CHAIRPERSON: And not to McKinsey and not to ...[intervenes]

MR SINGH: No sir, the payment was made to McKinsey.

CHAIRPERSON: Yes.

MR SINGH: As the main contractor.

20 **CHAIRPERSON:** Yes.

MR SINGH: And then as a subcontractor, a payment was then made to Trillian.

CHAIRPERSON: Well, you remind me of a question I wanted to raise. I cannot remember whether it was you under Transnet, when you were testifying under Transnet

or somebody else. Oh no, I think it may have been Mr Daniels under Eskom.

I would have expected that if a main contractor has been awarded a contract and they had a subcontractor, that the client Eskom in this case, would they remain a contractor and that the arrangements as to payments between the main contractor and the subcontractor would be their business, their own business and that the client, Eskom, would not be responsible for ... would not be
10 directly responsible for paying a subcontractor.

So when you say as did one of the witnesses I think in the context of McKinsey and Regiments, that Eskom would pay the subcontractor. That seemed strange to me, because I would have thought that your contract would be with the main contractor and the subcontractor has a contract not with you, but with the main contractor.

How much work they would do as a subcontractor is something that is discussed between them. Of course legitimately Eskom could say a subcontractor should not do
20 less than so much of the work, that is fine and they enter into an arrangement.

But one would expect that I would expect that the main contractor would pay the subcontractor. Is that not how it worked with Eskom generally and in this particular case, is that not how it worked?

MR SINGH: Mr Chair, the I think the ... if you look at both Eskom and Transnet, they adopted a policy that enabled them to pay a contractor directly, and it emanated from I would say the issue of paying a main contractor, who then had the discretion as to whether it needed to pay the subcontractor and when and how and how much.

So those issues became only issues for the entities you deal with, because eventually it became the entities issues. So I think both entities adopted the policy that
10 enabled subcontractors to be paid directly in certain conditions.

CHAIRPERSON: But the end client, whether Eskom or Transnet, would still not have a contract with a subcontractor, even in that situation. In other words Transnet or Eskom would pay the subcontractor without having a direct contract between the two of them.

MR SINGH: No sir, there would need to be a contract between the main contractor as well as the subcontractor.

CHAIRPERSON: Yes, no, no but I am saying there would
20 be no contractual relationship between Eskom or Transnet with a subcontractor. There would be a contract between the main contractor and the subcontractor and there would be a contract between the main contractor and Eskom.

MR SINGH: Yes.

CHAIRPERSON: But no direct contractual relationship

between Eskom and the subcontractor.

MR SINGH: Mr Chair, the subcontract would reference the main contract.

CHAIRPERSON: Yes.

MR SINGH: Yes.

CHAIRPERSON: But they would not have a contract as such with Eskom.

MR SINGH: If I recall, the MSA I would be guessing if I had to answer that question.

10 **CHAIRPERSON:** Yes and that would be the same with Transnet.

MR SINGH: Again I would be guessing.

CHAIRPERSON: Given your time.

MR SINGH: Again Mr Chair, I would be guessing if I answered that question.

CHAIRPERSON: No, no, no I thought you answered it, I just wanted to make sure that I understood you correctly.

MR SINGH: Okay.

CHAIRPERSON: What you did say is that for certain
20 reasons, Transnet and Eskom had taken the decisions to pay the subcontractors directly.

MR SINGH: Correct.

CHAIRPERSON: So I was simply saying this would happen in circumstances, this would happen despite the fact that Eskom would not be having any direct contract between

itself and the subcontractor.

MR SINGH: It could have been that way.

CHAIRPERSON: Yes. ja, you say it could have been. You would know whether it was that way or was not.

MR SINGH: Mr Chair, contract management is an area outside of finance, so again as I said, I would be ... I understand that that policy existed because of the fact that finance needed to pay. So hence I understand that the policy exist.

10 The mechanics of how the policy was actually implemented within the organisation, I would not have first-hand knowledge.

CHAIRPERSON: But would the finance department which would be headed by the CFO I would imagine.

MR SINGH: Yes sir.

CHAIRPERSON: Would the finance department not have the obligation before it authorised any payment or made any payment to say do we have a contract with this entity that you are saying we must pay.

20 **MR SINGH:** Yes sir.

CHAIRPERSON: Then it is difficult for me to understand how you would not know whether you were paying subcontractors without having a contract with them or not.

MR SINGH: Mr Chair, I think you are asking me the question would Transnet have had a subcontract with

...[intervenes]

CHAIRPERSON: A contract.

MR SINGH: With the subcontract?

CHAIRPERSON: Yes, yes.

MR SINGH: And my response to that was I am not sure as to whether that particular point ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: Exists.

CHAIRPERSON: Yes, yes.

10 **MR SINGH:** The policy position is that we allowed that to happen in certain conditions ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: As we stated.

CHAIRPERSON: Yes.

MR SINGH: As per whether I knew what the actual requirements were for that to happen Mr Chair, Eskom and Transnet are a very big organisation.

CHAIRPERSON: Yes.

20 **MR SINGH:** And I would not know every single contract that is concluded and how it is concluded.

CHAIRPERSON: So would you say that your, you would say the basis for the finance department paying or making a payment to a subcontractor would be the policy?

MR SINGH: Indeed so.

CHAIRPERSON: But the policy did not contemplate that

there would be a contract before payment would be made.

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

CHAIRPERSON: As you understood it.

MR SINGH: No sir, I am saying the policy would contemplate a contract. I am merely stating that I am not sure whether I can answer your question as to whether the contract would have been with Eskom or would have been per reference to the main contract.

CHAIRPERSON: Yes, yes. Well, obviously there would be
10 a contract with the main contractor I would imagine.

MR SINGH: Yes.

CHAIRPERSON: So what I was really looking at is whether this was a situation where a subcontractor would be paid, despite the absence of any contract with them, but I think what you are saying is you do not know whether factually there was such a contract in the McKinsey Trillian Regiments situation with Eskom, and you do not know whether in the case of Transnet, in those cases where it paid subcontractors directly, you do not know whether
20 there were contracts directly between Transnet and those subcontractors, but all you are able to say is there was a policy.

MR SINGH: That governed that relationship.

CHAIRPERSON: Yes, but you also say that policy did contemplate that if you were going to make a payment,

there should be a contract.

MR SINGH: Exactly.

CHAIRPERSON: So that if there were no contracts, then probably such payments would be in breach of the policy.

MR SINGH: Indeed sir.

CHAIRPERSON: Yes.

MR SINGH: Actually when we go through the corporate plan you see the process that is actually followed.

CHAIRPERSON: Yes.

10 **MR SINGH:** In terms of how those payments are actually made.

CHAIRPERSON: Yes.

MR SINGH: Yes.

CHAIRPERSON: And these direct payments to subcontractors by Eskom and Transnet, and I know that I am now including Transnet when you are here only for Eskom, but these direct payments, do you know whether they were general in terms of subcontracts, subcontractors were paid directly, all subcontractors or most
20 subcontractors after the decision had been made or it was only certain specific subcontractors?

MR SINGH: I think Mr Chair it was more of a general policy.

CHAIRPERSON: Yes.

MR SINGH: Yes, that was adopted.

CHAIRPERSON: Yes.

MR SINGH: I think by word of mouth I think the industry gets to know ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: That we adopt this policy and most empowerment companies would prefer to be paid directly.

CHAIRPERSON: Ja. Okay, Mr Seleka?

ADV SELEKA SC: Yes, Mr Singh we can cut to the chase because in this case for the corporate plan the invoice was
10 sent to you of 30.6 million.

MR SINGH: Sorry, I did not hear you?

ADV SELEKA SC: The invoice of 30.6 million was sent to you from Mr Lebelo of Trillian.

MR SINGH: That is correct, if I recall.

ADV SELEKA SC: Yes, and the payment for services said to have been rendered in respect of the corporate plan was made?

MR SINGH: Sorry, repeat your question?

ADV SELEKA SC: The payment was made of the 30.6
20 million?

MR SINGH: You said met or made?

ADV SELEKA SC: What was made.

MR SINGH: Was made, yes.

ADV SELEKA SC: Yes.

MR SINGH: In April, if I recall correctly.

ADV SELEKA SC: Yes, it was made on the 14th of April.

MR SINGH: That is correct.

ADV SELEKA SC: That is right, 2016. But a couple of things there I want you to address to the Chairperson. One is that the contracts, I will take them one by one. One is that the contract for the corporate plan when this payment was made, had in fact not been signed.

The contracts gets to be signed by Eskom represented by Mr Mabelane only on the 4th of May 2016,
10 and okay. Did you know that?

MR SINGH: Mr Chair, I was not aware of the fact that this contract was signed on the 4th of May by Mr Mabelane, and if I recall correctly the corporate plan was actually delegated to Mr Koko.

ADV SELEKA SC: Well, then tell the Chairperson about the contract. What do you know about the contract or the corporate plan, when was it concluded?

MR SINGH: Mr Chair, there is a letter of, sorry I am referring to page 650.

20 **CHAIRPERSON:** Yes, which bundle?

MR SINGH: Eskom Bundle 16.

CHAIRPERSON: 16?

MR SINGH: Yes.

ADV SELEKA SC: Is that where your affidavit is, is that where we find your affidavit?

MR SINGH: Yes.

CHAIRPERSON: What is the page number again?

MR SINGH: 650.

CHAIRPERSON: Okay.

MR SINGH: Yes, so there is a notification of acceptance of provision of consulting services that you will notice on page 651, signed by Mr Koko on the 29th of September 2015. That ...[intervenes]

ADV SELEKA SC: Okay, let me allow you to proceed.

10 **MR SINGH:** That in turn is then accepted by Mr Vice on the 29th of September 2015. The 653, 653 is an NEC professional services contract which relates to the corporate plan and that is accepted by Mr Vice on page 1655, if I am not mistaken, on the 29th of September 2015 as well.

ADV SELEKA SC: Yes.

CHAIRPERSON: I am sorry Mr Singh, that figure at the bottom of page 650, starting with 98, is that not before 27 there or is it 98 billion?

20 **MR SINGH:** Sorry sir, I just ... have you got the point?

CHAIRPERSON: The agreed fee. Is that 98 billion?

MR SINGH: No sir, it is 96. 98 million.

CHAIRPERSON: It is just that I do not see a dot before 27 or is there a dot?

MR SINGH: No, there is a dot there sir.

ADV SELEKA SC: Ja, the Chair is asking whether is that a million or a billion?

MR SINGH: No, it is a million sir.

CHAIRPERSON: He says million, but I do not see a dot but he says there is.

MR SINGH: No Mr Chair, there is definitely a dot.

CHAIRPERSON: Are you able to see it Mr Seleka?

ADV SELEKA SC: I cannot, ja no ...[intervenes]

CHAIRPERSON: There is some fade thing there.

10 **MR SINGH:** Ja, maybe it is my glasses, but I can definitely see a dot.

CHAIRPERSON: Okay, right continue.

ADV SELEKA SC: So that is 98 ...[intervenes]

CHAIRPERSON: So it was meant to be 98 million something.

MR SINGH: Yes.

CHAIRPERSON: And maybe it is just, there is just that the dot is not so clear. Okay, alright.

ADV SELEKA SC: Ja, Mr Singh I think you got the point,
20 of the date.

MR SINGH: Oh, yes. So it was accepted by Mr Vice on the 29th of September 2015.

CHAIRPERSON: Accepted by Mr Koko you mean?

MR SINGH: No, no sir it was accepted by McKinsey. Presented by Dr Vice on the 29th of September 2015.

CHAIRPERSON: Yes, but what is the basis for saying he accepted that on the 29th?

MR SINGH: Mr Chair, because his signature appears on page 655.

CHAIRPERSON: Oh, ja that is what I want because I was looking at underneath Mr Koko's, 655 you say.

MR SINGH: Yes sir, and then ... yes Mr Chair, that is the contract relating thereto.

CHAIRPERSON: Oh, okay. Is it 29? Looks, okay maybe it
10 is 29. I am not sure if there is a 20, probably 29. Okay, now I understand your answer. You may continue Mr Seleka.

ADV SELEKA SC: Can you answer the Chairperson? Give the Chairperson the answer to the question I was ...[intervenes]

MR SINGH: Okay. Mr Chair, I was not aware that the contract was signed by Mr Mabelane on the 4th of May 2016.

ADV SELEKA SC: So Chairperson the payment in respect
20 of the Corporate Plan, 30.6, just over R36.6million, was made, as Mr Singh testified, in April 2016.

CHAIRPERSON: April 2016?

ADV SELEKA SC: 2016 yes.

CHAIRPERSON: And the Corporate Plan had been completed when?

MR SINGH: Mr Chair we would have to submit the Corporate Plan on the 28th of February.

CHAIRPERSON: Were they being paid for assisting in putting the plan together?

MR SINGH: As part of the McKinsey contract for the corporate plan?

CHAIRPERSON: So they – and that was R80million?

ADV SELEKA SC: That was R30.6million.

CHAIRPERSON: R30.6million?

10 **ADV SELEKA SC:** Yes.

MR SINGH: That is correct, Chair.

ADV SELEKA SC: But then that is another issue. So what I was pointing out to Mr Singh was that by the time of that payment, the contract relating to the corporate plan had not been concluded, but not been signed by Eskom. It only gets to be signed on the 4th of May 2016.

CHAIRPERSON: Yes.

ADV SELEKA SC: So we were going through this exercise to determine that date and that date, you see it on
20 page 657 which is Mr Mabalane signing on the 4th of May 2016.

CHAIRPERSON: Is his signature the one just under the words of the employer?

ADV SELEKA SC: Mr. Singh?

MR SINGH: That is correct, sir, if I recall.

CHAIRPERSON: Okay, that is 20th of May, no, that is 4th of May 2016. Is that the date?

MR SINGH: That is correct, Mr Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: So in other words, the purported services were rendered, and subsequently payment made, without there being a contract in the two parts.

MR SINGH: Mr Chair there well, as I said, I was not aware of the fact that there was the contract had been
10 signed on the 4th of May 2016, as you find on page 657.

I have only been pointed that out now, however, Mr Chair there had been an acceptance of the letter of award, or the notification of acceptance that was signed by Mr Koko on the 29th of May 2015 and there was an acceptance thereof by Mr Weiss on the 29th of May 2018 and the contract that was presented to McKinsey, also was signed on the 29th September 2018.

So technically, there was no signature relating to this contract from an Eskom perspective on the 14th of
20 May, or 14 May 2016 but I guess, given the information before us, there was a meeting of the minds in terms of what was the law.

ADV SELEKA SC: So you mean, 14 April?

MR SINGH: 14 April, sorry.

ADV SELEKA SC: Yes.

MR SINGH: There was ostensibly a contract between the parties given what is before us today.

CHAIRPERSON: But was the rule not or policy, that there must be a contract first before you can make payment?

MR SINGH: Mr Chair, that is correct, in all instances, how and why this payment was processed in the manner it was processed Mr Chair the finance team or the procurement team would need to provide the details.

CHAIRPERSON: But of course, you were in charge of the
10 finances there?

MR SINGH: Indeed, sir.

CHAIRPERSON: Yes, so ultimately, the buck stops with you.

MR SINGH: Indeed, sir, but not every single process payment that is processed in Eskom is processed by myself. Ja, policies and processes that are put in place for employees to abide by and follow and in this case, it would seem that there were processes that were not followed.

CHAIRPERSON: And are the amounts in terms of rand
20 value of contracts or projects where you were obliged to personally see whether there was an existing contract before payment were made, and this does not happen to fall within those categories, or was there no such a rule?

MR SINGH: Mr Chair, in terms of the delegation of authority they would, there is a requirement for certain

authority levels to approve contracts once those are approved, and the payment process then does require that to come back to me, for example, for me to say yes, okay, we approve this contract again.

So the policy and process in terms of the processing of the payments covers that, so again the procurement department would have had to make sure that the contract was loaded into the system. So the finance people would have reference to that, and make sure that
 10 all the necessary documentation and sign offs that were required for that would have been implemented.

CHAIRPERSON: But I think my question is whether in terms of the amounts I would imagine the saving is, that is maybe R500million should not be paid by Eskom without the CFO knowing that everything was in order about that payment. Would that be unfair to expect?

MR SINGH: Mr Chair, not in – maybe at I am stretching my imagination, if I think back in Transnet but certainly at Eskom I was not called on to approve any payments that
 20 were in the context of the way you describing.

CHAIRPERSON: Yes, so but would there be amounts, like R1billion for example where everyone would expect that Eskom cannot pay R1billion with the CFO of the company knowing about it, and having satisfied himself that this payment can go ahead?

MR SINGH: Mr Chair, I have to take you back again to the delegation of authority. The delegation of authority would empower individuals to do certain things. So those values that you talk about, in terms of the physical payment, those would be delegated to the head end of the – let us call it payments section, whoever it may be.

So let us say if there was a payment that needed to be made for, let us say, for Capital Equipment, and there was a contract that was put in place for Capital Equipment.
10 Now the delegation would say, let us say the contract the equipment was for a R100million, the delegation would say Mr Singh, can approve contracts up to R50million.

So in that case, I would not have the delegated authority to approve the contract. It would then need to go to a higher authority, maybe it needed to go to the CEO for example, that delegated authority would look at that contract and then effectively approve the contract. That contract would then go to the procurement department and they would then upload it into the system and basically
20 keep it on file.

What happens thereafter is that that capital equipment would then arrive there, someone would then take custody of that capital equipment, when they take custody of that capital equipment in terms of the contract, they would have to do a whole lot of checks and balances

and make sure that the equipment is in working order and it is...[intervene]

CHAIRPERSON: It is the right thing.

MR SINGH: It is the right thing. So in other words, they would in the finance team, even I mean the finance terminology, either sign a delivery note or a goods received, note accepting that whatever the supplier had delivered, was in terms of the expectation, that would then be followed by an invoice from the supplier.

10 So what would happen is that someone within the finance environment would make sure that they – well the procurement people would upload the contract, so that would have been in there and it would be approved by the appropriate delegated authority, then the finance team would basically do two things.

 Someone would generate this goods receive note, or a delivery note that says this equipment has arrived and it is in working order and it is within our expectation. Now, that would normally be a person that actually requested it
20 in first place. So it will be the person that actually was going to use the equipment. So they would generate this, it will go up into the system, then you would have the finance people that would then receive the invoice. Let us say, this contract was for R50million, what was the number we used, no R100million, there is the invoice for a

R100million.

So what would then happen in the finance area is that the invoice would then be matched with the delivery note, would be matched with the purchase order that emanates from the approved contract. If those three things are in place, the finance system would generate a payment, it then go to somebody and that somebody would then release that payment.

CHAIRPERSON: And then authorise it.

- 10 **MR SINGH:** Authorise payment, and then depending on the payment terms, that supplier would get paid in 30 days or 45 days.

CHAIRPERSON: Okay, alright Mr Seleka.

ADV SELEKA SC: Thank you, Chairman, Mr Singh insofar as you say that, from the documentation here, it appears that process was not followed. You think you could say to the Chairperson, there was some negligence here and if you look at the amount even gross negligence, that amount of over R30.6million?

- 20 **MR SINGH:** Mr Chair that will be difficult for me to say, not having regard for the facts relating to the manner in which the payment was processed. I know for example, that the services were delivered, that was confirmed through a process between McKinsey and Trillian. There was a process that was followed to ensure that McKinsey

agreed that the amount can be paid directly to Trillian.

So from that perspective, Mr Chair, there was due process that was followed, relating to validate that work was done, and that the amount that was being paid was a value that was derived by as well, and that the main contractor was comfortable, that the amount would be paid directly to Trillian, and the fact that they were comfortable with the work that was delivered at the time.

Ja, in terms of this aspect relating to...[intervene]

10 **ADV SELEKA SC:** Ja, that is the aspect I am talking about.

MR SINGH: ...the actual payment itself and how that occurred Mr Chair, again, I am not privy to the facts, relating thereto.

ADV SELEKA SC: Yes, no the other part that we will come to, but this is the aspect that I am talking about that before the conclusion of the agreement, before the agreement is put in place, which only happens on the 4th of May 2016 Eskom allowed services in respect of the
20 intended contract of the corporate plan to be in respect of the corporate plan to be rendered and paid an amount of over R30.6million before the contract had been completed.

You said, when you look at the documentation, just on that limited basis, it appears that processes were not followed, correct?

MR SINGH: Correct.

ADV SELEKA SC: Then I was asking you, could this be a question of negligence?

MR SINGH: I would say so, sir.

ADV SELEKA SC: So then we can go to the next - which is what services were rendered because you and Ms Mothepu talk different languages. On the one hand is the services and on the other hand, is who in fact rendered services. And I want you to tell the Chairperson your
10 version, who rendered the services in respect of the corporate plan?

MR SINGH: Mr Chair, again, it would be difficult to explain this but for all intense and purposes, as I understand it, when Mr Seleka introduces this topic, I said that Regiments and Trillian were in a transition process during this period of time. And as I am given to understand, there was a sub-contractor agreement that was agreed to between Regiments and Trillian for the secondment of certain stuff for the Eskom consignment
20 relating to the corporate plan.

And that was the nexus for the corporate plan to be delivered by Trillian at the time, and Mr Weiss in his testimony I think, through that extent, alludes to that fact that there were McKinsey people, there were Regiments, people, there were Trillian people, and all of them

interacted interchangeably on the contract. But, as I understand it, not on first-hand knowledge, but in terms of the information that we have been provided thus far, it would seem like that there was an underlying sub-contractor agreement between Regiments and Trillian, regarding some secondment of certain stuff that would give rise to the services being provided, ostensibly, by Trillian and, therefore the payment being made.

ADV SELEKA SC: Yes, but I want you to be clear to the
10 Chairperson who rendered the services in respect of the corporate plan?

MR SINGH: Mr Chair, it was both McKinsey and their sub-contractor at the time, Trillian.

ADV SELEKA SC: That is your evidence?

MR SINGH: That is my evidence.

ADV SELEKA SC: So it was not Regiments which rendered services in respect of the corporate plan?

MR SINGH: Mr Chair, as I understand it, and this is what I was trying to clarify, was that there was a secondment
20 agreement between Regiments and Trillian that existed at the time that enabled Trillian to deliver the services.

ADV SELEKA SC: Yes, well, let us deal with that because I thought you would be open and frank, in regard to this to the Chairperson, because the evidence you would know that Trillian did not render the services in respect of the

corporate plan. Your comment on that, you stand by what you're saying?

MR SINGH: That is correct, sir.

ADV SELEKA SC: You stand by what you said, when were the services in respect of the corporate plan rendered?

MR SINGH: Between the period I would say November of - this thing was signed September, so maybe the 1st of October through to the 28th of February.

ADV SELEKA SC: October 2015?

10 **MR SINGH:** That is correct.

ADV SELEKA SC: To February 2016. In your affidavit page 620 let me start there.

MR SINGH: 620?

ADV SELEKA SC: 620, yes Eskom bundle 16...[intervene]

CHAIRPERSON: Yes, I wanted you to give the full reference for purposes of the transcript.

ADV SELEKA SC: Yes, Eskom bundle 16, page 620. An allegation gets to be made by Mr Koko which you deny in paragraph 82. Now 81 reads Mr Koko makes reference to
20 Trillian employees who were present at Eskom from January 2016. You said 82:

“I also deny.”

And that also is important because somebody else in fact, other people have denied.

“I also deny Koko statement that Trillian employees

were present at Eskom from January 2016.”

And you are correct they were not there, in fact not until March 2016 that employees moved from Regiments to Trillian.

MR SINGH: Can I respond?

ADV SELEKA SC: Yes, please.

MR SINGH: I think Mr Chair in this case, there is a clear error in the affidavit that I had submitted. The comments that I intended to make in this paragraph relating to Mr
10 Koko’s reference to January 2016.

In actual fact, what I intended to say here was that I disagree with the date and it actually was prior to January 2016 in terms of the contract that we had agreed with McKinsey at the time. So it would have predated January 2016.

ADV SELEKA SC: So what you intended to say is not expressed here?

MR SINGH: That is correct.

ADV SELEKA SC: And when you say also, you also deny
20 who else do you know has denied that Trillian had employees in January 2016?

MR SINGH: I think it was Ms Goodson I think at the – I think Mr Koko referenced Ms Goodson’s affidavit as well in terms of a date as to when McKinsey or Trillian employees arrived at Eskom. But from my perspective, in delivering

the corporate plan, the corporate plan engagements occurred on almost a daily to a weekly basis, and I had engaged with Eskom, McKinsey, Regiments, Trillian people from way before 2016 or January 2016. So what was actually happening on the ground was certainly not 2016 or January 2016.

And Mr Chair, further the corporate plan process as envisaged in the agreement was a period probably about six months, and we do not, it is not practically possible to
10 deliver an Eskom corporate plan from January to February. So the reference to January is misguided.

ADV SELEKA SC: Ja, well, your denial here is that you deny the allegation that Trillian employees were present at Eskom from January 2016.

MR SINGH: Mr Chair, as I have indicated, I think it is an error on my part but the factual statement that I can make today is that the corporate plan began when the contract was awarded in probably around the first week of October, and ran through to probably the middle of February
20 because there is probably two or three weeks that you need to print the document as well.

CHAIRPERSON: Is it not the position that Trillian did not exist until at the earliest than January 2016 and what you had before that was Regiments, and there was, it would seem a fallout among the partners or the directors as a

result of which Trillian was established, and I think, if I recall correctly from evidence and documents that I have seen, and that I have heard there was some tension between the two about some of the jobs that had to be done and so on. Is that not the position as far as you know as well?

MR SINGH: Mr Chair, I think, you know, we got Mr Weiss to come and try and explain the issues relating to McKinsey, Regiments in Trillian. We now have me here
10 today trying to explain the McKinsey, Regiments and Trillian scenario or scenarios. Again, I would suggest that the best people to explain that is maybe Regiments or Trillian themselves.

CHAIRPERSON: But I am not sure that Mr Singh, you can get away with it as easily as that because Eskom had to know who it had obligations with whom. It could not just pay people money without knowing whether those people are the right people to pay because they rendered services or not, because I think that is where the question, Mr
20 Saleka's question was, if I understood it correctly it started with the payment.

To the extent that the payment was for Trillian and Trillian rendered a service, if I remember correctly, I thought that was the line but I may have – Mr Seleka am I thinking along the correct lines?

ADV SELEKA SC: It is Chair, it has...[intervene]

MR SINGH: Can I respond to Chair?

ADV SELEKA SC: You want to – okay.

CHAIRPERSON: Ja.

MR SINGH: Mr Chair, we did.

CHAIRPERSON: H'm?

MR SINGH: Mr Chair, firstly, I do not try and get away from this thing as you put it.

CHAIRPERSON: Okay.

10 **MR SINGH:** Eskom did in its defence, do what was required in terms of the processes to establish who needed to be paid. They engaged with McKinsey, they obtained a letter from McKinsey, for approval for the payment for Trillian.

The individuals paid relating to the approval to pay Trillian was very senior people within McKinsey environment. It was the head of legal, it was the head of accounts and so on. So, we also got approval from McKinsey to the extent that the deliverables that we
20 agreed, have been delivered.

So, from that perspective, Mr Chair Eskom had done, in my view, what it needed to do to establish who should be paid and what was delivered. Which is, again, the process that are outlined in terms of was the goods received, was the goods delivered and is there a payment

to be made, and who is it to be made.

CHAIRPERSON: But if the services were rendered in October 2015, November 25, or even earlier and as a matter of fact Trillian did not exist at that time. It cannot be said that it is Trillian who rendered those services during that time, is that not correct?

MR SINGH: Mr Chair, that is why I am trying to provide you with context around what I understand to be a sub-contractor agreement that existed, or a secondment
10 agreement that existed at the time between Regiments and Trillian.

CHAIRPERSON: No, no I think I understand what you are saying what you are telling me is what steps Eskom took...[intervene]

MR SINGH: Yes.

CHAIRPERSON: ...to try and make sure that it paid the right entity.

MR SINGH: Yes.

CHAIRPERSON: Okay.

20 **CHAIRPERSON:** That may be fine and well but I am addressing the equation of whether factually it could be said that Trillian, which was being paid had rendered services, if the services were rendered in October or November, when it did not exist, whether or not Eskom acted reasonably in the steps that it took to try an

ascertain who was the right entity to repay might be another issue.

That might arise to say, we may have paid the wrong entity, but we took steps that we regarded as reasonable and maybe we were misled, you know I am just making an example. But if factually that entity did not exist, then factually that entity could not have provided services, there might be another explanation why Trillian was paid but it cannot be ...[indistinct – audio/word cut out] Trillian
 10 provided, rendered the services in that situation.

MR SINGH: Mr Chair I will go back to the – I will make two points. The first point is it is my understanding that a secondment agreement existed that enabled Regiments staff to act as Trillian employees. So they were there – they were on the ground they were doing work. Okay.

Secondly we took steps as you said to identify the party that needed to be paid. If those steps indicated X we paid X. If indeed we paid the wrong party then we were misled by the individuals that participated in that process. In
 20 this case would be McKinsey. Okay.

And again I am not saying that they misled us I have outlined the steps that Eskom had taken which had been confirmed by McKinsey and which Mr Weiss again confirmed.

Thirdly if the – if the 00:01:09 services were then rendered by Regiments as we are trying to establish Eskom

never received an invoice from Regiments. From the time – from the time that this assignment had been conducted and concluded to the time I had left I did not receive a claim from Regiments relating to proper claims.

CHAIRPERSON: But going back to what I said earlier on as I understood you the services in connection with the 00:01:45 were rendered during 2015. Is that correct?

MR SINGH: From I would – yes, yes Mr Chair around 2015 – October 2015 through to February 2016.

10 **CHAIRPERSON:** Yes.

MR SINGH: Yes.

CHAIRPERSON: Okay so into 2016?

MR SINGH: Yes. 16 – February 2016.

CHAIRPERSON: Ja, ja okay. And the question of when Trillian came into existence are you also able to accept that it only came into existence in 2016 that seems to be my recollection of the evidence or is that something you do not know?

MR SINGH: I do not know that Sir.

20 **CHAIRPERSON:** Ja. Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you Chair. So you know the evidence of Ms Bianca Goodson who you mentioned who says that even as at March 20 – well the end of February 2016 in the office at Trillian as employees it was herself, the CEO and a gentleman who was the COO. She was an

employee – she was the CEO of Trillian and she says we did not render services in respect of the corporate plan.

MR SINGH: So then who did the corporate plan? As Mr Weiss confirmed and I confirm today there were Trillian employees, there were Eskom employees and there were McKinsey employees and there were Regiments employees.

CHAIRPERSON: But there could not have been Trillian employees in October and November 2015 because Trillian did not exist as I understand it. I hope I am not mistaken.

10 **Only – at least it only – I think she said she was the first employee.**

ADV SELEKA SC: Yes.

CHAIRPERSON: Of Trillian that is Ms Goodson and she began in February – in February or mid- - or January?

ADV SELEKA SC: January.

CHAIRPERSON: Oh January.

ADV SELEKA SC: Yes 2016.

20 **CHAIRPERSON:** Yes. So to the extent that services were provided or rendered prior to January 2016 as I see the position they could not have been rendered by Trillian. They may have been rendered by employees of Regiments some of whom may have later in 2016 gone into – into..

MR SINGH: Trillian.

CHAIRPERSON: The employ of Trillian but she was not one of those employees; she had not been employed by

Regiments before.

MR SINGH: That is correct Sir.

CHAIRPERSON: And she says as Mr Seleka says as at even much it was just herself and the COO.

ADV SELEKA SC: Yes.

CHAIRPERSON: But at least as of February she says it was just the two of them and she says they did not render such service.

MR SINGH: Mr Chair if we reference back to the meeting
10 that Ms Goodson had with Mr Koko I think Ms Goodson – well Mr Koko references an invoice that Ms Goodson requested direct payment for and that is the exact same R30 million invoice that we are talking about now.

CHAIRPERSON: Yes but – but she was talking exactly about the same in effect and Mr Seleka will tell me if I am misrepresenting Ms Goodson saying in effect Eskom was being asked to make a payment to us in respect of services that we did not render.

MR SINGH: But they knew Mr Chair why did she not raise
20 that issue with Mr Koko on the day and say that we cannot – you cannot do this.

CHAIRPERSON: But before you pay Trillian you must make sure they have rendered services to you.

MR SINGH: Which in my view we can 00:06:13

CHAIRPERSON: Hm – but you cannot say that Trillian

rendered services when you cannot say that they were Trillian employees who rendered services because she says January, February it was just the two of them and she says we did not render that service.

MR SINGH: But Mr Chair on your own version or in your own interpretation as you were putting it to me you said there was a period of time when Regiments employees would have rendered services.

CHAIRPERSON: Hm.

10 **MR SINGH:** In terms of the secondment agreement.

CHAIRPERSON: Hm

MR SINGH: There would have then been a point in time when those people would have been seconded into Es – into Trillian.

CHAIRPERSON: No they were not seconded as I understand it.

MR SINGH: Oh they moved – moved over as employees.

CHAIRPERSON: They moved over and became employees.

MR SINGH: As some section.

20 **CHAIRPERSON:** They left Trillian.

MR SINGH: Yes.

CHAIRPERSON: They left Regiments.

MR SINGH: Regiments into – into...

CHAIRPERSON: Yes.

MR SINGH: Into Trillian. So when – when I am responding I

am responding to the extent that we were recipients of this.

CHAIRPERSON: You were?

MR SINGH: We were recipients of this process. The contract – the sub-contractor relationship is not one that Eskom manages.

CHAIRPERSON: But you are paying them. You are paying them millions.

MR SINGH: And that is why Mr Chair – and that is why Mr Chair there are processes in place that enables us to verify
10 who we paying and what we paying and that is the process that we followed. Our – our processes require us to confirm that with the main contractor which is what we did.

CHAIRPERSON: But as you sit there is it not true or would you not concede that you are not able to say that Trillian existed or had employees for January 2016?

MR SINGH: Well Mr Chair as I said I do not know when they were incorporated so...

CHAIRPERSON: Yes you do not know when they were incorporated. Now somebody who was employed as the CEO
20 of Trillian Ms Goodson has come before the commission and said under oath in January 2016 I was the first employee of Trillian. Then there was the COO. In March it was still just – in February it was still the two of us. We did not render any service for which Trillian was supposed to be paid this amount. I am saying to you are you in a position to dispute

that evidence?

MR SINGH: Mr Chair I am in a position to dispute it to the extent that Eskom followed a process to verify the payment prior to have been made and that process entailed engagement with McKinsey and McKinsey confirmed what was required to be confirmed for that payment to be made.

CHAIRPERSON: Yes, no but you – you not dealing with the question. You as Eskom took certain steps before you made payment.

10 **MR SINGH**: Yes Sir.

CHAIRPERSON: To satisfy yourself on whatever you wanted to satisfy yourself on. But the position is the CEO of Trillian at the time says I was the first employee of Trillian in January 2016. Then I think a little later COO joined and by February or in February it was still the two of us. We did not render that service that Eskom is talking about and so I am suggesting to you that I cannot see how you can deny when she says we did not render that service. You might say I think we were justified in making the payment to Trillian
20 because of ABCD but I cannot see how you can deny the evidence – her evidence that was I did not render that service and it is the COO was the only other employee of Trillian except myself also did. You are not going to be able I would imagine to say I saw them rendering that service and when they were rendering that service they were rendering

that service in their capacity as employees of Trillian.

MR SINGH: But Mr Chair on – on Ms Goodson's statement as it relates to her rendering the service I am not too sure if she rendered any service because she did not interact with me. So to that extent I cannot dispute what she is saying. But I can certainly tell you what we had – steps we had done as Eskom to ensure that we – services were delivered and that the entity that was being paid was contemplated as part of this main contractor agreement with McKinsey.

10 **CHAIRPERSON:** Hm. But of course also you would agree as a general proposition and I would leave it at that that if Regiments was the entity that was a sub-contractor in regard to the corporate plan and its employees had rendered services but they later moved to Trillian as a general proposition one would expect that you would still as Eskom pay Regiments because those employees would have rendered services not in their personal capacity but employees of Regiments if you had – if that was the situation. Would you agree with that at a general level?

20 **MR SINGH:** Mr Chair I would agree to the extent that Regiments then raised an invoice on Eskom.

CHAIRPERSON: Ja.

MR SINGH: But Regiments never did so.

CHAIRPERSON: Yes. Ja okay. Mr Seleka.

ADV SELEKA SC: Yes. But Regiments could not raise

invoice directly to Eskom because Regiments would have been a sub-contractor to McKinsey and you had nothing to do with the sub-contractors as Eskom.

MR SINGH: I do not understand your question Sir.

CHAIRPERSON: Oh he is saying – he is saying if Regiments was involved it was not involved as a contracting party with Eskom. It would have been involved as a sub-contractor to McKinsey and therefore being a sub-contractor for McKinsey it had no – it would have had no basis to raise
10 an invoice directly with Eskom because it had no contract with Eskom. It had to raise whatever invoice with McKinsey and I am now obviously elaborating on his question. So the expectation would be that when McKinsey raised its invoice with Eskom it would incorporate whatever it needed to pay Regiments because Regiments was their sub-contractor. Regiments would not be entitled to send a separate invoice directly to Eskom when they had no contract with Eskom.

MR SINGH: But Mr Chair my point still stands respectfully. In my view if Regiments had a legitimate expectation to be
20 paid they will have raised an invoice to McKinsey on your version directly else they would have raised an invoice directly to Eskom on my view. And in neither instance have I heard that Regiments ever raised an invoice.

CHAIRPERSON: What was your understanding of the relationship between Regiments and McKinsey during 2015

in the context of the corporate plan? Was it your understanding that they were sub-contractors to McKinsey – Regiments during 2015?

MR SINGH: Mr Chair as I think it is common cause by now that there was an envisaged transition and that would have happened due to the – how can you say? The merger and acquisition discussions that were happening between the Regiments partners at the time.

CHAIRPERSON: Well the – that may have happened
10 towards the end of the year but I am just talking during – let us say during the second half of the year you joined Eskom in August – beginning of August 2015.

MR SINGH: Yes. Yes Sir.

CHAIRPERSON: And actually prior to that you had discussions with McKinsey even before being seconded to Eskom.

MR SINGH: Yes.

CHAIRPERSON: So was your understanding throughout those meetings and after you had been seconded to Eskom
20 but prior to the end of February 2016 was your understanding that there was a relationship between McKinsey and Regiments.

MR SINGH: Ja definitely.

CHAIRPERSON: It was that?

MR SINGH: Yes.

CHAIRPERSON: And did you understand them to be a sub-contractor or did you understand them to have some other relationship with McKinsey?

MR SINGH: Well Mr Chair I think for you to be a sub-contractor there needed to be a specific main contractor.

CHAIRPERSON: Of course yes.

MR SINGH: That then enabled you to be a sub-contractor.

CHAIRPERSON: Yes.

MR SINGH: But my understanding at the time was that
10 McKinsey and Regiments had a strategic relationship.

CHAIRPERSON: Ja.

MR SINGH: That if and when.

CHAIRPERSON: Ja.

MR SINGH: They...

CHAIRPERSON: The contract was concluded.

MR SINGH: The contract was concluded they would then be a preferred sub-contractor.

CHAIRPERSON: Ja.

MR SINGH: Depending on the type of contract that they got.

20 **CHAIRPERSON:** Ja. Okay no okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Well I see we are at one – two minutes past one Mr Seleka. Do you have one or two questions you want to put or we can adjourn?

ADV SELEKA SC: I think it will be appropriate to adjourn

Chair.

CHAIRPERSON: Ja okay alright. Let us adjourn now I am going to add thirty minutes then to enable Mr Singh's legal team to consult with him. So we are going to resume at half past two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

- 10 **ADV VAN DEN HEEVER:** Chairperson may I be allowed just to quickly place something on record.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: And you have to forgive me I will have to refer to the information that I got on Whatsapp we will make sure that we give hard copies to yourself.

CHAIRPERSON: Yes.

- ADV VAN DEN HEEVER:** I have taken the liberty of forwarding the information to my learned friend so the – what we have done is my attorneys went and obtained the
20 CIPC records of Trillian Management Consulting Services and that is the entity that you will recall that Savier refers to,.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: And it is clear from here that the registration date Chairperson is the 13.04.2015.

CHAIRPERSON: Oh the registration of Trillian?

ADV VAN DEN HEEVER: Indeed.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: And then according to the director details Bianca Smith nee Goodson as we know was appointed on the 19 November of 2015.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: To become a director.

CHAIRPERSON: Yes.

10 **ADV VAN DEN HEEVER:** So I just thought that we just set the record straight pertaining to ...

CHAIRPERSON: No that – that is important. Let us obtain that information. It may well be that Ms Goodson may have said she was appointed at some stage in 2015 but I thought that the actual commencement of her employment she said was January 2016.

ADV SELEKA SC: Yes.

CHAIRPERSON: So that might – it may be that she was appointed in 2015 but actually started working in 2016. We
20 will need to check because she dealt with that in her evidence.

ADV SELEKA SC: Yes.

CHAIRPERSON: But that information is important.

ADV VAN DEN HEEVER: No Chairperson I – if my memory serves me right her evidence was actually you will recall I

cannot remember the entity that she left to take up this position.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: And she actually gave evidence that she started early. She was supposed to start with the contract I think in 2016 but she started working somewhere in 2015.

CHAIRPERSON: Okay. Okay.

ADV VAN DEN HEEVER: As I said I just speak from
10 memory now.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: I cannot recall exactly what she said but that is my recollection and if I am incorrect forgive me please.

CHAIRPERSON: No, no, no that is fine we must just double check what the correct information is.

ADV SELEKA SC: YEs.

CHAIRPERSON: And if necessary she may be asked to clarify whatever may need to be clarified but it might be
20 necessary to just go back to the transcript because in her evidence she deal – dealt with that. And there you may be right she may have said that before January 2016 she may have started doing some things for Trillian even though she may not have formally commenced her employment with Trillian. She may have said something – I think – I think

somebody will just need to check so that we have got those facts right.

ADV SELEKA SC: Chair I know.

ADV VAN DEN HEEVER: And then – sorry Mr Seleka if I may just continue one – with one further issue. Chairperson you will also then remember that my learned friend almost at the onset of leading the evidence of Mr Singh referred him to certain emails and maybe just to make it easy for us all it relates to Pandora or Project
10 Pandora. My learned friend has very graciously provided us with the said emails 23 June 2015 that is – that emanates from Mr Vikas Sagar of McKinsey and on perusal of same and again we have informed my learned friend all the person lists – all the people listed here are all Transnet people.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: So it is – I do not see any reference here to Eskom that is number 1. And then I also had copies of the – or I looked at the ones very briefly
20 because we had to take screenshots of it of the ones that was attached to Ms Goodson's affidavit MM2 and MM3 and again I say this very quickly because the photographs are not that clear. Also in respect of them I do not see any direct reference to Eskom itself.

CHAIRPERSON: Okay. Okay.

ADV VAN DEN HEEVER: Thank you.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chair. Can I start with the first one Chair? The affidavit of Ms Goodson she does say she signed the agreement on the 17th of November 2015 officially commenced 1 January 2016.

CHAIRPERSON: Okay.

ADV SELEKA SC: That is one.

CHAIRPERSON: In terms of finishing where she was
10 employed before being employed by ...

ADV SELEKA SC: Trillian.

CHAIRPERSON: Trillian does – does she say when she stopped working for whatever the entity was or does she not deal with that?

ADV SELEKA SC: She does say but I cannot recall offhand.

CHAIRPERSON: Ja.

ADV SELEKA SC: But I know that she was serving her notice period I think and nonetheless she said she went to
20 Trillian in December 2015.

CHAIRPERSON: Ja.

ADV SELEKA SC: That she was doing certain things in December.

CHAIRPERSON: Certain things ja.

ADV SELEKA SC: Ja but officially started on the 1st of

January.

CHAIRPERSON: Yes okay alright.

ADV SELEKA SC: That is one. Number 2 about the emails. The first ones my learned friend referred to I have not introduced them yet and I could – I can do so now. The second one she is referring to which are the annexures to Mr Motepu's affidavit they are attached as evidence of Mr Mothepu's version. So what we are only doing Chair is putting to Mr Singh the evidence substantiated by those
10 emails of Mr Mothepu. Mr Mothepu is the one saying we had meetings with the CFO and in regard to ...

CHAIRPERSON: Eskom

ADV SELEKA SC: In regard to Eskom but he was at Transnet.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: Yes. And Mr Singh has said there were no officials of Eskom that he can recall in those meetings. So it would not surprise me if there are no emails about you know either specifically Eskom or specifically a person
20 in Eskom in that communication.

The first set of ..

CHAIRPERSON: But what – one thing that is – that is established because Mr Singh ...

ADV SELEKA SC: Yes.

CHAIRPERSON: Admits it.

ADV SELEKA SC: I was going to say that as well.

CHAIRPERSON: Is that before he was seconded to Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: He did have meetings with McKinsey in regard to Eskom matters.

ADV SELEKA SC: Correct.

CHAIRPERSON: That – that is common cause now.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Which is the evidence of Mr Mothepu.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: The second – these emails which I will now introduce Chairperson they also have the subject line Pandora or Project Pandora and I wish to introduce them.

CHAIRPERSON: Do the emails that seem to refer to Transnet according to counsel for Mr Singh do they refer to anything relating to Eskom such as the – such as Project Pandora or whatever it was called? Do they refer to
20 anything that is attached or relates to Eskom in the text or anywhere?

ADV SELEKA SC: They – they have a subject Project Pandora.

CHAIRPERSON: Ja.

ADV SELEKA SC: I see there is an attachment which is

not printed out so we do not have a specific documentation that makes reference to Eskom.

CHAIRPERSON: Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: But if Project Pandora was an Eskom project and not a Transnet project then – then one could say it – they contain a heading that relates to an Eskom project although it was a McKinsey project for Eskom.

ADV SELEKA SC: That is right Chair and that is what I
10 wanted to put to Mr Singh.

CHAIRPERSON: To explore. Ja but the text does not seem to say anything that can specifically be ...

ADV SELEKA SC: No.

CHAIRPERSON: Identified with Eskom.

ADV SELEKA SC: No Chair.

CHAIRPERSON: Okay alright.

ADV VAN DEN HEEVER: Chairperson just one more thing I think that it is quite important is that this issue of Project Pandora there is no affidavit anywhere in the – in the
20 Eskom neither in the Transnet bundle for that matter dealing with this. We do not know what it is, we do not know where it comes from, there is nobody that deposed to it to explain what it is. And then just going back to the affidavit – ag to the emails that my learned friend wish to introduce. All the parties listed here Yusuf Mohammed,

Transnet Corporate, Norman Mbaso, Corporate Transnet Corporate. It is – it is all related to people that is within Transnet. So it is – you cannot even from that draw an inference that it relates to – to Eskom because it is specifically directed at Transnet employees.

CHAIRPERSON: No, no I think what we should do is I do not know whether Ms Mothepu said anything in her affidavit but in her oral evidence she certainly dealt with the – what she called Project Pandora. So there is something in her
10 transcript – there would be something in her transcript. What may need to be explored but again it just depends how important it is to – to spend time on it.

ADV SELEKA SC: That is right.

CHAIRPERSON: What – to say what was that project – what did that – was that project confined to Eskom or did it spread over a number of entities such as Transnet? But again it just depends how important it is. As I say what is common cause is that Mr Singh did have a series of meetings with McKinsey.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Before he was seconded to Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: That is common cause.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: Chairperson just – sorry this would be my last remarks.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: The second affidavit you will recall that when Mr Singh – when he was confronted with these emails he clearly states it to my learned friend it might be a second affidavit I have not seen it.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: We want to place on record that
10 we were not served with the 3.3 Notice in respect of this affidavit. Came to our attention basically because of this because you can imagine the – the reference, the link that was sent through to us I think it was last Friday contained a vast number of documents that we had to work through and then lastly I want to place on record but I will – we will deal with it in due course that – and I think the record would reflect it. I think I must mention it. When Mr Seleka and I do not point fingers at him started off with this issue he put it to Mr Singh against a certain backdrop if I can
20 call it and I think the record will reflect that that backdrop visa vie this is incorrect. So one must then see Mr Singh's answer in relation to what was put to him without showing him the actual emails and then asking him to comment on this. But we will – will deal with that in due course and I think it is important just as I said to mention it especially

since it is stated by yourself that it is now common cause. I think we need to explore that more against the background of what we have now learnt once we have had a look at the relevant emails. Thank you Chairperson.

CHAIRPERSON: Ja. No, no, that is fine. Mr Seleka.

ADV SELEKA SC: Thank you Chair. I am getting a date for services of Rule 3.3 Notices Chair.

CHAIRPERSON: Yes. Okay.

ADV SELEKA SC: Ja. Chair I could deal with these
10 emails very quickly.

CHAIRPERSON: You may do so if it is...

ADV SELEKA SC: Ja just very quickly Mr Singh sorry I want to hand up one to Mr Singh and to the Chairperson.

CHAIRPERSON: Yes you may proceed.

ADV SELEKA SC: Thank you. Mr Singh these emails I will refer to them in light of the response by – or the explanation by you that you did not have meetings in June 2015. Now these emails you can see there is a handwritten marking there; there is three pages of them.
20 On the first page you have number 1 and then number 2. Number 1 is an email from Mr Yusuf Mohammed Transnet Corporate JHB and it is written to Mr Vikas Sagar of McKinsey and there is no – Norman Mbaso copied. Norman Mbaso at Transnet and the date is 23 June 2015 subject is Venue Pandora. And the email reads:

“Hi please advise on the venue for your session with Anoj tomorrow. Regards Yusaf.”

And then email...

CHAIRPERSON: I am sorry, I am sorry. Oh yes reading the bottom email ...

ADV SELEKA SC: On the first page.

CHAIRPERSON: On what you have marked as first page.

ADV SELEKA SC: That is correct Chair.

10 **CHAIRPERSON:** Okay this is from who to whom?

ADV SELEKA SC: It is an email from Mr Yusaf Mohamed to Mr Vikas Sagar of McKinsey in which he copied Mr Norman Mbaso of Transnet.

CHAIRPERSON: So that line that is drawn just above where you might ...

ADV SELEKA SC: Yes.

CHAIRPERSON: You – page 1.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is in a wrong place. It should be above –
20 it should be just below Vikas Sagar Director McKinsey and Company Johannesburg and the 00:17:02 there.

ADV SELEKA SC: 28 Chair it would – it would appear to be.

CHAIRPERSON: Because it makes – it creates the impression that the information about it relates to the top

email.

ADV SELEKA SC: Yes. But – correct Chair.

CHAIRPERSON: Well for my own understanding I am going to

ADV SELEKA SC: Or except Chair the message below the line is exactly the same as the message above the details of the email address from whom it was sent to whom it was – it was sent. You read the message the fonts which are in blue it also says:

10 “Hi please advise on the venue for session
with Anoj tomorrow.”

CHAIRPERSON: Ja.

ADV SELEKA SC: The date is still 23 June 2015.

CHAIRPERSON: Ja. Okay. Okay. Yes you may continue.

ADV SELEKA SC: Mr Singh I am going to take you through all of them and then I will ask you to comment on this.

Then the second email at the top of the page it is from Mr Vikas Sagar of McKinsey on Tuesday 23 June 2015
20 it is addressed to Yusuf Mohamed of Transnet copied Norman Mbaso say:

“Hello Yusaf the open 20 Kruger Street
Maboneng Precinct we are starting at 9am.”

So that seems to be a response to Mr Yusaf and gives the address of the venue – of the meeting – address for the

meeting and the starting time. And then please turn the page to what is marked as number 3. I think there the details are given. The subject is 00:18:02 Condola the location is the Open Top Floor the Main Change 20 Kruger Street Maboneng Johannesburg. The start time date and time are given. Meeting status not yet responded. And then the organiser is indicated to be Anoj Singh.

And you turn to the last page which is marked page 4 – I mean email on the 4th it has – it has the same details
10 in fact as the previous one but in the middle of the page there is an email from you Mr Anoj Singh on the 23 June 2015 at 4:47 pm to Anoj Singh Corporate Yusaf Mohamed Transnet – subject is Project Pandora – when 24 June 2015 7:30am – where the Open 4th Floor the Main Change 20 Kruger Street Maboneng Johannesburg.

And the question I would like to ask you Mr Anoj – Mr Singh and maybe you could explain to the Chairperson is whether this Project Pandora is the same as the one you were dealing with in July 2015 as referred to by Ms
20 Mothepu?

MR SINGH: Mr Chair as I testified earlier and I do not recall the Project Pandora specifically that is what I testified to earlier okay. For me to confirm whether this Pandora and the Eskom Pandora is the same unfortunately I cannot do that.

ADV SELEKA SC: But can you tell the Chairperson whether at Transnet did you call any project Project Pandora?

MR SINGH: Well Mr Chair as I testified I would not call a project Pandora it would be McKinsey that called or named projects.

ADV SELEKA SC: Yes but specifically at Transnet was here a project called Project Pandora?

MR SINGH: Mr Chair as I testified I do not recall.

10 **ADV SELEKA SC:** But now in the last page of the email the subject – the email comes from you on the 23rd it has that subject Project Pandora.

MR SINGH: Mr Chair this...

ADV SELEKA SC: What can you say about that?

MR SINGH: Mr Chair as you would see these emails or the meeting status is not yet responded..

CHAIRPERSON: Sorry.

MR SINGH: The meeting status has not yet responded.

CHAIRPERSON: Is not yet responded.

20 **MR SINGH:** Yes.

CHAIRPERSON: Ja.

MR SINGH: So these meetings when – this particular meeting was not accepted or confirmed okay. Secondly this Anoj Singh Corporate for example the access to my diary at Transnet was accessible to my PA, was accessible

to Mr Yusaf Mohamed and was accessible if I am not incorrect to Mr Mbaso who is Norman. So anyone of these people could have initiated, changed, made amendments, postponed, cancelled these meetings.

CHAIRPERSON: There may be a need to look at other information or emails or so on that may throw light but on the face of it it does not seem likely that if it is true what they wrote here that you were the organiser of the meeting I guess I am looking at page 3 as well as page 4 or is it

10 email 3, email4?

ADV SELEKA SC: Yes.

CHAIRPERSON: Rather than page?

ADV SELEKA SC: Yes.

CHAIRPERSON: On the face of it it would seem unlikely that people who had been invited to a meeting that you were organising would be told it is a meeting about Project Pandora without you the organiser knowing that this is – this meetings is about Project Pandora.

MR SINGH: Mr Chair that is not what I am disputing.

20 **CHAIRPERSON:** Heh?

MR SINGH: That is not what I am disputing Sir.

CHAIRPERSON: Okay. Okay.

MR SINGH: All I am saying is that even Mr Mohamed, Mr Mbaso or my PA Ms Khanye could have arranged this meeting but in all likelihood it seems like Mr Yusaf would

have been setting up the meeting given the context at number 2 okay and all I am trying to suggest is that the email show what they show but the meeting may have not happened.

CHAIRPERSON: Ja, no, no I think we may be speaking at cross purposes. What I am dealing with is the question of whether you knew about Project Pandora or not that is what I am...

MR SINGH: Oh.

10 **CHAIRPERSON:** Ja that is what I am dealing with. You have said I think you – you have no recollection – I am sorry. I normally switch off my phone – I do not know what happened today. I – you said you do not recall.

MR SINGH: Yes Sir.

CHAIRPERSON: A project called Project Pandora so all I am simply saying is if you were the organiser of a meeting or meetings where those who were invited to the meeting were told that the subject matter of the discussions would be Project Pandora on the face of it it – it seems unlikely
20 you would not be aware that the subject matter is on Project Pandora. You have no issues with that?

MR SINGH: No Sir.

CHAIRPERSON: Yes okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Mr Singh turning lastly back to the page – the first page the email – it is not

from you but it specifically says:

“Advice on the venue for your session with
Anoj tomorrow.”

And then the time is given and the venue being Maboneng Precinct which coincidentally is the same venue that Ms Mothepu mentions as one of the venues you had a meeting at. The meeting was to start at nine o'clock according to this email did you – did you have this meeting?

MR SINGH: Mr Chair I think – I would be remarkable if I
10 could remember the specifics of this meeting or the day on which it occurred. I do not recall this meeting. As I said or as I testified earlier I acknowledge the fact that we had meetings as Ms Mothepu has outlined in her affidavit during July. If we had a meeting in the last week of June then we did. I do not recall it. Based on this it does seem like there is any confirmation in terms of the meeting had occurred but if it possibly could.

ADV VAN DEN HEEVER: Sorry Chairperson.

CHAIRPERSON: Ja.

20 **ADV VAN DEN HEEVER:** Again and as I said I do not want to unnecessarily intervene but what is put to Mr Singh visa vie the affidavit of Ms Mosilo Mothepu is not correct because in her paragraph 22 in the affidavit the one that we said we only learnt of later she says:

“The meetings were during Anoj’s time as

acting CFO at Eskom.”

Nothing to do with Transnet. So to try and establish this link on the face of emails that is totally different is ...o to try and establish this link on the face of emails that is totally different is ...

CHAIRPERSON: Ja no, no, no. Everyone accepts that Ms Mothepu’s evidence related to meetings that took place involving Mr Singh that related to Eskom. Everybody accepts that. There is an issue as I understand it about
10 when those meetings took place. Mr Singh says I think he says his recollection is that it was July. I do not know whether he is definite than that – that it was – it could not have been or was not June but my understanding is that he says his recollection was that they were in July. As I understand it either Ms Mothepu or somebody seems to say they did or some meetings involving Mr Singh did happen before July and Dr Weiss might be one, I am not sure, and so on. I took it that Mr Seleka is trying to explore the question of when those meetings happened, whether they
20 happened before July or not.

ADV SELEKA SC: Ja.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: That is correct Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because Dr Weiss places those

meetings in May 2015.

CHAIRPERSON: Yes.

ADV SELEKA SC: But my learned friend should read to you, Chair, the entire paragraph because the paragraph reads:

“Regiments and McKinsey were negotiating the Master Service Agreement with Anoj Singh in his capacity...”

Which is where my learned friend is referring to.

10 “...as acting Chief Financial Officer...”

Then she says:

“...when I joined Regiments in June 2015...”

CHAIRPERSON: H’m, h’m.

ADV SELEKA SC: Now you know in June 2015 what was the position in regards to Mr Anoj Singh. Then she goes on to say:

“However, Singh...”

I will say Mr Singh because she just writes Singh.

20 “...Singh was, in fact, still an employee of Transnet at the time...”

And that is the point you are trying to make Chair to my learned friend.

CHAIRPERSON: H’m, h’m. Okay I think let us continue. Let us all try to just establish what the position is.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay let us continue.

ADV SELEKA SC: Thank you. Mr Singh then, during – just before the lunch time, we went through the agreement, the MSC, the letter of acceptance, the MSC, the date when the agreement was signed which is by Eskom on the 4th of May 2016.

We have dealt with the issue about who actually rendered the services and Ms Goodson has said Trillian did
10 not render the services in respect of the Corporate Plan. Ms Matshepo has said it was Regiments. She was an employee of Regiments when services in respect of the Corporate Plan were rendered.

You have sought to indicate and maybe you can confirm that that is your evidence, that Trillian is in fact the one which rendered services in respect of the Corporate Plan. Is that your position?

MR SINGH: That is correct, sir.

ADV SELEKA SC: Ja, okay.

20 **CHAIRPERSON:** Well, I thought your position was not exactly that but you – I will give you a chance to clarify. I thought your position was, particularly when I was asking you some questions before lunch, I thought your position was.

You cannot dispute Ms Goodson's evidence that

Trillian did not render services but you as Eskom people took various steps which you have regarded as reasonable to establish who should be paid and you may have been mislead but you then paid Trillian because on the information you had, Trillian was the entity to pay.

I understood you to be saying that. I may have understood you.

MR SINGH: Certainly Mr Chair. I think my or my summation at the time was premised on the basis that you
10 had put to me that Trillian did not exist at the time. Now ...[intervenes]

CHAIRPERSON: I was saying on the evidence of Ms Goodson's.

MR SINGH: Yes.

CHAIRPERSON: Ja.

MR SINGH: Hence I am saying now. The evidence that we now know is that Trillian was in existing at the time. Not only was it in existence at the time, Ms Goodson was actually a director of the company during the period – time
20 when the Corporate Plan Service *was being delivered(?)*.

She also attended meetings with McKinsey relating to the activities that were happening between Eskom and McKinsey at the time.

CHAIRPERSON: Well ...[intervenes]

MR SINGH: Even went to the extent, as I said, presenting

the Corporate Plan invoice to Mr Koko.

CHAIRPERSON: Well, I am not sure... I think what you are saying suggests to me that what you are – what your position is now is different from what it was before lunch because before lunch you were not aware that Trillian was incorporated sometime in – early in 2015.

And you might also not have been aware that Ms Goodson was appointed in November at Trillian. And now that you know that you are saying your position is
10 different. Is my understanding correct?

MR SINGH: That is correct Mr Chair.

CHAIRPERSON: Yes.

MR SINGH: And I would like to emphasise that she was appointed as a director ...[intervenes]

CHAIRPERSON: Yes, yes.

MR SINGH: ...to Trillian in November.

CHAIRPERSON: Yes, yes. But... Well, let me start here. I did not – I do not know whether your counsel, when she told me what the information was that she obtained about
20 her appointment.

I am not sure whether that information was indicating when she actually commenced employment with Trillian, namely, in November or whether it might be a case of having been appointed in November but only commencing employment in January. So I am not sure

about that part.

MR SINGH: Mr Chair, let me ...[intervenes]

CHAIRPERSON: What has transpired is that, at least as far as Mr Seleka has been able to recall or check. In her evidence, Ms Goodson did say she did begin to do some Trillian functions, I think, before the end of 2015, towards the end of 2015.

MR SINGH: Yes.

CHAIRPERSON: Of course, exactly what she did, you
10 know, maybe that can be checked, but I am surprised that this information makes you change your position on whether or not Trillian rendered services because I would imagine that whether or not you know that Trillian rendered services, would depend on whether you saw them rendering the services or you have so proof of them rendering that service.

And my – from all that you have said, I did not understand you say: I did see them rendering the service that – for which we were paying them, for which we paid
20 them. And I did not hear you say: Although I might not have seen them rendering the service, I did see proof that they had actually rendered the service.

You understand where my concern is about you changing your position?

ADV VAN DEN HEEVER: Chairperson?

CHAIRPERSON: Yes?

ADV VAN DEN HEEVER: Sorry, I beg your forgiveness.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: But I understood the – what happened or the discussion between yourself and Mr Sing that whilst he was explaining to you what Eskom did. In that discussion he also mentioned to you they did in fact perform services there and he was aware of that fact. I think the records ...[intervenes]

10 **CHAIRPERSON:** He may have. He may have.

ADV VAN DEN HEEVER: Ja.

CHAIRPERSON: That is why I am asking him because I want to make sure my understanding is correct.

ADV VAN DEN HEEVER: H'm.

CHAIRPERSON: If he says: No, I did say because I did know, then that is fine. I am just saying my understanding of – this is my understanding of what you said and then you can say: No, I think you misunderstood. I did say I did see them render the services or I had proof of the
20 services they rendered. So do you want to clarify?

MR SINGH: Mr Chair, I did say that I did see them rendering services.

CHAIRPERSON: Yes.

MR SINGH: And the extent to which I can confirm that, Mr Chair, is that the Corporate Plan is not a simple

process to accomplish because it brings together technical aspects, operational aspects, financial aspects, marketing aspects, HR aspects. Every aspect of the business into a document.

That requires an *enormous amount of...* and planning and alignment. And those session used to happen, probably, on a weekly basis between myself, my team, the McKinsey Team, the Regiments/Trillian Team.

And that is how I knew that anyone who is
10 actually on the ground doing work. I may have not seen 35 Trillian employees or Regiments employees or for that matter 25 McKinsey employees but based on those meetings that happened on a weekly basis, I got feedback from my people, I got feedback from McKinsey people, I got feedback from the Regiments/Trillian people.

So from that perspective, Mr Chair, I have no doubt that people were on the ground doing what they ought to have done to deliver the Corporate Plan...

CHAIRPERSON: And when you talk about those meetings
20 that you talked about and you see people rendering a service, are you including the period, the 2015-period and you are not mixing it up with what may have happened in January and February 2016?

MR SINGH: No, Mr Chair, I think once I got to Eskom, in order for me to get up to speed with what was actually

happening on a day to day basis, also when I needed to get up to date in what was due in the next three months, the next months, the best way to have done that, was actually to have these weekly meetings.

And weekly meetings normally happened on a Monday, first things on a Monday morning and in preparation for the meeting on Monday morning, we normally have a debrief session on a Friday to understand who needs to talk about what on Monday.

10 And those meetings normally used to happen in the morning and should run through until eleven, twelve during the day.

CHAIRPERSON: Yes, yes. Now, are you able to say that in respect of the 2015-period, those meetings were happening between Eskom and Trillian staff or are you only able to say meetings were happening between Eskom and certain people and I think they may have been Regiments, they may have been Trillian or both?

MR SINGH: So ...[intervenes]

20 **CHAIRPERSON:** Or are you able to say, nobody can say to me it was only Regiments staff?

MR SINGH: Mr Chair, I think, I certainly cannot, as I said to you, pinpoint who was who at what point in time.

CHAIRPERSON: Ja, ja.

MR SINGH: So hence I used them interchangeable

...[intervenes]

CHAIRPERSON: Yes, yes.

MR SINGH: ...and said Regiments fork ...[intervenes]

CHAIRPERSON: Yes, yes.

MR SINGH: ...Regiments...

CHAIRPERSON: Because the reason why I raise it is. Ms Goodson's evidence, that seems to be quite categorical, that she was the first employee of Trillian and she formally started in January but I think, as Mr Seleka
10 says, should they have done some tasks of Trillian during November and December.

I do not think we went into details about those where – but she – what did she says, which Mr Seleka, I think, referred to is, that she never rendered to Eskom the services that related to this payment of R 30 million. I think she was categorically in regard to that.

So that is why it becomes important to establish whether in your own mind you were – you are able to say: No, I know who was Trillian's staff, I know who was
20 Regiments' staff. So when I say in November/October there were meetings relating to Eskom and Trillian and/or Regiments... I know when they were together in meetings, I know when they are separate, I knew who is associated – who was associated at Trillian and who was associated with Regiments.

But I think from what you say, you say you are not sure. You could not separate. That is why you say Regiments/Trillian. Am I right?

MR SINGH: Mr Chair, because that was factual state at the time as I understood it. I have also said that I am aware that there was an agreement or a secondment agreement between Regiments and Trillian relating to the secondment of certain staff.

CHAIRPERSON: H'm. Okay.

10 **MR SINGH**: So and we went then through the issue of whether Regiments had a claim against either McKinsey or Eskom and on that basis I concluded that there was no claim that Regiments had made... or for that matter against Trillian.

So from my perspective, as I understood it, for all intense and purposes, Trillian was McKinsey's sub-contractor of choice in the living Corporate Plan for which McKinsey confirmed *at that stage*.

CHAIRPERSON: Do we know whether during 2015, there
20 was a formal Regiments contract between McKinsey and either Regiments or Trillian or both? Mr Seleka, do we know that?

ADV SELEKA SC: The secondment agreement between Regiments and Trillian, we are not aware of that Chair.

CHAIRPERSON: Ja-no, I am not talking about the

secondment. I am talking about... Mr Singh has just said
...[intervenes]

ADV SELEKA SC: Yes?

CHAIRPERSON: ...I think he said Trillian was McKinsey's
subcontractor.

ADV SELEKA SC: Oh.

CHAIRPERSON: Ja. So I am asking whether we know
...[intervenes]

ADV SELEKA SC: Oh, yes.

10 **CHAIRPERSON:** ...whether that there was a formal
contract between McKinsey and Trillian during 2015 in
terms of which Trillian could have rendered ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...a subcontracting service to McKinsey.

ADV SELEKA SC: Okay. Thank you, Chair.

CHAIRPERSON: H'm.

ADV SELEKA SC: There was never a subcontract
agreement.

CHAIRPERSON: H'm. Do we know whether there was a
20 subcontract agreement between McKinsey and Regiments
during 2015 in relation to Eskom?

ADV SELEKA SC: May I just... Apparently there was a
draft. It was never signed.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: But is that in line with your recollection?

MR SINGH: Mr Chair, I think Mr Pule is ...[intervenes]

ADV SELEKA SC: Mr Seleka.

MR SINGH: ...produced the draft relating to the Corporate Plan. There is a draft relating to the MSA that was never signed.

CHAIRPERSON: Ja. But in terms of your recollection, what is your recollection in relation to McKinsey and Trillian in 2015? Do you know whether there was a formal
10 subcontract between the two of them in 2015?

MR SINGH: Mr Chair, I would be guessing but I do not think there was as Mr Seleka correctly states.

CHAIRPERSON: Yes.

MR SINGH: But equally so. I do not think there was an agreement between McKinsey and Regiments.

CHAIRPERSON: Yes, yes.

MR SINGH: ...Corporate Plan.

CHAIRPERSON: Yes. Okay. Whatever there may have been, if there was, in relation to the Corporate Plan, as far
20 as you are concerned. So ...[intervenes]

MR SINGH: Mr Chair, I can help ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...and the Commission, Mr Chair. On the Transnet stream, the commission has produced a judgment relating to the Eskom/Trillian/McKinsey matter.

In that judgment, Mr Chair, I – if I follow it closely, and in that court papers there is the explanation associated with how this secondment happened, when it happened, who was part of it and why it happened. So if it pleases the Commission, we will get access to those copies ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: *...and present them to you(?)*.

CHAIRPERSON: Ja. No, no. That is fine, ja. No, that is
10 fine. So that would be good but your recollection is that they do not say there was a contract that might explain how it worked but your recollection is not that anybody says there was a contract?

MR SINGH: Regiments and McKinsey ...[intervenes]

CHAIRPERSON: McKinsey, ja.

MR SINGH: *...for a Corporate plan...*

CHAIRPERSON: Ja, okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka.

20 **ADV SELEKA SC:** Yes, and that was my response to the Chairperson. So we are talking the same thing. There was no subcontract between McKinsey and Regiments, you say, and *Harry(?)* had said even between McKinsey and Trillian.

MR SINGH: I did not ...[intervenes]

CHAIRPERSON: Even if there was a draft. If it was not

signed, it might not be worth anything because it was not signed.

MR SINGH: Yes, Chair, but the inference is different though. You will have to agree.

CHAIRPERSON: Ja.

MR SINGH: That if there was a subcontract between Regiments and McKinsey, then the inference that we were discussing previously relating to the pain that they may have had ...[intervenes]

10 **CHAIRPERSON**: Ja, ja.

MR SINGH: ...becomes even greater.

CHAIRPERSON: No, if it was ...[intervenes]

MR SINGH: Exactly and ...[intervenes]

CHAIRPERSON: ...the draft is not good enough ...[intervenes]

MR SINGH: Hence I am saying I dispute the fact that there was a draft.

CHAIRPERSON: Ja, but all I am saying is ...[intervenes]

MR SINGH: Ja.

20 **CHAIRPERSON**: ...even if there was a draft, if it was not signed, it does not mean anything on the face of it, you know, because no obligations will arise out of a draft that was never signed.

ADV SELEKA SC: Correct.

CHAIRPERSON: Generally speaking.

MR SINGH: [No audible reply]

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay I think we are on, more or less, the same page. Ja.

MR SINGH: H'm.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright. Let us continue.

ADV SELEKA SC: Thank you, Chair. Because Mr Singh,
10 what I was going to say is. The date of existence or
incorporation of Trillian does not change the fact – it may
have existed in 2015 but you know – we know from
Ms Mothepu, she was at Regiments.

They rendered the services to Eskom in respect
of the Corporate Plan as Regiments in October, November,
December or whenever they did. It was not Trillian. You
have the CEO of Trillian who says to you – and I am saying
insofar as you have referred to her with the meetings of
Mr Koko - Ms Goodson has said Trillian never rendered
20 services to Eskom in respect of the Corporate plan, which
is exactly what Ms Mothepu is saying.

It is not Trillian that rendered services, Ms
Mothepu is saying, it was Regiments. Both of them say
that. And this court case that you are referring to of
Transnet are in relation to Transnet of – it originates in

Regiments against Trillian.

It also shows in the papers there that Mr Wood left Regiments by the end of February 2016 and he commenced at Trillian on the 1st of March 2016.

So you have that mounting evidence to deal with if you say: I insist that... Perhaps you do not insist, and I will not put words in your mouth, that Trillian rendered the services in respect of the Corporate Plan.

MR SINGH: Mr Chair ...[intervenes]

10 **CHAIRPERSON**: Well, give him a chance to ...[intervenes]

ADV SELEKA SC: Yes, I am.

CHAIRPERSON: Ja. [laughs]

ADV SELEKA SC: I am Chair. [laughs]

MR SINGH: Mr Chair, but the – I go back to my original statement. In my view these issues relating to Regiments and Trillian and Ms Mothepu and Ms Goodson needs to be dealt with by Regiments and Trillian, with all due respect.

[Speaker is not clear.]

CHAIRPERSON: I am sorry, just speak up a bit.

20 **MR SINGH**: Needs to be dealt with by Regiments and Trillian.

CHAIRPERSON: H'm?

MR SINGH: Because they were officials and employees of those companies at those times. My obligation was to ensure that the Eskom processes were followed to the

extent that I have demonstrated in my affidavit, the Eskom processes were followed to the extent that the Eskom processes indicating that work was delivered. I have said work was delivered. I have said I met the people. I have said there was a secondment agreement which no one seems to want to accept relating to the people that would have moved from Regiments to Trillian. The Commission refuses to accept that that is the factual position.

ADV SELEKA SC: No ...[intervenes]

10 **MR SINGH:** Because you continuously stating that there is this mounting evidence. The mounting evidence that I have a view and that view is that work was done, we obtained what we needed to obtain to ensure that we were paying the correct *payment(?)* for work that was divided.

CHAIRPERSON: Yes. No, there is no accepting or not accepting anything at this stage. It is just proving to get clarification Mr Singh. What you say now – what you have just said when you say, you know, Trillian's or Regiments' employees must come and testify what the position was. It
20 seems to be inconsistent with my understanding of what you were saying earlier.

I understood you earlier to be insisting that Trillian did provide services but what you are saying now seems to be saying, maybe the people who know would be Regiments employees and Trillian employees. They must

come and testify.

MR SINGH: Mr Chair, I was mentioning – I was referring to, let us say maybe the shareholders or the directors of Trillian and Regiments themselves.

CHAIRPERSON: Ja, yes, yes.

MR SINGH: To provide clarity.

CHAIRPERSON: Ja.

MR SINGH: But I have also offered to provide to the Commission ...[intervenes]

10 **CHAIRPERSON**: Yes.

MR SINGH: ...the court papers that relate to Eskom versus Trillian ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...and McKinsey, which I would assume have this information that ...[intervenes]

CHAIRPERSON: Yes. No, no, no. That is fine. It may be that we have dealt with this sufficiently. You have said what Ms Mothepu said and she was working for Regiments towards the end of 2015. Is that right?

20 **ADV SELEKA SC**: To... Yes.

CHAIRPERSON: And then she moved to Trillian in 2016.

ADV SELEKA SC: Yes, March, the 1st of March 2016.

CHAIRPERSON: Yes. And you said she said they rendered the services in regard to the Corporate Plan as Regiments.

ADV SELEKA SC: Correct.

CHAIRPERSON: Ms Goodson has said what she said about she not having been *ordered*(?) to render the services. Mr Singh has said what he has said which includes the – these are the measures they took to establish who should they pay. And there is clarity to the effect that Trillian was incorporated in May or there about, 2015. And Ms Goodson was appointed November by Trillian. So I do not know whether you want to take it
10 further?

ADV SELEKA SC: Yes, there was something I had in mind Chair, that the secondment agreement, Mr Singh, that you are referring to is between who and who?

MR SINGH: As I understand it, I have not seen a copy of it ...[intervenes]

ADV SELEKA SC: Ja, but you see ...[intervenes]

MR SINGH: Between Regiments and Trillian.

ADV SELEKA SC: No, but you see, it is as you understand. It is not as you know.

20 **MR SINGH:**to the Commission that I would go and get the court papers and present it to you.

CHAIRPERSON: I... Obviously, one would see what is there. Based on the evidence I have heard, I doubt that there was a secondment because those who created Trillian appeared to have had tensions with those who

remained at Regiments, at least the bosses.

My understanding is that those who went to Trillian were not going on secondment. They went to take up employment under a different employer.

Because a secondment means you remain the employee of the first employer, Regiments in this case, but you go and physically work under another employer and then the two entities make arrangements, who is going to pay you and so on and so on but you remained the
10 employee or your original employer. My understanding is that Regiments employees went to Trillian, became Trillian employees and did not continue to be Regiments employees. But you might not be using the term secondment in that sense. I am just saying when you say secondment, I look at it in that way.

MR SINGH: Mr Chair, if I can suggest that – allow us the opportunity to make ourselves available ...[intervenes]

CHAIRPERSON: Those papers.

MR SINGH: Those court papers.

20 **CHAIRPERSON:** Yes.

MR SINGH: Let us study what is contained therein.

CHAIRPERSON: Yes, yes.

MR SINGH: If there is something that is of relevance to the Commission on this matter, we will present it.

CHAIRPERSON: Yes, no, no, that is fair enough, ja.

MR SINGH: Thank you, Chair.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you, Chair. I think I will also provide Mr Singh and his legal representatives with the application that a director and shareholder of Regiments brought against Mr Eric Wood to be declared a delinquent director and there the – which is the application Ms Mothepu provided as well when she was here, they deal with the issues of conflict between them and Mr Eric Wood
10 particularly at Transnet that he invoiced in the name of Trillian when services were rendered by Regiments prior to March 2016 They deal – they go into the details of the conflicts in their minds that Mr Eric Wood allegedly invoiced Transnet for payment when services were rendered by Regiments, but we will provide you with that application.

MR SINGH: Mr Chair, I am not [indistinct] providing me with that will make any difference to our issues at hand.

CHAIRPERSON: Yes.

20 **MR SINGH:** But again it proves the point that if the Commission requires answers relating to Regiments and Trillian, call the relevant people to answer.

CHAIRPERSON: Well, of course but you remember how we go there, we got here because you say you must know who rendered services to you for you to pay R30 million.

Who rendered these services, that is where we started.

MR SINGH: And with due respect, Mr Chair, I think I have adequately demonstrated that we took procedures necessary to identify that.

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Ja. Well, those directors and shareholders have been called, Ms Mothepu and Janke, they were at the top of the ladder in those entities. So let us go to the services rendered having said all what we
10 have said because Ms Mothepu who rendered the services is able to speak about the services and whether it was worth paying Trillian 30.6 million because she says to the Chairperson you asked them, as Regiments, to prepare a corporate plan and it was – I think she says on a Friday that you asked them to do so and you wanted a corporate plan to be ready on Monday. Now I am looking at her transcript which is her testimony here. She says:

“Something very strange happened because I got that instruction on Friday, late afternoon, and Mr
20 Singh wanted his funding plan by Monday.”

They then went into drafting this plan. They presented it to you according to her and you trashed it because you said it was not good. After that Mr Andre Pillay say you called him to do the plan.

MR SINGH: Yes.

ADV SELEKA SC: I know you deal with his affidavit in your affidavit. And he says he knew that you had instructed Regiments to the plan, the corporate plan, but he did not ask why are you asking me? Ms Mosilo says, on the other hand, they called for the assistance of Mr Andre Pillay who finally [inaudible – speaking simultaneously]

CHAIRPERSON: I am sorry, is that Ms Mothepu?

ADV SELEKA SC: Ms Mothepu, yes.

CHAIRPERSON: Yes, okay, alright.

10 **ADV SELEKA SC:** Yes, Ms Mosilo Mothepu, yes, Chair. After you then said the plan is not good they then engaged Eskom treasury, a team of Mr Andre Pillay who helped them put together a plan which they did and she says this is the work that Eskom treasury could have done, she does not know why you asked them to do it. Your comment?

MR SINGH: Mr Chair, I go back to my original comment that I made this morning that the very same Mr Andre Pillay was part of the treasury team that created the two page borrowing plan that was presented in the corporate
20 plan ...[intervenes]

CHAIRPERSON: I am sorry? He was part of the...?

MR SINGH: He was part of the same treasury team that created the two page funding plan that was in the corporate plan for the previous year which led to the financial or the liquidity crisis that occurred in January

2015. Now I find it strange that Ms Mothepu would not be in a position to do a funding plan, firstly, given that she is a director of Regiments or Trillian Management Consulting or whichever one you want to use and secondly, reference back to Mr Pillay who had created the financial crisis of the liquidity crisis in January 2015. It is just inconceivable.

CHAIRPERSON: Well, you – I am not sure whether what you say is an answer to what Mr Seleka puts to you. As I understand it, he is saying after you rejected the plan that
10 they prepared over the weekend, they namely, Regiments, Ms Mothepu, approached Mr Pillay to help them put together a plan that they thought you would accept. Is that correct, Mr...?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Yes. What you did not say is whether the plan that was the product of the collaboration between Ms Mothepu and Mr Pillay was subsequently presented to Mr Singh and whether he accepted it, is that where you were going ultimately?

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: So it was presented to him.

ADV SELEKA SC: Yes.

CHAIRPERSON: And he accepted it as far as Ms Mothepu is concerned.

ADV SELEKA SC: Yes and Mr Pillay says Mr Singh

suggested some changes ...[intervenes]3

MR SINGH: Mr Chair.

CHAIRPERSON: Hang on, let him finish.

ADV SELEKA SC: Mr Singh suggested some changes and there is a trail of emails but I wanted to take you step by step, Chair.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Because I did not want Mr Singh to attack Mr Pillay before he addresses my question.

10 **CHAIRPERSON:** Okay, alright. So let us hear that. What do you say, Mr Singh, to what Mr Seleka is putting to you, namely that Ms Mothepu says after you rejected their weekend plan they approached Mr Pillay and Mr Pillay I assume hand them – Regiments, Ms Mothepu, produced a plan. Now I do not want to say another plan and this plan which was the product of their collaboration was presented to you and you accepted – I do not know whether you accepted it with some minor suggestions or you made the minor suggestions before it was finally brought to you,
20 what do you say to that?

MR SINGH: Mr Chair, I reject that assertion.

CHAIRPERSON: You say that – was there another plan that was presented to you after you rejected Ms Mothepu's plan?

MR SINGH: Mr Chair, my affidavit covers these aspects

quite extensively. If you would allow me, I will find it and I will deal with this matter.

CHAIRPERSON: Ja, we can go there. I take it that it is bundle 16 where we will find your affidavit?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay. Well, I think I am still on your affidavit and the one starts at 591, I do not know whether that is the one, bundle 16, page 591 black numbers. I do not know whether that is one or it is another one that you
10 want to look at.

MR SINGH: Sir, it is the one that starts at page 591.

CHAIRPERSON: Oh, okay, alright.

ADV SELEKA SC: Mr Singh, it is on page 610.

CHAIRPERSON: You mean the relevant portion?

ADV SELEKA SC: Yes.

CHAIRPERSON: It is from page 610.

ADV SELEKA SC: 610.

CHAIRPERSON: Okay. Okay, there is corporate plan contract with McKinsey.

20 **ADV SELEKA SC:** If that is what you want.

MR SINGH: Mr Chair, I think I would like to start ...[intervenes]

ADV SELEKA SC: As you go there, can I understand what is it that you are rejecting, Mr Singh? Are you rejecting that Ms Mothepu was requested by you, either you asked

Mr Eric Wood or Regiments and his employees to do a corporate plan on a Friday afternoon and you wanted it on Monday? Are you denying that?

MR SINGH: I do not recall that but it sounds like something I would have done.

ADV SELEKA SC: Ja but just face the Chairperson, but you are not denying it. You do not recall it but you cannot deny it.

MR SINGH: It seems like something I would have done,
10 Mr Chair.

CHAIRPERSON: Is that what – what is it that seems like something you would have done?

MR SINGH: Mr Chair, the assertion that Mr – the question that Adv Seleka is putting to me is that would I have not requested intervention on a Friday for a Monday/

CHAIRPERSON: Ja, after rejecting the first plan.

MR SINGH: No, the initial portion.

CHAIRPERSON: Oh, okay.

MR SINGH: The issue of the intervention that was
20 required.

CHAIRPERSON: Yes.

MR SINGH: And my response is that it is not unlikely to have requested an intervention. If I saw something that was not appropriate, okay? So where I was starting was paragraph 35 of page 603 where I say:

“It is correct that Eskom treasury ...[intervenes]3

CHAIRPERSON: Are we still on the same affidavit of yours?

MR SINGH: Yes.

CHAIRPERSON: And you say paragraph 35?

MR SINGH: Paragraph 35 on page 603.

CHAIRPERSON: Yes, okay.

MR SINGH: I say:

10 “It is correct that Eskom treasury was responsible
for drafting the funding plan to be included in the
2016/’17 corporate plan as alleged by Pillay which
has, as its main objective, the mitigation of liquidity
risk.”

Simply put, Eskom must have sufficient cash to meet its
payment obligation on any given date. At that time
McKinsey had as its appointed supply development partner
in preparing the plan but there was nothing untoward in
requesting Ms Mothepu to assist in the preparation of the
plan.

20 **ADV SELEKA SC:** And that is not my suggestion. That is
definitely not my suggestion.

MR SINGH: But again, if you look at the paragraphs that
follow, it is clear that the funding plan was not a weekend
exercise as alleged by Ms Mothepu. The funding plan, if
you have reference to the affidavit, actually went through

probably seven iterations or seven versions. Those seven versions, Mr Chair, was the product – and I even concede that it was a product of Eskom treasury and myself and Ms Mothepu and her team. So the suggestion that this plan was an Eskom product alone is rejected.

And secondly, that very same Eskom team prepared a two page funding plan that was incorporated in the previous year's corporate plan. The suggestion that that very same team was capable and had the ability to mitigate
10 Eskom's liquidity risk which in real terms actually happened in January 2015, I cannot accept.

And lastly, if Ms Mothepu alleges what she alleges, in those weekly meetings why did she not raise the issue with me to say we are adding no value in this process please can we be excused because you have a team that is fully capable of doing this.

CHAIRPERSON: Okay, let us ...[intervenes]

MR SINGH: Or raise it with any person that she felt comfortable to with.

20 **CHAIRPERSON:** Okay, let me understand what you are saying. You accept, do you not, that ultimately the corporate plan that you accepted or that was used was the product of efforts of Ms Mothepu or Regiments or her team, Mr Pillay and/or Eskom treasury and yourself?

MR SINGH: And McKinsey, just so that...

CHAIRPERSON: And McKinsey.

MR SINGH: Yes.

CHAIRPERSON: Okay.

MR SINGH: But if we are doing the corporate plan then it is all other Eskom divisions as well.

CHAIRPERSON: Yes, ja, okay. So that you accept.

MR SINGH: Yes.

CHAIRPERSON: Ja and you accept that that happened after you had rejected the weekend plan that Ms Mothepu
10 had presented to you after the weekend she is talking about.

ADV VAN DEN HEEVER: Chairperson, sorry to interrupt you again.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: I think there might be a miscommunication, there is a difference between the funding plan and the corporate plan and I understood the point that Mr Seleka was trying to make that yes, that he was dealing with the funding plan and not with the
20 corporate plan.

CHAIRPERSON: Oh. Oh, okay, no, no, that – is that the position, Mr Singh?

MR SINGH: Sorry, Sir?

CHAIRPERSON: What you were saying in terms of the plan that was the product of all of these people namely Ms

Mothepu, Mr Pillay or Eskom treasury and yourself and you said there may have been other people, that was the funding plan not the corporate plan, is that correct?

MR SINGH: That is correct, Mr Chair, the funding plan would form part of the corporate plan.

CHAIRPERSON: Yes, yes, that is my understanding.

MR SINGH: Yes.

CHAIRPERSON: But the one that Ms Mothepu was talking about which he says you asked him – her to do, work on
10 over the weekend, which you rejected, was that a funding plan or the corporate plan?

MR SINGH: Mr Chair firstly ...[intervenes]

CHAIRPERSON: And I accept that the funding plan is part of the corporate plan, I just want to make sure that we are on the same page.

MR SINGH: I agree, Mr Chair, there were – from my recollection there was no corporate plan – sorry, there was no funding plan that was prepared by Ms Mothepu.

CHAIRPERSON: Yes.

20 **MR SINGH:** Over the weekend, that was rejected.

CHAIRPERSON: Ja.

MR SINGH: My recollection of events was that Mr Pillay had prepared a funding plan which I was not happy with, which I then engaged ...[intervenes]

CHAIRPERSON: Ms Mothepu.

MR SINGH: Mr Woods.

CHAIRPERSON: Ja.

MR SINGH: To facilitate and improve.

CHAIRPERSON: Yes.

MR SINGH: And that is why Mr Pillay in his affidavit states that he knew that I had requested Woods' assistance to draft the plan, hence he did not understand why I was requesting the plan with him.

CHAIRPERSON: Okay, okay.

10 **MR SINGH:** And hence my paragraph 35 to say Mr Pillay was at all times – at all relevant times aware that the funding plan was his responsibility.

CHAIRPERSON: Okay, okay, okay. It seems to me that from what you are saying, where Ms Mothepu talked about a corporate plan in regard to that weekend, as far as you were concerned, she was talking about a funding plan.

MR SINGH: A funding plan.

CHAIRPERSON: Yes. And when you talk about a plan that was the product of the efforts of all of these people
20 including yourself and Mr Pillay and Ms Mothepu you are talking about the funding plan.

MR SINGH: That is correct.

CHAIRPERSON: Okay, alright, so ...[intervenes]

MR SINGH: And the reason why I focused on that, Mr Chair, is because Regiments' speciality was the financial

environment.

CHAIRPERSON: Yes.

MR SINGH: Can capital markets and so on.

CHAIRPERSON: Yes.

MR SINGH: So they were intimately involved in the production of the corporate plan – funding plan, sorry.

CHAIRPERSON: Funding plan, ja.

MR SINGH: And they also assisted McKinsey as the – the trading development process for themselves on other
10 aspects of the corporate plan.

CHAIRPERSON: Ja.

MR SINGH: Bu their main focus was the ...[intervenes]

CHAIRPERSON: Finance.

MR SINGH: Funding plan.

CHAIRPERSON: Funding plan. Okay, alright. So – but you say the process was that Mr Pillay of Eskom treasury worked on a funding plan presented to you, you were not happy with it, you then asked Mr Wood, Dr Wood, to assist and Dr Wood, Mr Wood, was part of Regiments at that
20 time?

MR SINGH: Well ...[intervenes]

CHAIRPERSON: So Regiments [inaudible – speaking simultaneously]

MR SINGH: This identity crisis.

CHAIRPERSON: Okay, alright. Okay. And to the extent

that Ms Mothepu got involved in this plan this would have come from – she would have been asked by Dr Wood, Mr Wood. Are you suggesting that you never spoke to her directly asking her to do the plan or you might not recall that?

MR SINGH: Mr Chair, by and large ...[intervenes]

CHAIRPERSON: It might not matter.

MR SINGH: By and large most of my interactions were with Mr Wood.

10 **CHAIRPERSON:** With Mr Wood, ja.

MR SINGH: In terms of these requests.

CHAIRPERSON: Yes.

MR SINGH: I would have had interactions with other members of the team.

CHAIRPERSON: Ja.

MR SINGH: In the weekly meetings that I have mentioned.

CHAIRPERSON: Ja, ja, okay. But what you do say is that this funding plan was not Mr Wood or Ms Mothepu would
20 have worked on over a weekend or whatever the period was, was not brought to you and you rejected it. You did not reject it as such, is that correct?

MR SINGH: Mr Chair, my recollection was the efforts of Mr Pillay was rejected.

CHAIRPERSON: Yes, that is the initial one.

MR SINGH: Which then led to the engagement of Wood and Ms Mothepu.

CHAIRPERSON: Wood and Ms Mothepu, yes.

MR SINGH: And that which is ...[intervenes]

CHAIRPERSON: Came out of that.

MR SINGH: Came out of the engagement was the eventual plan that ended up in the corporate plan.

CHAIRPERSON: That you accept, yes.

MR SINGH: Yes, over this let us say seven and eight
10 week period.

CHAIRPERSON: Yes. Okay, alright, I hope that at least clarifies the position as far as Mr Singh is concerned at least. What is does result in is that as far as he is concerned, the plan that ultimately got accepted, funding plan at least, as far as he is concerned, was the product of the efforts of a number of people including Mr Pillay, Ms Mothepu/Mr Wood and himself. That is correct.

MR SINGH: Over a period of time, Sir.

CHAIRPERSON: Over a period of time.

20 **MR SINGH:** Yes.

CHAIRPERSON: I guess that obviously, Mr Seleka, you can still explore the issue that you are saying Ms Mothepu raised mainly they had no need to be involved in this because they were not adding value, Eskom could have done this, blah, blah, blah, blah

ADV SELEKA SC: Yes.

CHAIRPERSON: But explore what you want to explore, I just wanted to make sure we are – I understood what Mr Singh was saying, ja.

ADV SELEKA SC: Yes, what Mr Singh said. Yes because there is no dispute, Mr Singh, I think from the evidence of the witnesses that Eskom treasury has always been responsible to draft a funding plan that becomes part of the corporate plan. I think that is not in dispute.

10 **MR SINGH:** No, Sir. What is in dispute is the quality of the plan.

ADV SELEKA SC: Yes. Where you part ways with the two witnesses before the Commission for present purposes of the evidence I am present to you is who in 2016 did the first draft of the plan, of the funding plan. Ms Mosilo says it was Regiments which was contacted, they prepared the plan which you required them to present to you on Monday, she says she contacted Mr Pillay, so I called Mr Andre Pillay and he had no idea about Mr Singh's instruction for
20 us as the consultant to draft this funding plan because it is annually – it is performed by treasury so he had no idea that – at the funding plan because I was trying to get an extension but they then present to you:

“Over the weekend we worked alone, not with Mr Andre Pillay and we submitted without Treasury's

input. Because, if you recall, Mr Andre Pillay had no idea about the instruction to draft the funding plan. Then he says that was the funding plan you were not happy with. That is her version. Upon you saying you are not accepting that funding plan, they engage Mr Andre Pillay with his team at Treasury and that is the funding plan ultimately with your changes and suggestions, collective collaboration that gets to be used.”

10 Now that is your version.

CHAIRPERSON: And Mr Singh has responded to that version.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: So you were saying what you rejected was Mr Andre Pillay’s ...[intervenes]

MR SINGH: No, now you raise a further contradiction.

ADV SELEKA SC: Ja?

MR SINGH: Because Mr Pillay, on his affidavit, states
20 that he was under the expectation that it was them initially to have developed the plan and he could not understand why I expected him to develop the plan hence my response to paragraph 35 of my affidavit.

ADV SELEKA SC: No, but remember, Mr Pillay, is approached for the second time. This is the first time he is

approached. He gets approached for the second time after Ms Mothepu says you rejected their plan but he says you asked him, Mr Pillay, he says you asked him to intervene and he did not ask but why are you asking me because you had asked the consultant to do it. Remember that is his version.

MR SINGH: Mr Chair, as it relates to Mr Pillay's version I would have to respectfully request that I get dates and Ms Mothepu's dates, the Monday, which date is it. The Friday,
10 what date is it? So I can then fit into the timeline of the emails that we have referenced in my affidavit.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think that should be fine.

ADV SELEKA SC: Ja, we can fine that. We will ask – have t ask them. Mr Pillay's evidence I did not lead, he came before us here.

CHAIRPERSON: But what you need is the transcript of their evidence and their affidavits, what do you need?

MR SINGH: Mr Chair, I think I understand what Mr Pillay
20 has asserted.

CHAIRPERSON: Yes.

MR SINGH: If I have I misunderstood what Mr Pillay has asserted then my response here is probably incorrect.

CHAIRPERSON: Yes, yes.

MR SINGH: The assertion that Mr ...[intervenes]

CHAIRPERSON: Seleka.

MR SINGH: No, what Ms Mothepu is making.

CHAIRPERSON: Oh, Ms Mothepu?

MR SINGH: Yes. Is making relating to her role, I am requesting that we understand that Friday and that Monday, which are those dates.

CHAIRPERSON: Oh, okay.

MR SINGH: So I can then understand how does it interrelate with Mr Pillay's version which I have already
10 commented on.

CHAIRPERSON: Okay.

ADV SELEKA SC: Okay.

CHAIRPERSON: The dates might or might not be in the affidavit in the transcript, hey?

ADV SELEKA SC: No, they are not in the transcript, Chair.

MR SINGH: Mr Chair, else it is just a random Monday and a Friday.

ADV SELEKA SC: The transcript is accessible on the
20 internet. Okay, we will do our best to go to Ms Mothepu and get the information but then ...[indistinct – word cut] was this, that even though Mr Andre Pillay and the treasury, Eskom treasury were ultimately the people who assisted in putting the corporate plan that was ultimately acceptable to your funding plan, she did not understand

why they were requested to do the funding plan when Eskom treasury could have easily done the job.

MR SINGH: Mr Chair, we will come back to this point and I make a point of saying I do not think we have a point of departure regarding who was involved and how they were involved. The point of departure relates to the quality and adequacy of the plan.

A two page funding plan to borrow 300 billion in funding that was included in the 2015, 16 corporate plan,
10 in my view was [indistinct]. I cannot put it stronger than that sir.

CHAIRPERSON: So what you are saying is you dispute any suggestion by Ms Matsepo that Eskom treasury was capable on its own to come up with an acceptable funding plan, because of and you say that because of what has happened the previous financial year?

MR SINGH: And having given Mr Pillay and his team the opportunity to develop the plan.

CHAIRPERSON: Yes.

20 **MR SINGH**: On my version.

CHAIRPERSON: Yes.

MR SINGH: Which was again lacking.

CHAIRPERSON: Yes.

MR SINGH: Which then required the intervention of Ms Matsepo and her team.

CHAIRPERSON: Yes. Okay.

ADV SELEKA SC: Thank you Chair. In so far as that aspect is concerned Mr Singh, that you had given Mr Pillay to do the job, I have looked at the emails that you are attaching, in order to show that the corporate plan was developed over time.

I have looked at these emails and I see that it is mainly emails with Mr Andre Pillay, between you and him and he is saying I have incorporated the changes, updated
10 as proposed and then there is Ms Maya Bana, she wants to explain how the wording should read.

But all throughout is you and Mr Andre Pillay. There is once an email that came from a gentleman from McKinsey through Mr Andre Pillay and it said, it reads:

“Please find attached comments from Anoj, re the funding plan. Also attached are the DPE comments on the overall plan. They have some comments on funding. We can help with making the changes. I will give you a call to
20 discuss the comments, and where you want us to help. Regards.”

The emails are replete with Mr Andre Pillay communicating with you. Nowhere is Regiments.

MR SINGH: Mr Chair, there is a simple explanation for this.

ADV SELEKA SC: Yes.

MR SINGH: As I mentioned to you, in the Monday meetings there was an integrated meeting that brought together a number of streams. In that streams you would have had Ms Matsepo and her team or Dr Wood as the case may be, who was whoever was available.

[indistinct] that you refer to the McKinsey guy, he would have been there. Dr Vice would have been there. Mr Sega would have been there. There would have been
10 all of these guys. My modus operandi was to deal with my people.

ADV SELEKA SC: Was to?

MR SINGH: Deal with my people.

CHAIRPERSON: Ja, the Eskom people when you say ...[intervenes]

MR SINGH: My Eskom people.

CHAIRPERSON: Eskom treasury.

MR SINGH: Whether it was Eskom treasury, whether it was Eskom finance or whether it was ...[intervenes]

20 **CHAIRPERSON:** Ja, but Eskom ...[intervenes]

MR SINGH: But Eskom people.

CHAIRPERSON: Staff, ja.

MR SINGH: Yes. So yes, the if you look at other emails relating to other streams, you would find it going through the respective responsible people relating to that area.

For example, primary energy would go to the primary energy person.

Yes, there will be discussions there. I would give feedback, but I would give feedback to both the consultant as well as the Eskom person, but it was the Eskom person's responsibility to make sure that the plan was delivered or any aspect relating thereto was delivered.

Even if you look at the MSA for example. MSA was coupled. There was an Eskom person and a consultant.
10 Whenever we engaged, we engaged with the Eskom person, as we would do originally from this morning. So it does not surprise me that those comments are directed to Mr Pillay in any way, shape or form.

The reason why we have attached those emails Mr Chair, was because Mr Pillay also tried to contribulise[sic] the impact that Trillian / Regiments had had on the corporate plan and more so to suggest that the input that he was receiving from them or from me for that matter, were surreal.

20 I am saying over a period of seven versions, you cannot suggest that those were trivial. Secondly, if you look at the comments that are referenced in the first email, there are fundamental and significant changes that were required to the plan.

Whether that was directed at Regiments or at

treasury, it is equally damning, because you have a consultant that is supposed to be helping you fix it, yet you receive a perfunctory product and you have Eskom employees that are being paid to use the same product and it is still performative.

So from that perspective whether the emails were directed to them or not, they were part of the process.

CHAIRPERSON: But is there not something that must take somebody [indistinct] professional to come to a forum such
10 as this and say with the whole world listening, when I was part of that team working on that project, I was not adding any value.

What would make Ms Matsepo come before the Commission and say that about herself and the team if indeed they were adding value? What would you say?

MR SINGH: Mr Chair, I cannot speak for Ms Matsepo or her motive, but what I can say for myself, is that on objective evidence that I have spoken to you about and presented here today, Eskom was not in the position
20 ...[intervenes]

CHAIRPERSON: They were adding value?

MR SINGH: They were adding value in that Eskom was not in a position to produce this plan. Mr Chair, I can tell you categorically if I have a view that Eskom was in a position to develop the plan, I would have not gone to the board

and asked for 100 million rand to be spent on preparing a plan.

If that was the case where I would just want to spend money, the next corporate plan that we developed, I would have got McKinsey and Trillian to help us again. Yet, because we went through the process that created the basics, that created the template in 2015, 16 and Eskom now understood the extent and the quality that was required for an organisation as complex as this one, we
10 were able to produce the plan ourselves.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Ja, Mr Singh a couple of things but let me say this. The emails again you say the first email, the comments are substantial, but when I look at the first email which was from you to Mr Andre Pillay and others, it says
27 January 2016:

“Hi guys. Overall comment on the funding and financial plan is that both of, both of ...”

I think there is a word either missing there:

20 “Lack and overall strategy.”

So let us start here:

“Other than the detailed comments sent under cover of previous emails. Maya, the list of issues we have with national treasury must be dealt with in the CP. Let us address this

ASAP. Further comments will follow in due course.”

That is on page 705.

MR SINGH: Seven zero five?

ADV SELEKA SC: Ja. Ja, 705.

MR SINGH: So Mr Chair ...[intervenes]

ADV SELEKA SC: So what we do not see are the substantial comments you are talking about.

MR SINGH: Mr Chair, with all due respect. If I received
10 an email like this from my boss ...[intervenes]

CHAIRPERSON: Sorry, let me go to the email. Where about is it?

ADV SELEKA SC: Page 705. Eskom Bundle 16.

CHAIRPERSON: Okay. Yes, I am there. Do you want to repeat your question Mr Seleka so that I will appreciate Mr Singh’s response?

ADV SELEKA SC: Yes, so Mr Singh was saying, if you see the first email I will make substantial comments. So this is the first email in the sequence of the emails you have
20 attached. So I was saying I struggle to see the substantive comments you were mentioning to the Chairperson.

CHAIRPERSON: Yes Mr Singh, what is your answer?

MR SINGH: Mr Chair, I think again one has to appreciate the purpose for which a corporate plan is put together. The purpose of the corporate plan is to provide strategic

direction to an organisation, over the next five years as a state owned company and it is a requirement of the PFMA.

This comment, as in that context, basically says we have a performatory plan. Because it lacks overall strategy. There is no strategy relating to where we are going, so it is fundamentally broken. So if you wanted me to write a long email of 50 pages, to suggest that the plan was performatory, I did not need to do that.

Because there was no strategy associated with the
10 plan, so where were we going? So that was, and as I was going to say if I had received an email like this from my boss, I would have been shocked, shattered and bewildered.

ADV SELEKA SC: Yes, I am not ... I do not know whether you answered the question.

MR SINGH: I did sir.

ADV SELEKA SC: Where?

MR SINGH: I said the extent of the email ...[intervenes]

ADV SELEKA SC: Yes.

20 **MR SINGH:** Should not reflect the effect of the email.

ADV SELEKA SC: Oh.

MR SINGH: The fact that it is two lines, does not mean that it is not impactful, and that is what I was trying to explain to the Chairperson.

ADV SELEKA SC: Oh.

MR SINGH: Is that the strategy, the purpose of a corporate plan is to provide strategic direction for a state owned company over a five year period.

ADV SELEKA SC: Yes, no I hear ...[intervenes]

MR SINGH: So to the extent that it lacked overall strategy, you are not even in the starting block sir.

ADV SELEKA SC: You are not?

MR SINGH: You are not even in the starting blocks as it relates to the purpose of the corporate plan.

10 **ADV SELEKA SC:** Ja.

MR SINGH: And more so Mr Chair, with all due respect, the two most important portions of any corporate plan, is the finance plan and the funding plan. If you do not have a view of where the organisation is going financially or whether it can actually fund its activities, there is no point in putting together any other portions of the plan.

CHAIRPERSON: Well, I see Mr Seleka, that in the next page that is 706, there is an email from Mr Singh ...[intervenes]

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: To Mr Pillay and others, where in the first line he says:

“The current funding is not coherent and uninspiring ...”

I guess is uninspiring he means:

“And does not give comfort that the funding will be raised.”

That would be consistent with your criticism of the plan?

MR SINGH: That is correct Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: So, and I see Mr Eric Woods is also in there.

MR SINGH: Yes sir.

10 **ADV SELEKA SC**: So that goes to, your comments goes to all of them?

MR SINGH: Yes sir.

ADV SELEKA SC: Your internal people and the consultant?

MR SINGH: Yes.

CHAIRPERSON: And I think one can refer to your second paragraph 2. You have got two paragraphs 2 in that email. But the second one, in the second one you say:

20 “Why do we say the 335 billion rand is doable if last year we said we cannot do 237 billion rand.”

MR SINGH: That is correct Chair. Mr Chair, and in that line now that you pointed it out encapsulates the thinking and understanding of Eskom at the time, which obviously was the previous year. Now I understand the purpose of

the corporate plan.

Certainly from where I sat as the CFO it was my primary document to engage with relevant stake holders, primarily in the finance area, in the funding area. So we presented it to banks, to rating agencies, to potential funders.

It actually created the basis from which we launched international bonds and the like. Now we prepared a two page plan, borrowed 235 billion and in the
10 plan itself we say to potential funders by the way we do not think we can raise 237 billion.

That was the context within which this team produced the previous plan.

CHAIRPERSON: In paragraph 9 you say, that is at page 707:

“What is our plan B for the expensive USD funding and how do we reduce cost of [indistinct] and swapping. The plan must be robust, coherent and must provide confidence
20 that all risks have been considered and the plan has been de-risked and is executable.”

Okay, okay. No, I just ... those features of that email caught my attention.

MR SINGH: Yes Chair.

CHAIRPERSON: Ja.

MR SINGH: So the Eskom internal team just got their salaries, the consultants got 30.6 million.

ADV SELEKA SC: Sorry, I could not hear you sir?

MR SINGH: The Eskom internal team, they simply got their monthly salary. A consultant got over 30.6 million. But so did I, I also got my salaries.

ADV SELEKA SC: Say again?

MR SINGH: I also only got my salary sir.

ADV SELEKA SC: You also?

10 **MR SINGH:** Only got my salary.

ADV SELEKA SC: Oh, you also only got your salary?

MR SINGH: Yes.

ADV SELEKA SC: So why did you give the consultant over 30.6 million?

MR SINGH: That was a contractually agreed value sir.

ADV SELEKA SC: Before they rendered services?

MR SINGH: Mr Chair, the contract was concluded at the 98 million that you pointed out this morning and the contract allocated 30% of the contract value to the BEE subcontractor.

20 **ADV SELEKA SC:** Ja, and that contract we saw that did not exist.

MR SINGH: Mr Chair, I would like to correct Mr Seleka. I think I made reference to it this morning.

ADV SELEKA SC: Yes.

MR SINGH: That the letter of acceptance Mr Chair, even in the absence of the contract, serves as the contract, based on the wording of the letter of acceptance.

ADV SELEKA SC: The letter of acceptance serves as a contract? Is that what you are saying?

MR SINGH: Yes sir.

ADV SELEKA SC: That is on page 650.

MR SINGH: Six?

ADV SELEKA SC: 650.

10 **CHAIRPERSON:** Well, if I am correct in my recollection of what you were talking about in the morning and if that is what you are talking about, obviously the fact that there was an acceptance of the offer of award, does not help if the policy of the company or the requirement is that there must be a contract.

ADV SELEKA SC: Yes sir, I agree Mr Chair.

CHAIRPERSON: You were mentioning what you were mentioning I guess, in mitigation. To say you plead guilty so to speak to saying well, there was no contract and you
20 were supposed to ensure that there was a contract before we could pay, but you know there had been these developments.

That is what you were saying, is that right?

ADV SELEKA SC: Mr Chair, if you would allow me?

CHAIRPERSON: Yes.

ADV SELEKA SC: I will just read a provision of
...[intervenes]

CHAIRPERSON: Of course I am using plead guilty, not
seriously, ja.

ADV SELEKA SC: No, if you allow me Mr Chair, I would
read a, on page 651 of the letter of acceptance?

CHAIRPERSON: Yes.

ADV SELEKA SC: “We confirm that a contract will exist
between Eskom and McKinsey and Company
10 on the above basis, which sets out the terms
and conditions. Please indicate your
acknowledgement thereof by signing below and
deliver the undersigned.”

That is which then, on the next page, which is 652
we record the following:

“We acknowledge receipt of your notification of
acceptance, dated 29-09-2015, confirming that
a contract will exist between Eskom and
McKinsey and Company from 1 October 2015
20 or soon thereafter.”

CHAIRPERSON: I take it that you read that to emphasise
the correctness of the proposition I was putting to you.

MR SINGH: Yes sir.

CHAIRPERSON: That you are pleading guilty to making
payments when there was no contract, but you were saying

in mitigation look at what the position was.

ADV SELEKA SC: If you were ...[intervenes]

CHAIRPERSON: Ja, it is okay, alright.

ADV SELEKA SC: Ja, because it says it will, it will. Page 650, there is contract, the terms and conditions of the NEC professional services contract will apply, which is then the one you referred us to on page 653 and page 656 says:

10 “Notwithstanding anything contained herein,
 this agreement comes into effect on the date
 when the tenderer receives one fully
 completed original copy of this document, as
 the NEC, including the schedule of deviations.”

 The funny thing is, this form is not signed. What they signed is the deviation page, but they did not sign the contract part on page 656. That is the form that should be signed and sent back.

MR SINGH: Indeed sir.

ADV SELEKA SC: It seems to make it even worse.

20 **MR SINGH:** Well, there is a formal offer and acceptance
 on page 606, if that would satisfy you sir.

ADV SELEKA SC: No, but it says the NEC terms will apply, which is this document.

MR SINGH: But form 606 which is form and acceptance, is part of the NEC contract, is it not?

ADV SELEKA SC: No. It is a separate document. It is on

the Eskom, you can see it is on the Eskom ...[intervenes]

MR SINGH: The contract starts on page 1, on 604 and it says page 1.

CHAIRPERSON: I am sorry sir. The 606 that I am looking at does not seem to be the same as the 606 that the two of you are looking at. I am at Bundle 16.

ADV SELEKA SC: Yes, Eskom Bundle 16.

MR SINGH: No, no I am, sorry sir. I am reading the red numbers instead of the black ones.

10 **CHAIRPERSON**: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

MR SINGH: But I have done well today, I have only done it once.

ADV SELEKA SC: The contract, the contract starts on page 653.

MR SINGH: You attached it as Annexure A55.

ADV SELEKA SC: Yes.

MR SINGH: So that is the contract, correct?

20 **ADV SELEKA SC**: Yes.

MR SINGH: Which is the NEC professional services contract.

ADV SELEKA SC: Yes.

MR SINGH: Which starts on page 1.

ADV SELEKA SC: Yes.

MR SINGH: It then goes to page 2.

ADV SELEKA SC: Yes.

MR SINGH: On 654.

ADV SELEKA SC: Yes.

MR SINGH: And then page 3.

ADV SELEKA SC: Yes.

MR SINGH: Which is on page 655 is the form of offer and acceptance.

ADV SELEKA SC: Yes.

10 **MR SINGH**: Which is signed.

ADV SELEKA SC: Yes, by only one party.

MR SINGH: I agree, but I am just saying ...[intervenes]

ADV SELEKA SC: But the next one did not sign, on the next page.

MR SINGH: I assume that is just an administrative oversight by Mr Vice.

ADV SELEKA SC: The contract is not concluded.

CHAIRPERSON: Speak up Mr Singh, you said something but I did not hear?

20 **MR SINGH**: I am saying Mr Seleka says that the 656 which is page 4 of the contract is not signed.

ADV SELEKA SC: Yes.

MR SINGH: And I am saying ...[intervenes]

CHAIRPERSON: On mine it does look unsigned.

MR SINGH: Yes, and I am saying I can only assume that it

was an administrative oversight on the part of Dr Vice, as he signed or extensively signed.

ADV SELEKA SC: No.

MR SINGH: All the other parts.

ADV SELEKA SC: No, no Mr Singh.

MR SINGH: But the initials is there.

ADV SELEKA SC: No, no Mr Singh, go to the previous page.

MR SINGH: Page 1, page 2?

10 **ADV SELEKA SC:** Page 655.

MR SINGH: Yes.

ADV SELEKA SC: There is the form of acceptance.

MR SINGH: Yes.

ADV SELEKA SC: This page is signed by the tenderer.

MR SINGH: Yes.

ADV SELEKA SC: For the tenderer, do you see that?

MR SINGH: Yes.

ADV SELEKA SC: The next page ...[intervenes]

20 **CHAIRPERSON:** Where does it say tenderer, oh for the tenderer, ja I can see.

ADV SELEKA SC: He signs. The next page is to be signed by the employer.

CHAIRPERSON: I am sorry, I am sorry. Signature ...[intervenes]

MR SINGH: So this would have been signed by Mr

Mabelane.

ADV SELEKA SC: Mister?

MR SINGH: Mabelane.

ADV SELEKA SC: Mabelane.

MR SINGH: He signed.

ADV SELEKA SC: Sorry, sorry.

CHAIRPERSON: Let me just get this.

ADV SELEKA SC: Give the Chairperson a moment.

CHAIRPERSON: On page 655, at the bottom of that page
10 that is where there is supposed to be a signature or
signatures.

MR SINGH: Yes.

CHAIRPERSON: Then there is a signature. I think that
signature is that of Dr Vice, because below that it says
name or names and it is Doctor Alexander Vice. Then it
says capacity, director and then says for the tenderer and
then there is something written there.

It says McKinsey ...[intervenes]

ADV SELEKA SC: And company.

20 **CHAIRPERSON:** And company incorporated or whatever,
there is something there, and then the address seems to
be given and then email signature of witness, then there is
a name. So ja, so ...[intervenes]

ADV SELEKA SC: So the tenderer has signed.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes. Then you turn the page.

CHAIRPERSON: Ja.

ADV SELEKA SC: To page 656.

CHAIRPERSON: Yes.

ADV SELEKA SC: Then this must be accepted.

CHAIRPERSON: Yes.

ADV SELEKA SC: They have tendered, must be accepted by the employer.

CHAIRPERSON: Yes.

- 10 **ADV SELEKA SC:** Then you go all the way down, just before signature. There is notwithstanding anything, that paragraph, contained herein. This agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document.

CHAIRPERSON: Yes.

ADV SELEKA SC: Including the schedule of deviations if any. Then it must be signed. Signature, names, capacity and then for the employer.

CHAIRPERSON: And there is no signature.

- 20 **ADV SELEKA SC:** There is no signature there, but they signed the schedule of deviations which is the next page, but not the contract itself.

CHAIRPERSON: What do you say to that Mr Singh?

MR SINGH: Well Mr Chair, I started off by saying it must have been an administrative oversight by Dr Vice, but I will

assume that it is an administrative oversight by Mr Mabelane in that case.

ADV SELEKA SC: It is a fatal oversight.

CHAIRPERSON: And what is the page at 657?

ADV SELEKA SC: It is page 5.

CHAIRPERSON: Page 5?

ADV SELEKA SC: Yes, at the bottom of the page. But that is just ...[intervenes]

CHAIRPERSON: But how could, how could mister, how
10 could Dr Weiss sign page 3 and sign page together with Mr Mabelane without signing page 4, which had that space for signature which appears to me to be one that you can see easily.

MR SINGH: Mr Chair, again I think you are asking me to explain something that somebody else did which is difficult for me to do.

CHAIRPERSON: Ja, well I am not ...[intervenes]

MR SINGH: Having regard to the issue at hand, in terms of whether there existed a valid contract or not, if I
20 reference the paragraph that Mr Seleka has read, it says:

“Notwithstanding anything contained herein,
this agreement comes into effect on the date
when the tenderer ...”

Which is McKinsey in this case:

“Received one fully completed original copy of

this document.”

And I am assuming he received it on the 29th,
because he signs it on the 29th:

“Including a schedule of deviations, if any ...”

Which is what is on page 657. This contract was
effective the date on which Dr Weiss sent it, and I assume
the lady received it the date on which he signed it.

CHAIRPERSON: But that clause you read requires that
the original copy that he receives must be a fully
10 completed original copy and this would not have
...[intervenes]

MR SINGH: Well Mr Chair this obviously ...[intervenes]

CHAIRPERSON: ...been a fully completed one if this part
was not completed. Isn't it? If this part was not
completed the original would not be a fully completed
original copy.

MR SINGH: As it relates to the signature Mr Chair.

CHAIRPERSON: Yes.

MR SINGH: Well it depends on who signs the contract
20 first.

CHAIRPERSON: No ...[intervenes]

MR SINGH: This says it would have been ...[intervenes]

CHAIRPERSON: No, as I understand it what this clause
says is we might not care about other things in this
contract but the thing we care about for it to be effective is

that when it is received by whoever it says received it must be fully completed. In other words if it is not fully completed then it does not come into operation or it does not become effective or is not valid, but if it is fully completed but there may be some other mistake it is still effective, but the one thing that should not happen is that it should not be incomplete.

MR SINGH: So Mr Chair by incomplete you are saying that Mr Mamalane's absence through his signature on page 656
10 means it is incomplete?

CHAIRPERSON: That is what I am putting to you, that if this was not filled, was not completed, he did not sign here and put in all this information would it not mean that something that was supposed to be completed had not been completed in the document?

MR SINGH: Well Mr Chair I think that would be – that will only be the case where they have signed first but in this case there is from the evidence you have seen that they provided it to Mr Weiss to sign.

20 **CHAIRPERSON:** H'm, but when he did receive it, it would not be fully completed, isn't it?

MR SINGH: That sounds ...[intervenes]

CHAIRPERSON: Yes, you accept that is how it at least seems?

MR SINGH: Mr Chair I am not a legal person, an attorney,

but if you say so then I ...[intervenes]

CHAIRPERSON: Ja, no, no, no that is fine, it may be that – it may be that somebody would present a different argument but I am just saying Mr Seleka as I understood his proposition it was that the agreement contemplated that before it could be effective it should be fully completed and if – and he was saying this one was not fully completed, ja, okay, Mr Seleka?

ADV SELEKA SC: It is not your fault.

10 **MR SINGH:** No, no, I am not saying it is my fault sir, I am not accepting any liability associated with this. I am just putting forward an Eskom position at the time.

ADV SELEKA SC: Ja.

CHAIRPERSON: Should we take a short adjournment, I see we have gone past half past four. I know that we have an evening session.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: In terms of your plan will it be that we would start with the evening session – what is your
20 proposal, at five, at half past five or how long will you be with the next witness, the evening witness?

ADV SELEKA SC: Chair we might take one hour thirty minutes.

CHAIRPERSON: With the evening witness?

ADV SELEKA SC: Yes, I would propose we adjourn Mr

Singh's evidence now so that when we come back from the adjournment we go to the next witness.

CHAIRPERSON: Well I would like us to use as much time as we can for Mr Singh simply because we need more time for him because he has to deal with many issues. Well why don't we take maybe a ten minute break and maybe you continue for at least another 30 minutes to try and cover whatever you can cover with Mr Singh, before we go to the evening session, and of course both teams will tell
10 me, will report back to me on the suggestion that I raised with both teams.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay let us take a ten minute adjournment now and then we will come back and continue for maybe thirty minutes and then adjourn and then we go into the evening session.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Okay let us continue.

ADV SELEKA SC: Thank you Chair. Mr Singh I was saying it is not the prob – your problem that you fault that the contract is not signed but you know your only fault could be making the payment without checking that there is a contract.

MR SINGH: Mr Chair I did not make any payments so that also cannot be my fault unfortunately.

ADV SELEKA SC: But you received the invoice.

MR SINGH: Indeed Sir I did receive the invoice and I sent it to the relevant people for processing. I did not give them any instruction to not comply with any policies.

CHAIRPERSON: What does processing mean?

MR SINGH: Sorry Sir.

CHAIRPERSON: What does processing mean? You sent it
10 to some people for processing.

MR SINGH: To follow the steps that I have outlined Sir.

CHAIRPERSON: Yes.

MR SINGH: To pay.

CHAIRPERSON: Your – oh the – do they include checking if they...

MR SINGH: Checking.

CHAIRPERSON: They have a valid contract.

MR SINGH: Exactly.

CHAIRPERSON: Oh okay.

20 **ADV SELEKA SC**: Yes. But I am saying is at that stage when you receive it that you should say this check is everything in place, the contract in place. Even the services you saying were rendered.

MR SINGH: Mr Chair as I have testified before I do not think for it – it is expected of the CFO of an entity as large as

Eskom to make sure that people's whose function it is to make sure that processes and policies are followed that the CFO can do the same thing.

CHAIRPERSON: Well – well I am not sure if I would accept that because should they not report back to you to say we have checked, everything is in order before they pay? Or should you not say to them here is an invoice that we have received but this is quite a large amount I do not want the risk that Eskom might make a payment in the circumstances
10 where it would be irregular because there is no valid contract.

MR SINGH: Mr Chair.

CHAIRPERSON: And then report back that everything is in – placed before you actually pay.

MR SINGH: Mr Chair.

CHAIRPERSON: Would you not say that?

MR SINGH: Mr Chair there is a reasonable expectation of any employee in any organisation to carry out the policies and procedures of that organisation. In the case of Eskom
20 we were very clear policies and procedures as to what needed to be done as I have explained to you earlier this morning in terms how payments are processed. That as I said is an expectation that anyone has when a payment is being processed. Because there are specific people with specific functions that has specific policies and processes

that they need to follow. To the extent that there is a deviation there is an expectation then for that particular employee to come back to a relevant delegated authority to say I have a problem. That then would result in a different process that is followed where that specific person would then request that – the relevant delegated authority to approve a deviation to a certain specific policy

CHAIRPERSON: What level would – would the employees have been that would have had to check whether all these
10 steps were in place?

MR SINGH: Sorry Sir I did not hear you.

CHAIRPERSON: What is the level in the hierarchy of the organisation would the employees have been at who were required to check whether there was a valid contract or not?

MR SINGH: Mr Chair there would probably be I would say relevantly senior employees in the organisation what level exactly I am not too sure.

CHAIRPERSON: Because you see I – there is something that does not sit well with me if the position is that no matter
20 how much the amount is that is involved the CFO is never expected to ensure that before payment is made these steps – these requirements have been met. There is something that does not sit well with me there. If you say ...

MR SINGH: If you allow me to explain Mr Chair.

CHAIRPERSON: Yes. If you say – I will allow you. If you

say up to a certain amount I do not have to check it is sufficient if so and so checks. I can understand but if – and then if you say once it reaches a certain amount because the amount is quite large then I must oversee that and I must – nobody must pay that without seeing my signature that I am approving that payment can be made. Then I would understand but in terms of what you have told me so far in terms of the processes before payments are made the impression I get is the CFO never has to satisfy himself that
10 these requirements have been met. Other people, junior people to him have to do that.

MR SINGH: Mr Chair if I can fill the gap?

CHAIRPERSON: Hm.

MR SINGH: In your understanding. Mr Chair you have to appreciate that the role of the CFO or any senior executive is to establish policy and processes and monitor ...

CHAIRPERSON: And implementation is it not?

MR SINGH: I am getting there Sir.

CHAIRPERSON: And oversee implementation.

20 **MR SINGH:** I am getting there Sir.

CHAIRPERSON: Yes.

MR SINGH: So firstly we start with establishing the policy and processes. Now in Eskom's case a big portion of the how can I say compliance to policy process and procedure is automated okay. So it comes back to how the systems were

designed. So to the extent that internal audit and external audit audit the systems and are satisfied that they are – adequate controls in place to make sure that the checks and balances that you refer to are in place we have the reasonable assumption that the processes that are built into the system are checking and doing what they ought to be doing. To the extent that I have an oversight function I agree Sir that I do have an oversight and that oversight comes – function comes from again our own managers. So a person
10 that directly reports to me for example in the case I have spoken about Mr Pillay for example. Mr Pillay had a duty to ensure that his treasury environment complied with all the policies, procedures, legal acts and so on – and so forth applicable to a treasury [?] with the systems that we had provided. So my function was to provide him with the direction, the systems, the tools that he required. To the extent that he found deviation. He had a responsibility to report it to me. If there was a weakness he had a responsibility to tell me there is a weakness here we need to
20 fix this. Or again based on reports that I found maybe reports that come to if I identified a weakness it would then be incumbent upon me to again improve the environment. But our biggest source of how can I say oversight came from internal audit and external audit in any large organisation they talk about the three lines of defence which is

management, internal audit and external audit. So in that case Mr Chair that is where that assurance came from. So to the extent that there were deviations that were identified that is when we would have played a role to understand why did the deviation come about? Was it due to system override? Was it due to negligence? Was it due to fraud? And then you – then you basically go through an improvement process. If there was negligence or fraud or any of these other let us call it irregular issues that were identified in
 10 terms of the deviation you would then go through what we termed a disciplinary process for the particular 00:09:29.

CHAIRPERSON: But that is – that is after the effect disciplinary process.

MR SINGH: Yes.

CHAIRPERSON: I am looking more at measures that are put in place to minimise the chances of for example a large amount even by Eskom's standards being paid out in circumstances where it should not be paid out because there is no contract and I am saying that I would have expected
 20 that the transactions would come – would reach a level of monitoring early where it would be said you know we need our top finance person to approve this before it can be paid not junior staff and not middle management for this kind of amount – for this kind of transaction we will – we as Eskom want to rely on the judgment of our top finance person the

CFO. That is – that is where my query is.

MR SINGH: Mr Chair you are – you are – I would put it this way. As I have explained the policies, procedures and practice with an organisation as large as let us say Eskom and Transnet get incorporated into the computer system let us call it that and in Eskom and Transnet was basically the same process. Now the payments process for example let us say in this case right. In this case this was not a financial deviation this was a procurement deviation in that a
10 process – a payment was processed with a contract that was dated post the actual payment being processed. Now there could be a number of reasons for that right. Firstly they could have identified that there was this anomaly and therefore sought the required deviation and that deviation would have been on the system. So we can actually go back and find out who authorised this deviation to enable the payment to happen. So that is inbuilt in the system. So when you say you know it is post the event it is actually not post the event. Yes the disciplinary ...

20 **CHAIRPERSON:** No I was talking about the disciplinary process.

MR SINGH: The disciplinary is post.

CHAIRPERSON: Ja.

MR SINGH: But in this case.

CHAIRPERSON: Ja.

MR SINGH: In this case Mr Chair this would have been flagged in that it would not have allow the payment to happen because there was no contract yet you had a delivery note and you had an invoice. So the finance guys would have said but this cannot happen. But there would have been an intervention before that on the procurement side that would have enabled this to happen for the finance people to have processed it. So when we now go back to understand and look at the audit trail relating to the
10 transaction itself we would be able to identify what did the finance person do, what did the invoice guy do, what did the contracts guy do and who actually allowed this transaction to occur.

CHAIRPERSON: So is the gist of what you are saying that the internal policies and mechanisms at Eskom included provisions that prescribed who should check what before a payment such as this payment was authorised and you say that was not you and that person can be identified whose duty it was to check whether there was a valid contract
20 before authorising and that is the person who should have checked.

MR SINGH: That is correct Mr Chair. Mr Chair in – in my role my obligation is to make sure that there are processes, policies and procedures and practice that prevent these type of things from happening.

CHAIRPERSON: Hm

MR SINGH: And that could either be manual processes or checks or automated checks and in this – in the Eskom and Transnet environment most of the checks were automated. So – and again on your second point yes Mr Chair I can confirm that if we have to go back to Eskom and find out who overrode the system to enable this payment to happen there should be an auditor that identifies that person. And again that identification would have happened by internal audit and
10 external audit. Again then I come into play and if it happened within the finance environment and I do not discipline let us say the finance manager because this happened if it was indeed his fault then yes I take responsibility for that because then I am letting that person perpetuate.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Mr Singh but you were the gatekeeper. You asked Eric Wood – Mr Eric Wood and Regiments to offer services in respect of the corporate plan.
20 Their invoice came to you directly for the payment of 30 over R30.6 million. If anybody has to be responsible it is yourself as the finance person – the chief of finance – the person who asked for the service – the person who receives the invoice – the person who sends the invoice for processing it should be you?

MR SINGH: Mr Chair I respectfully disagree with Mr Seleka based on the discussion that you and I just had in terms of what my role and responsibility in the finance process is and I also would like to correct Mr Seleka or Advocate Seleka in that I was not the one that requested services from Regiments or ...

CHAIRPERSON: You are not the one who? Just – do not swallow your words.

MR SINGH: I was not the one who requested services of
10 Trillian. McKinsey brought their sub-contractor who happened to be Trillian or Regiments as we have spoken this morning. Yes they performed the work as we have explained this morning the invoice did come to me and I sent it to the appropriate people for them to process. Had there been a problem with this invoice it was incumbent upon them to bring it back to me and say listen we cannot pay this for the following reason.

CHAIRPERSON: Did you see the contract between Eskom and McKinsey in other words what we are seeing now?

20 **MR SINGH:** No Sir.

CHAIRPERSON: Did you see it at any stage.

MR SINGH: No Sir.

CHAIRPERSON: While you were at Eskom.

MR SINGH: No Sir.

CHAIRPERSON: So how does it happen that you are

involved in the discussions prior to coming to Eskom with McKinsey obviously this is something quite important to them that is McKinsey and maybe to Eskom as well this agreement that at that stage they wanted Eskom to buy into as I understand the position before you came to Eskom in August 2015 and ultimately they get to do the work but you do not take the trouble to say let me see what contract we have with these people because even before I came to Eskom they already wanted to brief me and tell me about what they

10 – they – what plans they have for Eskom about the future and the future included this agreement even though on your version they might not have negotiated it with you. How come you would not have wanted to see this agreement even as they were rendering the service – the services you would not want to see – you would not have been keen to see it?

MR SINGH: Mr Chair the – the – the nexus of the agreement emanated from a board resolution that was taken to authorise the delegated authority to sign the contract. The delegated authority to sign the contract was identified as –

20 as I correctly remember as Mr Matshela Koko who was at the time I think the Group Executive 00:19:55 and Commercial. So he was the de – and hence I was surprised when Advocate Seleka mentioned that it was signed by Mr Oberline. So there was no need for me to look at the contract because the contract was – the delegated authority

to actually enter into the contract was Mr Koko. The inputs of the contract was contained in the – in the board submission. The Terms and Conditions therefore was included in the board submission. It was...

CHAIRPERSON: They were included in?

MR SINGH: Sorry in the board submission.

CHAIRPERSON: Ja.

MR SINGH: That approved Mr Koko to conclude the contract. Those Terms and Conditions found its way into the
10 contract and Mr Koko – it was my understanding that Mr Koko would have then signed the – my expectation was that McKinsey together with Regiments and or Trillian delivered the corporate plan. In whatever shape, manner or form that document needed to be delivered and to understanding as I have explained to you before the process that we undertook to deliver the same – very same corporate plan. So from my perspective I knew that the corporate plan was to deliverable from the contract, they had come, they had done what they needed to do, they had delivered. And therefore I was
20 satisfied that work had been performed. Similarly on the McKinsey side. McKinsey may have sent me an invoice as well so it would have followed the same process. So equally so Mr Chair this contract is problematic for the McKinsey invoice. So again it comes back to a point as would I have had to see this agreement? Mr Chair I would not have even

considered seeing it because in my view it was a – I would have expected that the contract would have been concluded it would have been concluded for the delivery of the corporate plan – I was comfortable that the corporate plan was delivered and thereafter if the invoices had come to me I would have sent it for processing with the understanding that the processes, policies, procedures that ought to have been followed or the payment to have occurred would have been complied.

10 **CHAIRPERSON:** But what would have been the purpose of anybody sending the invoice to you?

MR SINGH: Mr Chair I think at the end of the day the service providers normally send invoices to the department or the person to whom the services were rendered.

CHAIRPERSON: So the services would have been rendered to you?

MR SINGH: Well I was basically the coordinator of the corporate plan.

CHAIRPERSON: You – you were – you were the most senior
20 person in regard to the project.

MR SINGH: Yes.

CHAIRPERSON: If we call it that.

MR SINGH: Yes.

CHAIRPERSON: Yes. And then they sent the invoice to you.

MR SINGH: Yes Sir.

CHAIRPERSON: And I would imagine that the person to whom an invoice is sent is supposed to be the person who can confirm whether what has been done is what was expected of the service provider and whether it was done correctly and I guess also whether it was done in accordance with the agreement that would be my expectation. Because you would know if the service provider had been expected or required to perform service A but it performed service B in
10 which case when you look at the invoice and it says service B was provided you say no, no, we cannot pay for that. Would you not agree with that expectation?

MR SINGH: Mr Chair I would agree with your final assertion.

CHAIRPERSON: Yes.

MR SINGH: Associated with let us say a glaring error.

CHAIRPERSON: Ja.

MR SINGH: Let us say I received McKinsey invoice.

CHAIRPERSON: Yes.

MR SINGH: And it was for Transnet work.

20 **CHAIRPERSON:** Hm.

MR SINGH: In error.

CHAIRPERSON: Yes.

MR SINGH: That would be glaring and I would say to them listen this is not within our expectation there is no need for you to send this. So let us say for example the corporate

plan. The corporate plan as per our attached in our affidavit Mr Chair both McKinsey and the Trillian invoice went to specific people that required them to sign off on specific aspects of the work that was delivered by Eskom – oh delivered to Eskom. Those individuals asserted that that services were received. Those pieces of paper or those confirmations would then flow into the system. People would then look at who and what was done and who verified what in terms of the policies and processes that I have explained.

10 And once that process was complete and everyone was comfortable they would release the payment but as you state Mr Chair if there was something glaring wrong with the invoice yes I would probably get up and say listen this is not acceptable.

CHAIRPERSON: But it might not be – it might not be what is expected of you in terms of objecting whether appropriate to paying that invoice. It might not be limited to situations where there is a glaring error but an invoice is presented to you is it not your duty particularly if the work that is alleged
20 to have been done is alleged to have been done under maybe your portfolio or if you are the ultimate person who can say no this is not what we asked for, this is not what we asked you to do. Is it not the position that whether it is glaring or not you must just satisfy yourself that they have done what was required of them?

MR SINGH: Mr Chair and I will say it again. And it relates to the corporate plan.

CHAIRPERSON: Yes.

MR SINGH: There was one deliverable the 300 page document. The 300 page document was delivered. It was delivered through a process of these integrated meetings that used to happen on a weekly basis.

CHAIRPERSON: Is that – ja.

MR SINGH: That I have eluded to earlier. So through those
10 meetings I had a view that whatever this contract envisaged was being actioned you see as it relates to me. So when the invoice arrived it was not an unforeseen expectation that the work was not delivered. If that was the case I would have not even sent the invoice for processing you see and I will give you another example shortly. If I was satisfied that there was reasonable performance it would then go for processing. In terms of the policies and processes and practices that I have mentioned no one has the authority to override those processes, policies and practices other than
20 following a specific process else it is impossible to police the volume of transactions that an entity such as Eskom or Transnet would have to process. The other example that I would like to use Mr Chair is take for example the external auditors. External auditors provide services over a period of time. They perform it in terms of a budget right. Invariably

budgets sometimes does not meet actions and they are overridden. Who gets that invoice? The CFO gets the invoice. Who do they report to? They do not report to me they report to the Audit Committee. I do not have authority to approve that invoice until the Audit Committee sits and deliberates on its fees you see. Now even on that invoice that comes in order for the Audit Committee to form a view because we are intimately involved with the Audit process we know that they had problems in this area or they overspent
10 in this area or there was a complex issue there or you know the Eskom people did not provide the information on time. So when they provide us reasons for those overrides because we are intimately involved in those processes we are able to validate those reasons and in my case Mr Chair the – the external audit liaison - let us call it the head of the financial reporting function. We first have to look at that invoice to understand what are the deviations, to what extent are we comfortable with the reasons that are being report. Once we received those reasons, those reasons
20 are then analysed again by myself.

I feel the reasonable, we then submit an application to the Audit Committee to recommend the fees or deviations there from and once that approval is received, we then consider approving the payment. So that is the process that one would follow for invoice

processes.

CHAIRPERSON: But basically, you are saying that in regard to this project you were quite involved in it. I think you said there were these monthly meetings.

MR SINGH: Weekly.

CHAIRPERSON: Weekly meetings, where you met with a large group of people involved. I guess that at such meeting, you would have played a leadership role to guide where everything should be going because I take it in the
10 absence of somebody, like, the Group CEO, you would have been the most senior Eskom officials at such meetings.

MR SINGH: That is correct, sir.

CHAIRPERSON: Yes. So you would have been given guidance as to whether the project was still going in the right direction and so on and so on. and this went on for about how many months before it was finalised, this plan?

MR SINGH: As I said, Mr Chair, I think the initiative started probably in October.

20 **CHAIRPERSON**: Ja.

MR SINGH: And run right up until mid-February, I think.

CHAIRPERSON: Yes, that is about four months or so and you are meeting weekly?

MR SINGH: Well, the meetings continued over a matter, of course.

CHAIRPERSON: Yes, yes. Ja, ja. It is just, your level of involvement gives me some difficulty when I think that you were not supposed to see the contract about something you were so intimately involved. You were not supposed because that is what you have said. You said you are not supposed to see the contract. It just seems odd to me that – I do not know whether the CFO is the second most senior person in the organisation. Is that correct?

MR SINGH: Mr Chair, the reason for the CFO being the
10 second most senior person in the organisation
...[intervenes]

CHAIRPERSON: Yes?

MR SINGH: ...is the reason why I would not spend the time at looking at ...[intervenes]

CHAIRPERSON: Well ...[intervenes]

MR SINGH: ...the context.

CHAIRPERSON: ...you might put that way but I would have thought that the second most senior official of an organisation, if he gets intimately involved in any project,
20 then one thing he would like to make sure is that there is proper – there is a proper contract if there is supposed to be a proper contract because you would not like to be embarrassed to find that he was so intimately involved in this thing and yet there was no valid contract.

MR SINGH: Mr Chair, again, coming back to my original

statement. There are policies, processes and practises that individuals within Eskom are supposed to comply with. That is my obligation to put in place.

The board, for example Mr Chair, in terms of the PVA, is required to put in place processes and practises and policies to govern the financial environment. It is not a requirement for them to look at everything of a transaction.

CHAIRPERSON: No, no. I understand that the board
10 might not be required to look at every transaction and I understand that not everything goes to the board, you know, in terms of transactions.

It might depend on the monetary value of the transaction but if you being a senior person, as senior as you were, CFO, were so intimately involved in a project that every week you were taking your time to attend meetings over four months, that you should be so involved and yet not think it is necessary to see whether there is a valid contract here.

20 That sounds a little odd to me. Maybe I am unfair to you but that is just giving you what I am thinking. And maybe I am going to change my mind when you have said what you might wish to say.

But that seems strange to me because I would think that you would say: Well, before I get too involved,

where are the founding documents that you have been placed about this, what are our obligations? And because also, I can only give guidance if I know what our obligations are.

MR SINGH: Hence Mr Chair, I began from the founding documents relating to the contract.

CHAIRPERSON: H'm?

MR SINGH: The founding documents were – was the submission to the board which I co-signed with Mr Koko.
10 Mr Koko was the delegative authority to sign the contract. I was at all material times aware of what the deliverables of the contract was which was the Corporate Plan and it was a fixed price contract and it was over hundred million, okay.

I knew that much because of the submission to the board. As you said, Mr Chair, I was intimately involved in the project. Therefore, when the invoices arrived, it was not as if the 30% that we paid to Trillian or the 70% that we paid to McKinsey was a surprise because it was within
20 my expectation at the time, that we were going to have to pay 70% to McKinsey and 30% to the subcontractor whoever they may have been.

The fact that I was intimately involved in the project, let us call it that, also gave me comfort that the work had been done notwithstanding, Mr Chairman, the

invoice too went through the normal approval processes where each lead had to sign off to say but the work was done.

And consequently Mr Chair, as I have said, that was what my responsibility was to make sure that there are policies, processes and procedures in place that people adhere to, to the extent that there are deviations, I have a responsibility too, understand why they are there and do something about it.

10 **CHAIRPERSON**: H'm. Mr Seleka.

ADV SELEKA SC: Ja. I have a few questions Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: And then we can adjourn so that we can start with Mr Pamensky.

CHAIRPERSON: Ja, okay alright.

ADV SELEKA SC: Mr Singh, a couple of things. If Mr Koko was authorised to sign and not Mr Mabelane, and as you say, you were surprised to Mr Mabelane having signed, that means his signature there, even he had
20 properly and fully completed that form, we talked about earlier, it would have had no effect to the... I see you are laughing.

MR SINGH: Ja.

ADV SELEKA SC: You know the answer to – you know the question – you know the answer to it?

MR SINGH: All I can say, it was not me.

ADV SELEKA SC: [laughs] It was not you.

MR SINGH: No, sir. ... Oh, yes, I think I just need to – I know it was – I am not too sure if it was delegated to Mr Koko as his name or his position. If it was in his – they normally delegate in terms of the position. So they delegate to the CFO or the CE and so on.

There was an organisational change at some point in time where commercial was taken out of as a
10 Group Executive, Technology and Commercial.

So that may have been the reason why Mr Mabelane eventually signed because as you would see, the letter of acceptance was actually signed by Mr Koko.

ADV SELEKA SC: That is one. Number two. I am a bit confused by your evidence. Earlier said, your version was, Mr Pillay had drafted the proposal – I mean, a plan which was not acceptable to you.

Then you went to Mr Eric Wood and you said please assist. When you were reading from your affidavit
20 you said there was nothing untoward that. I say, yes, I am not suggesting that.

So you went to them and you asked them to assist you with the Corporate Plan on that version.

MR SINGH: Again, I may be missing the point, sir.

ADV SELEKA SC: No, I am only reiterating what you

said.

MR SINGH: Oh, okay. So there is a point to come?

ADV SELEKA SC: Yes.

MR SINGH: Okay.

ADV SELEKA SC: That you went to them and you asked them to assist you with the Funding Plan. That is your version, is it not?

MR SINGH: Correct.

ADV SELEKA SC: Yes. So then, that is why I am saying
10 to you, and it emphasis the point the Chairperson is trying to make with you. If you approached them and you asked them to assist you with the Funding Plan, you then were the person, of all the people, who should make sure that there is a contract in place. And that is why I am saying to you that you were the gatekeeper. Let me hear your comment.

MR SINGH: Mr Chair, in terms of commenting to Mr Seleka's point. I would reiterate. Eskom awarded a contract to McKinsey for the compilation of the Corporate
20 Plan. McKinsey choice their subcontractor, in this case being Regiments/Trillian. They decided the work that was allocated between the parties in terms of the 70/30 split.

Because of Regiments' technical skill in the financial environment, they awarded the finance aspects thereof which included the Funding Plan. As I have stated,

Mr Chair, I had done what I was required to do in terms of my fiduciary duties relating to the delivery of services under the Corporate Plan.

I put in place processes and procedures and policies to make sure that all payments followed a certain standard as was accepted by internal and external, as it is my duty under the PFA, as a board member.

Those policies and procedures are supposed to be adhered to by those very specific employees. That was
10 what my gatekeeper role entailed. My gatekeeper role did not entail me scrutinising every single invoice and every single contract.

ADV SELEKA SC: But we are talking one invoice here and one contract.

MR SINGH: It does not matter, sir.

ADV SELEKA SC: Why does it not matter?

MR SINGH: Because this contract is not special. I fail to see the specialness which this contract is being dealt with.

ADV SELEKA SC: It is the Funding Plan. You were
20 responsible ...[intervenes]

MR SINGH: So let us talk about the R 70 million that we paid to McKinsey.

ADV SELEKA SC: Let us talk about?

MR SINGH: Let us talk about the R 70 million that we paid to McKinsey.

ADV SELEKA SC: R 70 million?

MR SINGH: That emanated from this contract.

CHAIRPERSON: What R 70 million is that? Is that to Eskom?

MR SINGH: No, sir. This contract, as you pointed out correctly this morning, was R 98 million contract where we thought it was R 98 billion.

CHAIRPERSON: H'm?

MR SINGH: That split of, let us call it a hundred million,
10 was split 70/30 between McKinsey and its subcontractor.

CHAIRPERSON: H'm?

MR SINGH: So if we paid R 30 million to, let us call it Trillian, then conglomerate we paid R 70 million to McKinsey.

CHAIRPERSON: H'm?

MR SINGH: So the issue that they raise around the contract is equally applicable for both service providers.

CHAIRPERSON: Ja, of course.

MR SINGH: Yes.

20 **CHAIRPERSON:** Of course. But does that make a difference?

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

CHAIRPERSON: Yes.

MR SINGH: ...I had done what I believed to be my fiduciary duties. My fiduciary duties was to establish the

system of control.

CHAIRPERSON: Yes. No, but insofar as you say: Why are we talking so much about the 30% ...[intervenes]

MR SINGH: Well, in this contract ...[intervenes]

CHAIRPERSON: ...and there is 70%. But the points that are being made are not really dependent on the 30%. Whether they apply to the entire payment to both entities.

ADV SELEKA SC: H'm.

MR SINGH: I concede that point, sir.

10 **CHAIRPERSON**: Yes, yes.

MR SINGH: But the point that I am trying to make is. This contract in its entirety, the 70% and the 30% is not special in any way, shape or form. It is a normal contract that should have went to the normal processes that were established within Eskom for it to either be formulated in the first place, approved, signed an implemented and ultimately paid.

For each one of those processes, or how can I say it, functional areas, there are specific rules, processes, policies and procedures that needs to be
20 followed by a specific individual.

CHAIRPERSON: Ja. No, no, no. That is fine. I think you have made that point. Let me go back what may link with Mr Seleka's point but maybe not necessarily. I think what you are saying, and you must – I just want to confirm that I

understand you correctly.

The version that you are putting up is. Yes, I had... Yes, McKinsey was very keen to brief me on certain matters relating to Eskom even before I got seconded to Eskom and I attended the meetings that I attended with them.

Yes, I got involved in this project of the Funding Plan, Corporate Plan, Funding Plan. I got involved and I got very involved. Yes, I asked Regiments to actually
10 render the service. Yes, I attended with the meetings over four months with a number of people on this project. Yes, I saw the invoice. It was sent to me. Yes, I passed it on to other people at Eskom for them to do their part.

But notwithstanding that level of involvement, I was unaware, I have never seen the agreement or contracts between Eskom and McKinsey. That is what of what you are saying. Is my understanding correct?

MR SINGH: Let me put it to you this way, sir.

CHAIRPERSON: Yes, ja.

20 **MR SINGH**: The initial part of where you say I met with McKinsey and Regiments prior to me... [Speaker's voice drops – unclear]

CHAIRPERSON: H'm.

MR SINGH: I did do that but you need to understand the context within which it happened. The context within which

it happened was... and getting me to a point where I will be comfortable to take on a challenge as... Eskom and hit the ground running.

We had a liquidity challenge in January 2015 where we had no – where there was no possibility of paying salaries. So that is the context within which those meetings happened.

Mr Chair, where you specified that this project – I got very involved in this project. Mr Chair, anything I undertake, I get very involved in. So hence me saying, this thing is not special.

CHAIRPERSON: Ja, okay alright.

MR SINGH: If I do anything, I get...

CHAIRPERSON: Okay.

MR SINGH: And hence, my point being that if I was not involved in this and I received an invoice for R 500 million, the first thing I would do is call – let us say it was a new bill invoice, for example.

The first thing I would have done is call Mr Masango and said: Mr Masango, I received this invoice. I do not know. If he was not able to answer, I would say: Mr Masango, you better bring your people here to explain this thing.

So the reciprocal is actually true. If you are not involved in something you have a heightened sense of

scepticism relating to something that you see and that is what triggers the ancillary processes that you are expecting in this invoice. Thirdly, Mr Chair.

CHAIRPERSON: H'm?

MR SINGH: I have been points to suggest that I did not request Regiments to get involved in the preparation of the Corporate or the Funding Plan. It was McKinsey's initiative that was allowed it in Regiments being involved in the preparation of the Funding Plan as well as other aspects of
10 the Corporate Plan.

Passed it on to relevant other individuals, again, within the context of them having to do what they needed to do. In terms of the policies, process and procedures that Eskom have in place to ensure that the invoices are valid, accurate and complete before a payment is made and being valid, means that you have to have a contract.

In terms of not seeing the contract, Mr Chair, I think I have explained the issues associated with a heightened level of scepticism. That is when I would call
20 for it.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you, Chair. On the liquidity issue, Mr Anoj Singh, or the allegation you are making

about liquidity. I am going to give you a reference to Ms Tsholofele Molefe's affidavit, dealing with that specific aspect in response to Ms Lynne Brown's allegation.

So we will deal with that on your return. I will give you the reference and to your lawyers. It is in Eskom Bundle 13 and on page 686. It starts with – on page 688.

Now talking of her. She had been approached in 2014 in respect of the Corporate Plan, the Funding Plan which Mr Tsotsi had said the Minister says is not robust
10 enough. And Mr Colin Matjila offered the internal people to exist. Low and behold, that was Mr Salim Essa, they were to introduce him to her.

Mr Salim Essa said he will bring Regiments to do – to be the service provider in respect of the Corporate Plan, Funding Plan. They met at Monte Casino, I think. And Mr Salim Essa undertook to give a proposal in five days or Mr Eric Wood, also in that meeting at Eskom.

She says in her version, they... to give a proposal within the time they had said they would.
20 Instead, after 14-days, they gave a draft agreement to Eskom. And she said that this is not what we were promised and she refused to sign the draft agreement even against Mr Collin Matjila's assistance and some of the board members stood up for her.

She thinks, as a result of that, she got

suspended the following year and ultimately gotten rid of at Eskom. So it is surprising that under your – on your watch, the very Regiments that she had refused the year before is now appointed.

You have any comment on that?

MR SINGH: Mr Chair, as I have mentioned before. Regiments was a function of McKinsey. It was not a function of me.

CHAIRPERSON: But you paid them directly.

10 **MR SINGH**: Based on the policy and procedures ...[intervenes]

CHAIRPERSON: You did not pay McKinsey and left McKinsey and Regiments to sort out how they shared the payment. You paid them directly as if Eskom had a direct contract with them.

MR SINGH: But Mr Chair, I do not see the relevance of that to the point that Mr Seleka is raising.

CHAIRPERSON: Well, you are saying in response, in effect: Look, we had nothing to do with Regiments. They
20 were McKinsey's subcontractors. So in other words, do not bring me into the picture about Regiments.

So, but I am saying, it looks like you are saying that when it is convenient to say that but you dealt directly with them when it is convenient. You pay them directly.

You do not say: Well, they are McKinsey's

subcontractors. We have nothing to do with them. So even when it comes to payment, McKinsey will pay them.

MR SINGH: Mr Chair, with all due respect, I think we have dealt with this process in the morning as well ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: ...of saying that.

CHAIRPERSON: But that was before he brings the end of that. He is bringing ...[intervenes]

10 **MR SINGH**: No, no. I agree.

CHAIRPERSON: Ja.

MR SINGH: And I will repeat what I testified to ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...is that there is a policy, process and procedure in place that deals with payment of subcontractors directly. So I did not intervene in that process. I did not favour them in that process. I did not have anything to do with the process. The process was
20 there. It was established. They followed the process. And the payment was processed.

CHAIRPERSON: Do you recall when it was that Eskom started having this policy that subcontractors of main contractors should be paid directly by Eskom?

MR SINGH: But Mr Chair, it was not – I did not create the

past.

CHAIRPERSON: Yes.

MR SINGH: So I will assume in previous ...[intervenes]

CHAIRPERSON: When you arrived, they were there?

MR SINGH: I was given to understand it was there...

CHAIRPERSON: Yes, and you – and did you say at Transnet when you were there, there were similar policies too?

MR SINGH: Yes, Mr Chair.

10 **CHAIRPERSON:** And there too, as far as you know, they had been there before you became CFO?

MR SINGH: Mr Chair, I think the – I stand under correction but I think that policy may have been implemented by myself at Transnet ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: ...on recommendation of a procurement ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: Yes.

20 **CHAIRPERSON:** Okay alright. Mr Seleka.

ADV SELEKA SC: Ja.

CHAIRPERSON: Did you still have something to put to him or we can adjourn?

ADV SELEKA SC: Well, I think we can adjourn Chair. I will check about the police because I hear my investigator

saying he was told by Eskom officials that there was not a policy of the sorts Mr Singh has referred to, but I am not putting anything to you until I have satisfied myself ...[intervenes]

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: ...that there is or there was or was not a policy.

CHAIRPERSON: Yes.

ADV SELEKA SC: Chair, before we adjourn. My learned
10 friend has to put something on record and I am not letting her off the hook.

CHAIRPERSON: Oh.

ADV SELEKA SC: Yes.

ADV VAN DEN HEEVER: [No audible reply]

CHAIRPERSON: Okay. Well, she looks bewildered. She does not know what you are talking about. [laughs]

ADV SELEKA SC: The email.

CHAIRPERSON: Give her a clue.

ADV SELEKA SC: The Rule 3.3. Notice.

20 **ADV VAN DEN HEEVER:** [No audible reply]

CHAIRPERSON: She does not know what you are talking about.

ADV SELEKA SC: No, then it was her attorney. Rule 3.3. Notice or...[intervenes]

ADV VAN DEN HEEVER: I know what he wants me to say.

CHAIRPERSON: [laughs]

ADV VAN DEN HEEVER: He wants to me, after I already apologised to him, again apologise publicly to him. It is pertaining to Ms Mothepu's second affidavit.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: I indicated this morning that I was unaware of such a 3.3. Notice.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: It was brought to my attention
10 that there was indeed such a 3.3. Notice. So my only excuse will be, like, the dog ate my homework or it went into my junk mail but when I said it at the time, that was my impression and I accept that there was such a 3.3. Notice.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: Because it was shown to me.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: So in as much as he might not want to suggest that I try to or cast dispersions on him,
20 that was not what I wanted to do.

CHAIRPERSON: [laughs] Okay alright.

ADV VAN DEN HEEVER: It was sent on the 8th of December 2020, Chair.

CHAIRPERSON: Okay. No, that is fine. Okay thank you to everybody for your cooperation. We are going to adjourn

the day session now and I will take a 10-minutes, 15-minutes adjournment for you to set up.

ADV SELEKA SC: Yes, Chair, ten minutes.

CHAIRPERSON: Ten or fifteen?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: How much do you need? I will see 15.

ADV SELEKA SC: Fifteen.

CHAIRPERSON: If it is earlier, you will let me know.

ADV SELEKA SC: Yes, indeed.

10 **CHAIRPERSON:** Then, thereafter, we – I will come back for the evening session.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: So arrangements will be made for Mr Singh to continue his evidence in due course. There is cooperation from his legal team and I am sure him as well to try and find time when we can continue and we will try and make sure it does not take too long before he can continue. Thank you. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Good afternoon to those who were not here in the morning when I greeted everybody.

ADV SELEKA SC: Good evening, Chair.

CHAIRPERSON: Are you ready?

ADV SELEKA SC: We are ready, Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you. Mr Mark Pamensky has come back, Chair, to complete his evidence.

CHAIRPERSON: Yes.

ADV SELEKA SC: He is again legally represented.

CHAIRPERSON: Yes.

ADV SELEKA SC: I will give me learned friend opportunity to place himself on record.

CHAIRPERSON: Yes and he may do so from where he is.

10 **ADV BLOU SC:** Thank you, Chair, it is Advocate Jonathan Blou, with my junior, [indistinct] Goodman with attorney Adam Mitchell representing Mr Pamensky.

CHAIRPERSON: Thank you very much. I think I must thank you, Mr Pamensky, I am aware you that you fulfilled your promise. You had promised that you would assist the Commission to point out the location of what used to be Mr Essa's offices and I am aware that you have done so and you have submitted an affidavit, so I just want to thank you for that cooperation.

20 **MR PAMENSKY:** Thank you, Chair, I just hope you remember you this time.

CHAIRPERSON: I do remember you this time.

MR PAMENSKY: Brilliant.

CHAIRPERSON: Please, registrar, administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MR PAMENSKY: Mark Vivian Pamensky.

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

MR PAMENSKY: No, I do not.

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

MR PAMENSKY: Yes, I do.

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

MARK VIVIAN PAMENSKY: So help me God.

CHAIRPERSON: Thank you. Mr Seleka, I assume that in
leading Mr Pamensky's evidence you will also cover his
affidavit relating to the assistance he has given to the
Commission.

ADV SELEKA SC: Oh, yes.

CHAIRPERSON: Indicating where the Mr Salim Essa's
20 offices were located in 2015.

ADV SELEKA SC: Yes, Chair. Yes, Chair.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: I think Reverend should then switch off
...[intervenes]

CHAIRPERSON: The aircon.

ADV SELEKA SC: The aircon.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Thank you. Mr Pamensky, thank you very much for coming back, hopefully the evening is short, let us see whether we can finish your evidence. Chairperson, we are using Eskom bundle 17.

CHAIRPERSON: Yes, I have got it.

ADV SELEKA SC: EXHIBIT U39. Mr Pamensky, before we go into the evidence I would like you to confirm the two
10 subsequent affidavits that you have since provided to the Commission. The first of the two is on page 719.

CHAIRPERSON: Did you say page 1719?

ADV SELEKA SC: Page 719.

CHAIRPERSON: Yes. Have you got it, Mr Pamensky?

MR PAMENSKY: Yes, correct, Chair.

ADV SELEKA SC: You are there. Thank you, Mr Pamensky. That is the affidavit of:

“I, the undersigned, Mark Vivian Pamensky...”

It runs up to page 721 and above your name, Mark Vivian
20 Pamensky, on page 721, there is a signature there. Mr Pamensky, do you confirm that to be your signature?

MR PAMENSKY: Yes, I do, Sir.

ADV SELEKA SC: The affidavit is dated 10 March 2021. Do you confirm that correctness of the contents of this affidavit?

MR PAMENSKY: Yes, I do, Sir.

ADV SELEKA SC: Thank you. Chairperson, I beg leave to have this affidavit dated 10 March 2021 admitted as EXHIBIT U39.3 together with the annexures thereto.

CHAIRPERSON: The affidavit of Mr Mark Vivian Pamensky, which starts at page 719 will together with its annexures be admitted as an exhibit and will be marked as EXHIBIT U39.3.

AFFIDAVIT DATED 10 MARCH OF MARK VIVIAN
10 **PAMENSKY AT PAGE 719 TOGETHER WITH ANNEXURES**
HANDED IN AS EXHIBIT U39.3

ADV SELEKA SC: Thank you, Chair. And page 727.

MR PAMENSKY: Yes, Sir?

ADV SELEKA SC: It is again an affidavit:

“I, the undersigned, Mark Vivian Pamensky”

This affidavit runs up to page 742 but there is a signature that I want to draw your attention to on page 741 above your name, Mark Pamensky, do you confirm that to be your signature?

20 **MR PAMENSKY:** Yes, I do, Sir.

ADV SELEKA SC: The affidavit is dated 16 March 2021. Do you confirm the correctness of the contents of the affidavit?

MR PAMENSKY: I do, Sir.

ADV SELEKA SC: Thank you, Mr Pamensky. Chair, I beg

leave to have this affidavit, dated 16 March 2021, admitted as EXHIBIT U39.4 together with the annexures there.

CHAIRPERSON: The affidavit of Mr Mark Vivian Pamensky, which starts at page 727 will together with its annexures be admitted as an exhibit and will be marked as EXHIBIT U39.4.

AFFIDAVIT DATED 16 MARCH OF MARK VIVIAN PAMENSKY AT PAGE 727 TOGETHER WITH ANNEXURES HANDED IN AS EXHIBIT U39.4

10 **ADV SELEKA SC:** Thank you, Chair. So Mr Pamensky, you are aware – I have not read this affidavit, to the extent that you need to refer to it, if there is anything want to, you are free to do so, I only need the assurance from you that it does not implicate anyone.

MR PAMENSKY: Adv Seleka, Chair, it does to implicate anyone, it was the request from the Chair, Deputy Chief Justice Zondo, to please just cover those issues that you had issues with from other witnesses, so I duly did that in a short space.

20 **ADV SELEKA SC:** Oh, I see, thank you very much. Let us deal first and foremost with the affidavit on page 719 which is EXHIBIT U39.3.

MR PAMENSKY: Yes, Sir.

ADV SELEKA SC: I see that affidavit has annexures of pictures of buildings on page 722, 723, 724 and 725 as

well as 726. Can you please explain to the Chairperson what is it that we see there?

MR PAMENSKY: Yes, Mr Chair. The first picture A1 is the first building as you drive into Melrose Arch on the right hand ...[intervenes]

CHAIRPERSON: I am sorry. I think Mr Seleka, start a little earlier so that whoever reads will understand.

ADV SELEKA SC: Yes.

CHAIRPERSON: You start quite some distance because
10 you know us to know what the background is. Mr Pamensky, what is this affidavit about that you depose to?

MR PAMENSKY: Chair, this affidavit was a request from yourself to please give the location of Mr Salim's offices in Melrose Arch.

CHAIRPERSON: In respect of what period?

MR PAMENSKY: In respect of the period 2015 and 2016, if I am correct.

CHAIRPERSON: Yes. Okay, alright and you had confirmed that you knew his back offices that he used
20 during that time, is that correct?

MR PAMENSKY: That is correct, Chairman.

CHAIRPERSON: Yes, I think take it from there, Mr Seleka.

ADV SELEKA SC: Oh. Thank you, Chairperson. Mr Pamensky, probably you also need to explain how would

you known that these are the offices that belonged or were occupied by Mr Essa.

MR PAMENSKY: Chair, as you know, I was friendly with Mr Essa, so I knew exactly where his offices were.

CHAIRPERSON: Yes and you said last time you had been to his offices a number of times.

MR PAMENSKY: Yes, Chair, that is correct.

CHAIRPERSON: Thank you.

ADV SELEKA SC: You would have heard also Ms
10 Mothepu to – not Mothepu, Ms Goodson, testifying that from time to time when she was working for Trillian and Trillian occupied offices at Melrose Arch he would meet with your from time to time when you go for a smoke break. Do you confirm that to have been the position?

MR PAMENSKY: Chair, I confirm that we did have cigarette breaks or I did smoke with her.

CHAIRPERSON: Yes, what was the address – what is the address of the offices that Mr Salim Essa used in 2015 that you used to visit? I see you provide the address in
20 paragraph 5.

MR PAMENSKY: Yes, in 2015 Mr Salim Essa was in unit 11A, 1st floor, 1 Melrose Boulevard, Melrose Arch, Johannesburg.

CHAIRPERSON: Yes and that was at the offices where you used to visit him.

MR PAMENSKY: Yes, Chair.

CHAIRPERSON: Yes. Okay, alright, take it from there Mr Seleka.

ADV SELEKA SC: So then are these annexures – oh, you want to say something?

CHAIRPERSON: Okay, can I ...[intervenes]

MR PAMENSKY: Sorry, Chair, you wanted me to explain Ms Bianca Goodson and the smoking?

CHAIRPERSON: No, no, let us do it ...[intervenes]

10 **MR PAMENSKY:** No, I wanted to explain this affidavit ...[intervenes]

CHAIRPERSON: No, no, we will come to that.

MR PAMENSKY: Okay, Sir.

CHAIRPERSON: Okay, as a result of the request that I made to you to assist the Commission in order to identify the place where Mr Salim Essa's offices were located, what happened after you had left the Commission, what arrangements were made for you to show the Commission personnel where those offices were?

20 **MR PAMENSKY:** Chair, are you asking me what happened?

CHAIRPERSON: What arrangements were made for you to show the Commission personnel where Mr Salim Essa's offices used to be in 2015.

MR PAMENSKY: Chair, my attorney liaised with the

investigators.

CHAIRPERSON: Yes.

MR PAMENSKY: And we met there with my advocate, Ms...

CHAIRPERSON: Yes, if you do not remember your advocate's name, she is going to charge you for...

MR PAMENSKY: Sorry, Chair, I am terrible with names, I always have been. Isabel Goodman attended there with me.

10 **CHAIRPERSON:** Yes.

MR PAMENSKY: I think we met on the 5 March.

CHAIRPERSON: Yes.

MR PAMENSKY: Roughly at about eleven o'clock – or sorry, twelve o'clock to be precise.

CHAIRPERSON: Yes. And there were members of the investigation team of the Commission who met you there as well?

MR PAMENSKY: Yes, Chair, there were two investigators.

CHAIRPERSON: Yes.

20 **MR PAMENSKY:** Cannot remember the names.

CHAIRPERSON: Yes.

MR PAMENSKY: And there was this lovely lady here.

CHAIRPERSON: Yes. Okay, alright. And at the time you remembered the address as well or you just remembered where the offices used to be located?

MR PAMENSKY: No, I pointed out where it located.

CHAIRPERSON: Yes, you did not remember the address at the time ...[intervenes]

MR PAMENSKY: Not the exact address, no, but I knew the building.

CHAIRPERSON: Ja, you knew where they used to be.

MR PAMENSKY: Yes, Sir.

CHAIRPERSON: And you pointed that out.

MR PAMENSKY: That is correct.

10 **CHAIRPERSON:** Okay. And what building were they?

MR PAMENSKY: Chair, they were building 1 Melrose Boulevard, Melrose Arch, Johannesburg.

CHAIRPERSON: Yes. That building did it have a number of floors?

MR PAMENSKY: Yes it did, Chair, it has a number of floors.

CHAIRPERSON: Yes, what floor were his offices?

MR PAMENSKY: The first floor.

CHAIRPERSON: The first floor. Do you want to describe
20 or to tell me about some of the main features of where – of the place or part of the building where his offices used to be?

MR PAMENSKY: Yes, Chair, it is an open courtyard type of building like this.

CHAIRPERSON: Yes.

MR PAMENSKY: You would walk up the stairs to the first floor. You would walk right across to the end of that area.

CHAIRPERSON: Yes.

MR PAMENSKY: And there was his offices, number 11A.

CHAIRPERSON: Yes, yes, yes.

MR PAMENSKY: And you would open the door. There was a sitting area here too. There was a boardroom in front of you.

CHAIRPERSON: Yes.

10 **MR PAMENSKY:** And on the right hand side would be the PA and the toilets.

CHAIRPERSON: Yes.

MR PAMENSKY: You would go down and on the left would be Mr Salim's office and it had a balcony behind it.

CHAIRPERSON: Yes.

MR PAMENSKY: And on the right there was I think another office and some desks.

CHAIRPERSON: Yes.

20 **MR PAMENSKY:** And that was it, Chair, it was a very small office.

CHAIRPERSON: Yes. Now from the street, maybe the nearest street or one of the streets around, could one see the office, could one see the balcony or not?

MR PAMENSKY: Yes, Chair, from Atholl Oaklands Road you could see clearly see the balcony.

CHAIRPERSON: Yes, okay. Mr Seleka, do you want to take from there?

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: And you can refer him to the pictures.

ADV SELEKA SC: Yes, so if we go to the pictures, Mr Pamensky, are you able to point to the Chairperson the one that would show Mr Salim Essa's office?

MR PAMENSKY: Yes, Chair, if you would look at the annexure marked A1.1 you should see it there with the red
10 arrow.

CHAIRPERSON: Maybe before you do that, tell us what A1 depicts, what does it show, that picture at A1, what does it [inaudible – speaking simultaneously]

MR PAMENSKY: Oh sorry, that picture at A1 is the picture of the courtyard showing the building with ground floor, first floor, second floor and a bit of the top floor. So it is the inner courtyard and the inner courtyard is pointing at the offices, Chair.

CHAIRPERSON: Yes but you see the person who was
20 taken – I think walking there, there is a picture of somebody who was walking, I think, on A1. Can you see where that person is? he seems to be walking. Can you see that picture on A1 at page ...[intervenes]

MR PAMENSKY: Oh, A1, sorry, I was A1.1. Yes, Chair, sorry, I see that person walking in A1, sorry, Chair.

CHAIRPERSON: Yes. Now on that picture Mr Salim Essa's office would it be on this side.

MR PAMENSKY: No, Chair, it is not this side, Chair.

CHAIRPERSON: It is not this side.

MR PAMENSKY: No, it is not this side, Chair.

CHAIRPERSON: Can you see it from this side, from this picture, can you see the offices or not?

MR PAMENSKY: No, you cannot, Chair.

CHAIRPERSON: Oh, so this is just a view from the
10 street?

MR PAMENSKY: That is – I would not so – yes, you can say at the street but more within the boulevard.

CHAIRPERSON: Okay.

MR PAMENSKY: You are in the boulevard itself.

CHAIRPERSON: Okay, alright. And then I think Mr Seleka then referred you to A1.1.

ADV SELEKA SC: Point 1, yes.

CHAIRPERSON: Mr Seleka, do you want to take it from there?

20 **ADV SELEKA SC:** Yes, please. Mr Pamensky, if you can then explain what we see on A1.1?

MR PAMENSKY: Chair, what I see on A1.1, Chair, is the courtyard and you have the first ground level, you have the first floor, you have the second floor and you have got a bit of a cut-off of the top floor, Chair. You have an arrow –

sorry, Chair.

CHAIRPERSON: Yes, yes.

MR PAMENSKY: Yes, Chair, you have an arrow pointing to Mr Salim Essa's office.

CHAIRPERSON: That is a red arrow, is it pointing at Mr Salim Essa's office as it was in 2015?

MR PAMENSKY: Yes, Chair, as it was in 2015, that is correct.

CHAIRPERSON: Yes. When you went there on the 5
10 March do you know whether it is other people who use those offices now?

MR PAMENSKY: Chair, we did not walk up, he just asked me to point where those offices are, yes.

CHAIRPERSON: Point, oh. Okay, alright. Mr Seleka?

ADV SELEKA SC: Yes. Who took the photographs?

MR PAMENSKY: Chair, one of the investigators took the photographs.

ADV SELEKA SC: So then the photo marked A1.1, which is on page 723, does it show the front part or the back part
20 of the offices?

MR PAMENSKY: Chair, that shows the front part of the office, that would be the entrance into the office.

ADV SELEKA SC: Oh, this is the entrance into the office?

MR PAMENSKY: Yes, Sir.

CHAIRPERSON: There is a balcony there, is that correct?

MR PAMENSKY: Chair, there is a balcony behind.

CHAIRPERSON: There is a balcony behind?

MR PAMENSKY: Yes, Chair.

CHAIRPERSON: Oh, so we cannot see the balcony on A1.1.

MR PAMENSKY: That is correct, Chair.

CHAIRPERSON: Okay, okay. This side is on which street's side if there is a street on this side or is there no street?

10 **MR PAMENSKY:** Chair, are you talking the – his office, which side would it be?

CHAIRPERSON: Entrance side.

MR PAMENSKY: Oh, the entrance side, no, it would not be a street, Chair.

CHAIRPERSON: It would not be a street.

MR PAMENSKY: It would be in the boulevard.

CHAIRPERSON: Oh, okay, okay. No, that is already. Yes, Mr Seleka?

ADV SELEKA SC: Yes, I think the – I mean, just for one
20 to have an understanding, where are you standing here, is it on a driveway, or is it – you know, a walkway.

CHAIRPERSON: When the picture was taken.

ADV SELEKA SC: Yes, where the picture was taken where are you standing?

MR PAMENSKY: Chair, where we are standing is the

entrance just past where you sign in with security.

CHAIRPERSON: Yes.

MR PAMENSKY: So we are on the ground floor looking up like that.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: I see. Because we wanted to understand whether is it a street where cars drive or is it just a walkway?

CHAIRPERSON: I think you said it is inside the bundle.

10 **MR PAMENSKY:** Correct, Chair.

CHAIRPERSON: That side, yes.

MR PAMENSKY: So maybe this is a better way. Let us just draw a square like that, Chair.

ADV SELEKA SC: Yes.

MR PAMENSKY: Inside the square is an open courtyard.

CHAIRPERSON: Yes.

MR PAMENSKY: And around is the offices.

CHAIRPERSON: Ja, ja, okay.

ADV SELEKA SC: Oh, I see. I see.

20 **CHAIRPERSON:** Yes, no that is alright.

ADV SELEKA SC: Okay. Is there a photo that shows us the balcony behind Mr Essa's office?

CHAIRPERSON: I think we can just go – we can – I think there are only three more left, Mr Seleka, we can go to B1, B2 ...[intervenes]

MR PAMENSKY: Advocate Seleka ...[intervenes]

CHAIRPERSON: He can tell us what it shows, what it depicts. The picture which is marked B1 at 724, what does it depict or what does it show?

MR PAMENSKY: Chair, the picture is showing the balcony outside Mr Salim's office that you would enter that balcony directly through his office, like I explain to you. So you would walk into his office, you would have the boardroom, then you would go around, you have got his office and you
10 could enter the balcony via his office.

CHAIRPERSON: Oh, okay.

MR PAMENSKY: That is the only way you can get to the balcony, via his office.

CHAIRPERSON: Okay. And now the side of the building ...[intervenes]3

MR PAMENSKY: Chair, my recollection from my side, this is on Atholl Oaklands Drive, so that is the long road. So this overlooks Atholl Oaklands Road.

CHAIRPERSON: Oh, so from the – that road you could
20 see the balcony?

MR PAMENSKY: That is correct, Chair.

CHAIRPERSON: Okay, alright, okay.

ADV SELEKA SC: So it is similar in regard to annexure B1.1 on page 725?

MR PAMENSKY: Yes, it is very similar, it is just different

angle of the picture, it is a different angle of the picture.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: The please turn the page to page 726 and you can – annexure marked C, you can explain to the Chairperson what do we see there.

MR PAMENSKY: Chair, that was the building that the entire Trillian Group moved into roughly about mid-year in 2016, that would be the entrance and they would be on the very top floor over there, Chair.

10 **CHAIRPERSON:** Okay, okay, and where is that building situated, if you are able to – that is different from the building where Mr Salim Essa's offices were that we have just been looking at.

MR PAMENSKY: That is correct, Chair.

CHAIRPERSON: Yes.

MR PAMENSKY: Maybe just give you an explanation. Let us assume you enter from – sorry, excuse, I am not looking at you, apologies. Sorry.

CHAIRPERSON: Ja.

20 **MR PAMENSKY:** Just assuming you are coming from Atholl Oaklands you would drive in to Melrose Arch. On your right hand side would be Mr Essa's office at that point in time.

CHAIRPERSON: Ja.

MR PAMENSKY: And there would be other offices come in

and it would just before the gym, Chair.

CHAIRPERSON: Yes.

MR PAMENSKY: It could be just before the gym, actually opposite JB's corner.

CHAIRPERSON: Okay, okay. So JB's corner was quite close to Mr Salim Essa's offices?

MR PAMENSKY: Chair, in terms of his old office, let us say that. Old office, three, four, five minute walk. Not even three minute walk, it is in a precinct.

10 **CHAIRPERSON:** Okay, okay.

MR PAMENSKY: And in terms of Trillian's new office, it was just across the road, ten seconds.

CHAIRPERSON: Yes. Ja, okay, okay, alright. I think he has covered what you really needed in regard to locating the offices.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Unless there is something that you still want to – ja.

ADV SELEKA SC: No, that is alright. Mr Pamensky, I
20 recall the evidence of two witnesses who came here. One is Ms Daniels, the other is Mr Masango. Ms Daniels talks about an occasion where she was taken where – she drives with Mr Koko to Melrose Arch and Mr Koko meets with Mr Essa but she is left in the waiting area and Mr Koko goes into a boardroom with Mr Essa, they have a chat there and

they come out meeting her there and they leave. So your description of the offices of Mr Essa reminded me. Does that accord with that? There is a waiting area then a boardroom and she says she is left in ...[intervenes]

MR PAMENSKY: Advocate Seleka, you are spot on correct, it was exactly what I said to you. You would walk in the door, on the left you would have like a sitting area for someone, on the right you would have the PA and then directly was the boardroom.

10 **ADV SELEKA SC:** That is right, okay, thank you. Then Mr Masango talks about him being asked to go there. He sees Mr Koko standing on the balcony. They are talking on the phone in order for Mr Koko to give him the direction of where Mr Koko is and ultimately when he goes in he says he is asked to leave his phone by the receptionist and he walks into the boardroom. So does that also give a picture of prior to you entering the boardroom you would have seen a reception and a receptionist there in close vicinity?

MR PAMENSKY: Chair, yes and no, correct. But I do not
20 know if there would be a receptionist there, an actual person but yes ...[intervenes]

ADV SELEKA SC: Okay.

MR PAMENSKY: I do not know if he had a PA or what the story was there but yes, there is on the side there, there is the desk for the PA. He used to have a PA, I just do not

know if she was there or whatever. But it does accord what you are saying.

ADV SELEKA SC: Okay, thank you. Thank you ...[intervenes]

CHAIRPERSON: Mr Seleka, did Mr Masango mention the name of the street from which he could see the balcony or he could see Mr Koko on the balcony or did he not mention the street?

ADV SELEKA SC: He did not.

10 **CHAIRPERSON:** Oh.

ADV SELEKA SC: Ja, he did not because he said he did not know where is Melrose Arch, he has never been there before.

CHAIRPERSON: Ja, well he said he was going there for the first time.

ADV SELEKA SC: For the first time, yes, Chair.

CHAIRPERSON: Ja, but he said from the street he could see Mr Koko on the balcony.

ADV SELEKA SC: yes.

20 **CHAIRPERSON:** And Mr Koko I think was according to Mr Masango waving at him or directing him while they were speaking on the phone as well.

ADV SELEKA SC: Correct.

CHAIRPERSON: I think he said he was waving at him maybe to draw attention to say this where I am.

ADV SELEKA SC: Ja, I cannot recall that part but...

CHAIRPERSON: Or ja, maybe ...[intervenes]

ADV SELEKA SC: The phoning and giving directions was – I can remember that definitely.

CHAIRPERSON: Yes, yes. Okay, no that is fine.

ADV SELEKA SC: Yes.

CHAIRPERSON: Thank you very much Mr Pamensky for providing that assistance to the Commission.

MR PAMENSKY: No problem, thank you.

10 **ADV SELEKA SC:** Ja.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you. Mr Pamensky, I am going to go to your first affidavit.

MR PAMENSKY: Yes, Chair.

ADV SELEKA SC: As I do, a couple of things maybe you want to – or not a couple of things, there is one thing about your marriage you want to correct to the Chairperson?

20 **MR PAMENSKY:** It is a whole different story, Chair, scarier than you and it is in my new affidavit, Chair. As I left you, I arrived home and my wife said to me Mark, you were not single, you were married eight months earlier, Chair, and you were free to go because she was overseas in Italy and she reminded me of it one night, which was the same I accorded with guys for like two days. I immediately

emailed my attorney and gave a copy of my wife's passport. But, Chair, maybe if you give me one minute to give a bit of context, Chair. Blue Label Telecoms, Chair, is a massive listed company on the Johannesburg Securities Exchange, it has billions in turnover and it is worth billions in market capitalisation, so me and the two CEOs shared a big office, Chair, because I was single eight years before that, I used to go to most of the – 70, 80% of the all invites and the events and take people. Like that is where I met
 10 Mr Pamalo(?) at the Vodacom awards, so I used to do most of the events and do that, Chair. So when I meant single to my wife, I meant I was single before. I was married at that time so, sorry, Chair, sorry.

ADV SELEKA SC: Ja. So the correction is, Chair, when Blue Labels received the invitation to the Gupta weddings in 2013, Mr Pamensky had said that he told the CEO that he will attend the wedding because he is single at the time when in fact he was not single, he had been married for eight months, so he was married in 2012.

20 **MR PAMENSKY:** The 8 August 2012. Yes, sorry, Chair.

CHAIRPERSON: You will never forget now.

MR PAMENSKY: I am not going to forget that again.

ADV SELEKA SC: Ja.

CHAIRPERSON: Well, Mr Pamensky, in case you forgot you got married you would not be the first witness to have

forgotten when you got married who appeared before this Commission.

MR PAMENSKY: Chair, I am going to use that when I get home later.

ADV SELEKA SC: Ja, okay, that is the one thing, Mr Pamensky ...[intervenes]

MR PAMENSKY: Sorry, advocate, sorry, Chair, it is in my affidavit that got filed I have mentioned those facts to you. I do not know if you have had a chance to read my latest
10 affidavit where ...[intervenes]

CHAIRPERSON: No, no, I have seen your affidavit for the first time, I think Mr Seleka said he has not also seen it.

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: But in due course we will look at it.

MR PAMENSKY: Thank you, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Oh, so this – the marriage is addressed there?

MR PAMENSKY: Yes, Chair.

20 **ADV SELEKA SC:** The correction is made there.

MR PAMENSKY: Yes, the correction is clearly made there, Chair.

CHAIRPERSON: Yes, that is fine.

MR PAMENSKY: Sorry, just to jump in, that other affidavit, Chair, you asked certain questions that no one

could answer to you.

CHAIRPERSON: Yes.

MR PAMENSKY: And could I please deal with those to the extent they are not dealt with? And, I did, we made it very short for you.

CHAIRPERSON: Yes, yes.

MR PAMENSKY: And I hope that ...[intervenes]

CHAIRPERSON: Yes, yes. No, I remember, I remember I asked you to do that. I think the reason was just so that
10 when you come back – when you come back we could see at what extent it would be necessary for Mr Seleka to canvass those issues depending on a number of things including to what extent what you were saying depart from what other board members may have said so but the idea was that let us have something in writing that puts your version on those matters.

MR PAMENSKY: Thank you, Chair.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you. Mr Pamensky, how many
20 aspects in that affidavit are you dealing with? Is it four, five or less, mean now questions arising from the Chairperson.

MR PAMENSKY: Five.

ADV SELEKA SC: Okay.

MR PAMENSKY: It is five. I can quickly give you a

summary. One of the questions the Chair asked clearly was did we find outside interference within Eskom. That's the one question I answered.

The second question I answered was the question that you put forward to when we did we know when the suspensions and that were all coming forward.

The third one was tell you in my reasoning in more detail why I felt Mr Tsotsi would be suspended and you had a problem with the charges and I have given you the
10 evidence that shows that all the charges were adequately catered for by the lawyers and then I summarised even more the suspensions just to show the space I have got and then I think they asked some question which I answered from a small pack, I think of Johan Bester.

ADV SELEKA SC: Oh, yes.

MR PAMENSKY: Yes, your investigator asked me just to answer something on that, did it occur or did it not occur.

ADV SELEKA SC: Oh yes I remember that he had been asked that he prepares some document for you in – ja, I
20 will have to look at his affidavit. You can remind me, okay, please do.

MR PAMENSKY: Yes, Chair, Mr Bester wrote in his affidavit shortly after my appointment he came to meet with me and then thereafter – shortly thereafter he sent a – coal on a one document via Suzanne Daniels. So my

recollection is I do recall meeting him shortly before – shortly after my appointment, I had no background knowledge into coal at all and I wanted to get an understanding and he gave me a high level understanding one on one, there was nothing sinister or anything. I would do that in any environment to learn key aspects and I put another point in there, at that point in time, if it was mentioned, was that [indistinct] was not even coal or anything it happened ages later that you have got in my
10 affidavit, so there is nothing sinister there. So I answered that for you, Chair.

ADV SELEKA SC: Okay, that is – I see. That is alright.

CHAIRPERSON: How many – is it one affidavit that you have filed recently that deals with the issues that I raised in one affidavit?

MR PAMENSKY: Yes, Chair, it is just that one. It is not a long one, Chair, it is about – well, maybe not long for you, 16 pages, Chair, or really 15.

CHAIRPERSON: Mr Seleka, is that the one you have not
20 had a chance to look at?

ADV SELEKA SC: Yes, that is the one, Chairperson.

CHAIRPERSON: Because I also have not looked at it. Was it deposed to yesterday?

ADV SELEKA SC: I am not sure when it was ...[intervenes]

MR PAMENSKY: No, Chair, it was disposed (sic). So, Chair, what happened after you was we were hoping to have a conversation with Advocate Seleka, we arranged it – Mr Seleka was extremely busy and he said please just answer the questions that you did.

CHAIRPERSON: Yes, ja.

MR PAMENSKY: That was on last Friday and we managed to get this out at about seven, eight at night on Tuesday to your guys.

10 **CHAIRPERSON:** Okay. It is dated 16 which would have been, is it ...[intervenes]

MR PAMENSKY: Tuesday.

ADV SELEKA SC: Tuesday.

MR PAMENSKY: It was Tuesday evening, Chair.

CHAIRPERSON: Maybe we should take a ten minutes break for you and me to quickly have a look at this affidavit because otherwise if you have not had a chance to read it, it is not going to help much.

ADV BLOU SC: Chair, just if I might? So it deals with
20 topics which are – there are headings, sub-headings that tell you which topic is addressed.

CHAIRPERSON: Yes, yes.

ADV BLOU SC: It addressed discretely, briefly.

CHAIRPERSON: Yes, yes.

ADV BLOU SC: I am sure by reading with it if Mr Seleka

had questions some might have been answered and hopefully, ja, we can narrow the questioning and it will facilitate it. I think that is a better idea.

CHAIRPERSON: No, that is fine, ja. Okay, let us take a ten minutes, maximum fifteen minutes break and then we will have a look and then when we come back we then – and then we continue.

MR PAMENSKY: Thank you, Chair.

CHAIRPERSON: Thank you.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue. On the suspensions, Mr Seleka I wonder whether there are any, are there any issues that you still need to question Mr Pamensky on?

ADV SELEKA SC: We have not touched the suspensions with him, but I understand the Chairperson's question.

CHAIRPERSON: Well, I thought we had, but I have read his affidavit, the latest one where he summarises as I
20 understand it what he says he said in the previous affidavit.

ADV SELEKA SC: Yes.

CHAIRPERSON: It seems to me that one, he says he was against the suspension of the financial director.

ADV SELEKA SC: Yes.

CHAIRPERSON: That is one of the things he says. Two, he says the decision at the end of the board meeting on the 11th of March 2015, which is the meeting that happened I think after the minister had left, he says only three executives were going to be suspended in terms of the decision that was taken, and they did not include the financial directive.

ADV SELEKA SC: Yes.

CHAIRPERSON: That ties in with the evidence of one or
10 more of other witnesses, but there may be other witnesses who says something different. That is what he says. G3, there is no suggestion on his affidavit that he does not say anything that suggests that he knew prior to the 11th, that there were going to be suspensions.

I am saying he does not say anything that suggests that. Four, he says and this might be something that may be looked at. He says Mr Tsotsi was quite vocal with, I understand what he is saying, directive in calling for the suspension of the executives, and that he relied on
20 allegations of misconduct to say they should be suspended.

I do not know whether you have picked up anything else as far as the suspensions are concerned, that is important to canvass with him, other than maybe some of those.

ADV SELEKA SC: Not on the suspension, I think what the Chairperson has just set out is exactly what I have picked up on the suspensions.

CHAIRPERSON: Ja.

ADV SELEKA SC: I saw something interesting on the secondment of Mr Singh.

CHAIRPERSON: Yes.

ADV SELEKA SC: Which was new to me.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** Ja.

CHAIRPERSON: Yes, so maybe if there is something on the suspensions.

ADV SELEKA SC: Yes.

CHAIRPERSON: Maybe if we deal with that.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And then after that we can see what other topics ...[intervenes]

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** But as I understand it there are not too many topics, or am I mistaken there?

ADV SELEKA SC: No, you are not mistaken.

CHAIRPERSON: That you need to gather with him.

ADV SELEKA SC: No, you are not mistaken Chair.

CHAIRPERSON: Okay, alright. Then you can go ahead and let us see how it goes.

ADV SELEKA SC: Yes, yes.

MR PAMENSKY: Sorry Chair, I hope it helped.

CHAIRPERSON: Yes, no, no it helped, it did, ja.

ADV SELEKA SC: So we will free flow Mr Pamensky. If you need to refer to your document or you want me to refer to it, only at that stage I will do so. I think you have listened to the evidence of others. You have read the affidavits.

Let us start with the first one which you deal with.

10 On the 9th of March 2015 you saw the question I asked one of the witnesses and I said how come on the 9th of March when the suspensions were not talked about, which you confirmed, that you were able to make a statement that you do not want to lose the top officials or top executives.

You deal with it in your affidavit. It was strange that you would say so if the suspensions were not mentioned on the 9th of March. Are you able to explain yourself there?

MR PAMENSKY: Yes Chair, I would like to refer you to my
20 affidavit to actually see the transcript to actually put it in context.

CHAIRPERSON: Ja.

MR PAMENSKY: But fundamentally I was saying that we are going to, management time is going to be lost because they are going to be tied up doing this inquiry, this report,

and I questioned the timing of this inquiry. After that, Mr Tsotsi then said no, the management time will not be taken up because they will not be doing the inquiry.

But I just want to read one thing here Chair.

CHAIRPERSON: Yes, you may do so.

MR PAMENSKY: It would be page 8 at the top Chair, just to put it into perspective. I said:

“Disturbs me ...” ...[intervenes]

CHAIRPERSON: What page number?

10 **MR PAMENSKY:** Oh, sorry Chair. Page number 734.

CHAIRPERSON: Okay.

MR PAMENSKY: At the top. Chair, I say:

“It disturbs me specifically during this time in a crisis. We need all hands on board and we need everyone focussed. We have managed doing this report.”

That would the inquiry:

“They are doing the wall room, they are doing this and that. When are they going to get time
20 to do the actual work.”

ADV SELEKA SC: Ja, just [indistinct] part, a little bit away from you right, but this is my question is on this aspect where you are saying:

“My biggest concern is that we are going on, we are going down on this report and it is

going to take up a lot of management time, and as what we know is the skills set at the highest extra level there is a massive problem. If we lose top staff members during this critical time, it really puts the business at huge risk, and that is my biggest concern. You know, skills are very hard to find within this level and I think we really need to understand that like in a normal process, I understand that an invitation, an investigation I beg your pardon, wants to happen and I am very for an investigation should it happen, but it is all about the timing of the investigations.”

It is that loosing of skill and how to replace it that I think we want to understand why that statement was made.

MR PAMENSKY: Chair, the statement weighs in the sense that we are going to lose the management time, because they are going to be involved in doing all these elements, and it is very limited skill which we have got there and it is going to take up a lot of management’s time, because management time will be lost because they will be tied up during all the entire investigation, when are they going to do the actual work?

So that is what I meant Chair.

ADV SELEKA SC: Yes, that statement it is well, the

explanation itself is also surprising, because what was envisaged ultimately with the inquiry is that management was going to be asked to step aside. As opposed to be coming ...[intervenes]

CHAIRPERSON: Well, maybe before you go there. Mr Seleka, I am sorry ... Mr Pamensky, in that quotation at page 733, that last sentence of the first quoted paragraph, you say if we lose top staff members during this [indistinct] we had to push the business and that is my concern.

10 That does not seem to me to be talking about a situation where temporarily the skills of management are focussed on the inquiry and you could be looking at people to assist. It looks like you are talking about losing top staff members.

MR PAMENSKY: Chair, not at all. Losing top staff members to work, if you look before that ...[intervenes]

CHAIRPERSON: Ja.

MR PAMENSKY: My biggest concern going down this is going to take a lot of management's time. So I am implying
20 the time Chair. If we go through the transcript of those meetings, the first person was Mr Baloyi and he mentioned they will take up management's time.

Thereafter it was followed by Mr Khumalo who also said it will take up management's time. There were two other members who never mentioned it. I then came on

and mentioned it again about the time. Mr Tsotsi then gave me comfort on the time.

Then I went back to Mr Khumalo and said Mr Tsotsi yes, but they are still going to be tied up doing the report in the sense that the investigators are going to be talking to them. So Chair, I knew nothing about their suspensions before, it is all in relation to management's time being tied up in doing the investigation and the report.

CHAIRPERSON: Yes, Mr Seleka.

10 **ADV SELEKA SC:** Yes. So I was saying also that the inquiry, even if that is your explanation that the inquiry will take management's time, the inquiry was never intended to take management's time. In fact, it was intended to take management out, to remove them and not even have their time.

So why would you say this on the 9th of March?

MR PAMENSKY: Chair, there are two different, sorry. They are two different timelines. On the 9th of March there is no discussion about suspensions or anything, any
20 misdemeanours or anything to that extent, you know. I am told there that the Presidents instruct us to do an inquiry and I am concerned it is going to take up a lot of management's time.

That is where it is. Then on the 11th is a completely different situation and that is when the decision is made to

ask the people to step aside.

ADV SELEKA SC: Yes.

MR PAMENSKY: So there is no link between the two Chair.

ADV SELEKA SC: Ja.

MR PAMENSKY: Because there was no discussion.

ADV SELEKA SC: But here is the link, because your question of management's time being taken away becomes even more relevant if management is taken out of the
10 picture.

MR PAMENSKY: Yes, you are correct and that is why I fought for the CFO not to go. I felt it was unnecessary and I needed her at that point in time.

ADV SELEKA SC: But what about the others?

MR PAMENSKY: My perspective with the others was the minister was explaining a lot of things that were untoward, you know. Such as diesel. If you look at the transcripts, sorry. If you look at the transcript when it comes to me defending the CFO, I say there that the minister never said
20 there was anything untoward with the finance.

All the minister said was the flow of information was correct. So if my memory tries to serve me correctly that those were areas where I believe that pressure could be put onto people. I did not believe it was the CFO. Chair, the start of the meeting was where Mr Tsotsi explained this

all to us and when he explained the four departments, it was me who was the first person to say well, please can you tell me who these people are.

Then he mentions the four people and I go back and I say I understand that they can put pressure on those people, but explain to me. Tell me how is the CFO going to be put under pressure. I do not see it and that is where Mr Tsotsi said yes.

You know, that is when the CFO was excluded.
10 Later on in the discussion another member mentioned the CFO and I came back again protecting the CFO saying that I do not think it is necessary for her to leave now. So that is the events, on the other side from them leaving, was we believed that this was a short three month inquiry and that could potentially impede or slow down this inquiry.

ADV SELEKA SC: That what?

MR PAMENSKY: That could impede or slow down this inquiry as I told you in my affidavit.

ADV SELEKA SC: Yes.

20 **MR PAMENSKY:** Therefore, that was the three that could potentially interfere from my onset, because I could not see how the FD could put pressure on anyone.

ADV SELEKA SC: Ja, you see I am struggling with your reasoning. The inquiry is introduced on the 9th. You say but on your explanation you say losing skills did not mean

we are giving, we are losing them literally. It meant you are going to take their time and channel it to the inquiry.

You are concerned about that.

MR PAMENSKY: That is correct.

ADV SELEKA SC: But when it comes to it being made plain, on the 11th of March, that these executives are going to be removed, you support that?

MR PAMENSKY: I support it because Mr Tsotsi was pushing for misconduct and me explaining the
10 misdemeanours and he did indicate to us that these people could potentially interfere and impede the investigation and also my mind set was in terms of this investigation, the mere presence of them could create that impression.

So it was a completely different environment to what the meeting was on the 9th. There was no discussion or thought of suspension. The meeting on the 11th was where Mr Tsotsi was pushing for the suspension. It was the first time.

ADV SELEKA SC: Well, there is a couple of things, but let
20 me deal with this one because the board members who have come here, particularly Ms Klein and even Mr Tsotsi himself, I think Dr Ngubane, have said that there was no evidence of these executives in the past having impeded an investigation or that they would impede even that investigation.

MR PAMENSKY: Yes, there was no evidence but he was explaining misdemeanours which indicated that they could potentially interfere. That was the impression that I got. He was giving us an indication that these people could potentially interfere in the business and that was the motivation for asking them to step aside for the three month period.

I think I am missing you here.

ADV SELEKA SC: Say again?

10 **MR PAMENSKY:** I think I may be missing you here.

CHAIRPERSON: No, no you are not missing him and he is not missing you. I think, ja.

MR PAMENSKY: So Chair, Mr Seleka, on the 9th there was no even thought of the suspension. The seed was planted by the minister on the 11th and then Mr Tsotsi was motivating for them to be suspended, because he believed and he explained that they would potentially interfere in the investigation.

ADV SELEKA SC: Ja. Mister, the board members have
20 said when the minister came on the 11th, not only did the minister confirm what Mr Tsotsi said. So what the minister said was in accordance with what Mr Tsotsi said. Accorded with Mr Tsotsi.

I think you also say the same.

MR PAMENSKY: That is correct.

ADV SELEKA SC: Not only that, but she went further to plant the seed of suspensions. Do you also agree with that?

MR PAMENSKY: I agree with that. The principle was brought up by the minister.

ADV SELEKA SC: Ja. Did you express your views to the minister because she, the board members have said she mentioned four areas, which included finances which meant the FD should also be asked to step aside. Did you raise
10 your concerns with the minister?

MR PAMENSKY: No, I did not.

ADV SELEKA SC: Did you ask the minister whether there is a report that ...[intervenes]

CHAIRPERSON: Well, let me ask the question maybe Mr Seleka. At the time the minister mentioned the four portfolios and said the heads of those portfolios would be suspended, did you understand that that meant the head of the finance department, namely the financial director was also to be suspended?

20 **MR PAMENSKY:** Yes Chair, I understood the four departments were the four people, but as I said to you before.

CHAIRPERSON: Yes.

MR PAMENSKY: What I recall of that what she said we are not going to protect them anymore.

CHAIRPERSON: Yes.

MR PAMENSKY: And she did not mention any names, but it was a moot point for me, because that decision had to be determined by us.

CHAIRPERSON: Yes.

MR PAMENSKY: As the board.

CHAIRPERSON: Okay.

MR PAMENSKY: And what I found behind that was I knew the minister would support us after she mentioned those
10 comments. So you knew you had the minister's support, if you are determined to suspend any of those four executives.

CHAIRPERSON: Ja, but I think the point that arose is, or that Mr Seleka is putting forward or was putting forward earlier, was you appear to have failed strongly after the minister had left, that the financial director should not be suspended.

If you understood when the minister was speaking to the board that she was suggesting that the heads of the
20 four portfolios, including the financial director, should be suspended why did you not raise your concerns with the minister.

I think that is part of what he was putting to you.

MR PAMENSKY: Oh, sorry Chair. First of all, you know I think it is quite hard when you are talking to the minister. I

mean it is like coming to talk to you. So you do not really you know go and ask those questions. You sit and you take in everything that she says and then you have the discussion at the board meeting.

CHAIRPERSON: Okay.

MR PAMENSKY: So it was not like, I cannot be like I am out, like this. It is the minister you know. So you sit and you listen, and if I recall but I cannot hundred percent recall, but normally you ask a few questions. Chair, that is
10 something new to me.

You ask a few questions and then the minister responds. I remember the one question was why was the board meeting cancelled, because we wanted to know.

CHAIRPERSON: Okay, but Mr Seleka that is, you say after the minister had left and the board was deliberating on the issues of suspensions, you were quite vocal in saying the financial director should not be suspended?

ADV SELEKA SC: That is correct Chair.

CHAIRPERSON: Okay, Mr Seleka.

20 **ADV SELEKA SC:** So the minister has said the inquiry and the suspensions or the stepping aside. Was she asked about whether there has been any investigation into the conduct of the executives that would justify them to be asked to step aside, go on forced leave or be suspended?

MR PAMENSKY: To my best recollection I cannot

remember anyone or I do not recall, I do not remember anyone asking that to the minister.

ADV SELEKA SC: Yes. I have also said to members who have come here about or witnesses who have come here, and you would recall about the report that Mr Baloyi kept on asking for Mr Tsotsi, and Dr Ngubane's response was that well, there might be a report out there but that is not Eskom's report, we must take this decision.

You were in that meeting. Did you object to that?

10 To his view?

MR PAMENSKY: No.

ADV SELEKA SC: You heard him say that?

MR PAMENSKY: I heard him say that. It is factually incorrect that his comment disposed of that report. If you look at the end of the transcripts, the company secretary specifically says to Mr Tsotsi:

"Please can you hand the report to ARC and to PMG?"

And he says:

20 "Yes."

I thereafter asked specifically also:

"Please can you give us the report because we need it to finalise the corporate plan."

ADV SELEKA SC: So if you say his statement should not be interpreted or construed as the disposing of the need

for that report, why ... what do you think he was saying about that statement?

MR PAMENSKY: Sorry Chair, I would assume he was saying that we do not need that report, but we need to do our own report you know, we must do our own investigation, it is true. You know, you have to do your own report, so maybe you were saying we did not need that report. Maybe that was his opinion.

But in my mind we needed that report and I
10 specifically asked for that report. It was one of my deciding factors where I supported the inquiry and the suspension. So it was based on that report and I specifically asked for it, and if I recall Mr Baloyi later on, roughly about the 13th also re-asked again for the Chair, Mr Tsotsi to please give us that report.

ADV SELEKA SC: Ja, no Mr Baloyi wanted that report throughout and he got that response from Dr Ngubane, that it is not Eskom's report. We must make our own decision. But in addition to that Mr Pamensky, you know that Mr
20 Tsotsi was not charged with failing to provide the report.

It was not one of the charges.

MR PAMENSKY: Chair, that is not my understanding. Mr Baloyi was very vocal. He wanted to ensure that all the charges were included. Mr Baloyi then started communicating with their attorneys and the attorneys came

back and said all his concerns were adequately addressed.

Such as the report which was for me in my key element, was included. It was an all encompassing Clause 1.4 if I am correct and 1.5. That is what the attorneys said on a high level.

CHAIRPERSON: Well, that suggests you may be moving to the charges, Mr Seleka? If you are moving to dealing with the charges because they are a separate item.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** I wanted to ask some questions in relation to the suspensions. Maybe let me do that whether or not you are moving to a separate item.

ADV SELEKA SC: Yes, no it is just ...[intervenes]

CHAIRPERSON: It is still in the same ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Because the issue of charges comes up.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: And you will need to ask questions to the extent that you might not have done so previously.

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

CHAIRPERSON: On the charges.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I want to go back to the issue of the suspensions. Your decision to support the suspensions, were you saying that as far as you were concerned, you

were supporting the suspensions of the executives, because you said you did not support the suspension of the financial director, because of the allegations of misconduct or not, because the evidence from the other members was that the allegations of misconduct did not form the basis of the decision to suspend the executives.

Are you with them on that part?

MR PAMENSKY: I am with them on that part, Chair.

CHAIRPERSON: Okay, alright. So the issue of allegations
10 of misconduct did they play any role at all in the suspension of the executives at that stage?

MR PAMENSKY: Chair, the truth is I do not remember him explaining the three misdemeanours. You know, I ...[intervenes]

CHAIRPERSON: Is that Mr Tsotsi?

MR PAMENSKY: Mr Tsotsi.

CHAIRPERSON: Ja.

MR PAMENSKY: He did explain them but maybe they did not sink in to me, so I do not recall ... I do not recall what
20 he said number one, number two, in the meeting you can hear Dr Ben mentioning something to do with did something with someone will come out later, which implied that Mr Tsotsi did so, but if you ask me now I just do not remember Chair.

CHAIRPERSON: Okay.

MR PAMENSKY: But it would have played potentially, if I was probably in that position at that time, a secondary matter. My primary matter was they could potentially interfere or impede this investigation as I said.

CHAIRPERSON: Ja, okay. Now I am not sure that every board member has said that the final decision of the board after the minister had left the meeting that happened immediately after the minister had left, I am not sure that every board member who has testified has said that the
10 decision of the board to suspend the executives, was limited to three executives and did not include the financial director.

I seem to think there may be one or more who may have said even though during the discussions there may have been some members of the board who questioned why the financial director should be suspended, but in the end she was included among the executives suspended.

So I just want to raise this to check whether your recollection is clear, that the decision of the board to
20 suspend the executives, did not include the financial director or whether you are not sure about that.

MR PAMENSKY: Chair, I am one million percent sure.

CHAIRPERSON: Yes.

MR PAMENSKY: And it is also in the minutes. I left after that twelve o'clock meeting that ended at one thirty.

CHAIRPERSON: Yes.

MR PAMENSKY: When I left, the CFO was not included. It is as clear as day light even in the minutes. We left there was three.

CHAIRPERSON: Yes.

MR PAMENSKY: I left for the day Chair.

CHAIRPERSON: Yes.

MR PAMENSKY: I was not there.

CHAIRPERSON: Yes.

10 **MR PAMENSKY:** There were two other meetings that occurred that I got to learn from here.

CHAIRPERSON: Yes.

MR PAMENSKY: There was an ARC meeting.

CHAIRPERSON: Yes.

MR PAMENSKY: And there was the people in governance meeting, and as I understand in that people in governance meeting, the CFO was included again.

CHAIRPERSON: Ja.

20 **MR PAMENSKY:** And then there was the three o'clock meeting which was the people in governance which I did not attend and that is where Nick Linnell was introduced.

CHAIRPERSON: Yes, yes.

MR PAMENSKY: And if I recall some evidence which you guys were saying, is even the company secretary said was are you sure it was not three, but not four. So Chair, I am

a million percent sure. When I left that board meeting and if you look at the transcript, I ask again please let us make sure it is not these people.

I double check at the end.

CHAIRPERSON: Yes.

MR PAMENSKY: So it was three people when I left.

CHAIRPERSON: Yes. So on your evidence, although the minister suggested to say the least, that the financial director be included among those executives who should
10 be suspended, and I know that she was at pains to say I cannot instruct the board what to do, but you would say in the meeting that took place after the minister had left, the board did not follow her suggestion as far as suspending the financial director is concerned.

MR PAMENSKY: That is correct Chair, and the other board members supported me on that.

CHAIRPERSON: Ja. Okay. Mr Seleka?

ADV SELEKA SC: Yes, so ultimately we know that the board suspended four, but this is what is interesting.

20 **CHAIRPERSON:** Maybe put it this way. Maybe the way to put it is we know that ultimately the financial director was suspended. Is that correct?

MR PAMENSKY: That is correct Chair.

CHAIRPERSON: Yes, and her suspension on your version would have occurred as a result of something that

happened after the Board had made the decision to exclude her.

MR PAMENSKY: That is correct Chair.

CHAIRPERSON: And it may have been the PMG Committee that included that?

MR PAMENSKY: Chair those are the facts that has come out here.

CHAIRPERSON: Yes, yes.

MR PAMENSKY: At one thirty I left, PMG met and I
10 understand that PMG, that the CFO was then included again.

CHAIRPERSON: Yes, yes.

MR PAMENSKY: I was unaware of that.

CHAIRPERSON: Yes, but of course the full Board subsequently got to know that the financial director was included in the suspensions, it would have got to know subsequently.

MR PAMENSKY: Yes, subsequently Chair, I do not know when but subsequently.

20 **CHAIRPERSON:** Ja, did you say – hang on how come the financial director was included because we the Board, the highest authority at Eskom had excluded that?

MR PAMENSKY: Chair, I found out on the 12th but it was from the press and obviously, I assumed that the people met thereafter, and they must have had their reasons. So I

did not query that is the truth to Chair. Like I said they must have had their reasons I did not query.

CHAIRPERSON: Yes, would they have been authorised to include her in circumstances where the full Board had excluded her?

MR PAMENSKY: That is a good question, Chair.

CHAIRPERSON: I mean; you cannot tell the Board...[intervene]

MR PAMENSKY: Chair, I cannot really answer that
10 because I am not sure if the Board delegated it to PMG where they could make their decision but...[intervene]

CHAIRPERSON: No, but the Board could not exclude her and delegate the...[intervene]

MR PAMENSKY: That is correct, if you actually think about that it sounds correct, but I am not sure maybe we did delegate it to PMG but my understanding was, it was three people when we left.

CHAIRPERSON: Because my understanding or my recollection of the evidence that has been given is that the
20 PMG Committee or whatever committee was asked to look at this matter further what it was asked to do was simply to take the necessary steps to implement the decision of the Board that had been taken.

MR PAMENSKY: That is correct, Chair.

CHAIRPERSON: Which would not therefore include,

suspending somebody that the Board had decided should not be suspended.

MR PAMENSKY: Yes, Chair that sounds correct.

CHAIRPERSON: Ja.

MR PAMENSKY: It is a good question did the Board thereafter authorise after when I left there was confirmed three people.

CHAIRPERSON: But you see, part of the importance of that question is that if the Board, if you are correct in
10 saying the Board had decided to exclude the financial director from the executives to be suspended, it should have surprised members of the Board to learn that a sub-committee of the Board the PMG had gone against the Board's decision.

And one would have expected that the Board would or various members of the Board would say, hang on, how can this committee do this, and that they would have been an issue. But if the Board had included her, when it said, these executives must be suspended, then they would not
20 have raised any issue because her inclusion would have been in accordance with its own decision.

Do you understand?

MR PAMENSKY: I understand, Chair.

CHAIRPERSON: And the financial director is quite important in an organisation and that is part of the reason

why at least I think some of the members of the Board were saying, hang on you know if we suspend the financial director, the markets might react in a certain way. So I understand what you are saying but I was raising these things, because it may well be that yours is a version different from the version of some of the Board members about the financial director and the decision of the Board at the meeting at the end of the meeting, after the Minister left. Okay, Mr Seleka.

- 10 **ADV SELEKA SC:** Thank you Chair, because you see the suspension of - well the intention to suspend three is consistent with what Mr Tsotsi was told in Durban, the Durban meeting with the President and Ms Dudu Myeni on his version. But if the Board suspended the four, which is consistent with what the Minister said that the Board members have said she identified four areas.

It is in turn consistent with what Ms Suzanne Daniels said she was told the day before the 11th by Mr Salim Essa at Melrose Arch that is four executives would
20 be suspended, and one would return, and Mr Salim Essa introduced himself to her as the Minister's advisor, meaning the advisor of Minister Lynn Brown.

So is it a coincidence that the Minister comes there and says four areas when Mr Tsotsi was only told about three?

MR PAMENSKY: It is a strange coincidence, if you asking me, Chair.

ADV SELEKA SC: So you see where the outside influence concept comes in that it seems somebody else from outside was in fact influencing what was happening within Eskom, do you see that? Is that a yes?

MR PAMENSKY: Oh, as I said to you, from what I have seen at the Commission and other things, it does indicate that there was outside influence but again I cannot
10 personally, independently approve...[intervene]

ADV SELEKA SC: Of course not.

MR PAMENSKY: ...tell you because I was never asked to do anything and no one spoke to me.

ADV SELEKA SC: Yes, let me go back to the issue of misdemeanours, because the Chairperson I think was asking about that.

CHAIRPERSON: Do pace yourself because I think we should finish about half past eight.

ADV SELEKA SC: Yes, Chair. Okay let me just put it to
20 you because we know ultimately, that the Board members were not suspended for misdemeanours, you know that?

CHAIRPERSON: Ja, he has confirmed that the allegations of misdemeanours were not the basis for the suspension, he has confirmed that.

MR PAMENSKY: That is correct, yes.

ADV SELEKA SC: But the reason I am asking you that Mr Pamensky is because in your affidavit, you say your impression was that misdemeanours would be investigated in the inquiry.

MR PAMENSKY: Yes, at that point in time Chair. When we finished the meeting of the 11th my understanding was that they would still look at those misdemeanours, it is our duty if someone mentioned something to us as a Board, we need to go and investigate it if it is reasonable, but my
10 understanding was that would fall part of the investigation on the terms of reference.

ADV SELEKA SC: And you know, that Dentons was appointed not to investigate misdemeanours?

MR PAMENSKY: That is correct, as I understand after the Board meeting of the 9th the investigation was not to look for any wrongdoing of the executives and it was never the intention to look for any wrongdoings of the executives.

ADV SELEKA SC: Yes, so and the one executive was returned on the basis that there was no findings of
20 wrongdoing on his part.

MR PAMENSKY: I cannot confirm that Chair, I understand he came back because he wanted to come back, I understood at a Board meeting of the second of July, that the PMG wanted to lift his suspension and we were consistent and what we said was we need to wait for that

report.

ADV SELEKA SC: Yes, in order to see whether or not it makes findings of wrongdoing against him.

MR PAMENSKY: It is hard for me to comment on that element, Chair you know, all my side was as I understood was we wanted to wait for the report to see if there was anything that came out of the report, you know, there was not looking for wrongdoings, but reports do evolve into these type of elements.

10 So if you do an investigation, you know, it is not looking for wrongdoing, but you work in that area and you find something that leads into that path.

ADV SELEKA SC: Ja, but I think you will recall the minutes show quite clearly that the decision was that okay Ms Mariam and Ms Venete Klein, they said they have contacted Dentons and Denton said that but we were not making investigation into any misconduct against the executives, so we did not make any findings.

 And on the basis of that they reported back to the
20 Board saying no findings of wrongdoing are made against this executive. You can recall that?

MR PAMENSKY: No I need to see that minutes.

ADV SELEKA SC: You cannot recall that?

MR PAMENSKY: I cannot recall that I need to check that minutes, sorry.

ADV SELEKA SC: Okay, it is in the minutes.

MR PAMENSKY: Did I attend that meeting?

ADV SELEKA SC: Ja, you were present in that meeting.

MR PAMENSKY: Okay.

ADV SELEKA SC: Yes, but the point of the matter is, if the Board was told no, no findings of wrongdoing against Mr Koko and he should return, that is a position that applied similarly to all the three executives.

MR PAMENSKY: I would agree with that.

10 **ADV SELEKA SC:** Ja, so they could equally have been asked to return.

MR PAMENSKY: But I do not know what you mean being asked to return?

ADV SELEKA SC: To come back from the suspensions.

MR PAMENSKY: At which point in time Chair?

CHAIRPERSON: Well, I think what he means is his contrasting what happened to Mr Koko and what happened to the other three executives. They were effectively paid out or they were paid money to allow to leave Eskom, he
20 was not paid money to leave, maybe he was offered and maybe rejected that, but he was allowed back to come back to work.

And there was a suggestion, I think that - I think by Ms Dey that because Dentons said they had found no wrongdoing on his part then the Board could take him

back. And I think you have said that, if that was the basis for allowing him back that basis should have applied to the other executives as well.

MR PAMENSKY: Chair, my understanding was very clearly that they were going to come back after this. It was not that; I was not involved in the PMG in the great detail. What learnt was they sent us a round robin resolution and said that these executives have approached the company and wanted to exit.

10 So the intention was always to bring them back in my mind but just at that point in time, the only person who was there was obviously Mr Koko. If you look at my evidence to do with the suspensions, if you want to go, you know, there is only four situations where the suspensions came into being, I mean, it is in my affidavit, I am happy to elaborate if you want.

CHAIRPERSON: Well, I have read your affidavit, but just make it - you can say what you wish to say.

MR PAMENSKY: So after my direct involvement with
20 suspended the three, not the financial director was given to the PMG, and we just got the report of that, so the first meeting we had was on the 23rd of April and that was the first time that I heard that Mr. Montana wanted to leave and it was clear in that meeting that we only delegated three people part of PMG to go and have an off the record

settlement.

And we said in those minutes, that if the other executives approach the company we will deal with it at that point in time. That is all I thought, the next element that came to me was the round robin resolution was clearly stated that they had approached the company where they wanted to leave. The next situation that came in was the report back on the Board on the 28th of May.

And then the next was the third when I went to see
 10 when Mr Koko came back. So you know I was really unaware of these elements from that perspective. So the first time I ever heard someone wanted to leave was on the 23rd and then when the round robin came on the 5th or 6th of November was the first time I was aware that all four wanted to leave.

CHAIRPERSON: When you heard that one of them or more wanted to leave why pay them to leave, everyone in any employment situation they want to leave they can leave, so why pay the money to leave?

20 **MR PAMENSKY:** Chair, my understanding was that Mr Tsotsi had misled us and there was a potential risk because the process was not followed so that could be potential litigation. So my understanding of that resolution that came was drafted on the back of taking legal advice and everything it was to avoid the potential of litigation,

and that is why they were offered settlement packages up to 12 months, and that is how I left them, Chair.

CHAIRPERSON: Ja, it is – I have said so when other Board members were here, it is very strange to me, I mean because these executives have not been dismissed.

MR PAMENSKY: Correct.

CHAIRPERSON: They were on suspension. They were paid their full salary and if they did go to court one, you would want to see the basis on which they were going to
10 court and get your lawyers to advise you to see what prospects there were.

You were not far from the time when they were supposed to come back, around 23 April you were something like six and a half weeks away from the end of the three months, I think because I am thinking if three months started soon after the 11th of March when they were suspended, then the three months would be April, May or no, no I may be wrong with my numbers.

But it was not going to be more than two months,
20 when they would have to come back in terms of the original agreement and you pay them 12 months in the case of two of them, I think 18 months in the case of one of them, the financial director, to leave.

I just have difficulty understanding the logic, especially when you want them back, because I think that

is what you are saying, as far as you are concerned, as a Board member, you wanted them back. There are other Board members who said, as far as we were concerned, we had no issues with them coming back. So my question is why pay people so much to leave when you want them back and where there is no litigation, they have not gone to court, they are being paid their full salary in the meantime. And maybe there - I do not know if there was anybody who had threatened litigation other than Mr Matona who had
10 gone to court and I think his litigation may have been finalised by 2013.

MR PAMENSKY: Chair, just to tell you, just to break it down to myself. So first of all, yes, it was three months. However, what transpired was, it was much later the three months, we got from after they had appointed Dentons, and Dentons was officially appointed on the 20th of April. So it would be May, June, July, so that was the one element.

The second element was on the meeting of the 19th Mr Dan Marokane did write a letter from his lawyer to
20 explain that, I think the process was flawed. So when I received this resolution Chair, because I was not involved from my perspective was I had the fear that there could be potential litigation. I did not want anything to affect the independence of this inquiry.

And my understanding was that they had

approached the company and they wanted to leave, so they had enough. So that was my understanding, Chair you know it was left to people in governance and they liaised this, so that was my simple reason to avoid a potential risk of litigation based on what I said, so that is why I supported that.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you, Chair. So the – I am distracted by the time because we need to finish by 8
10 o'clock. Sorry, I will be quick, what is the time sorry, Chair I do not have a watch.

CHAIRPERSON: It is half past eight.

ADV SELEKA SC: There is a statement you making in your affidavit Mr Pamensky that page 393:

“As far as I was aware, you say the remaining executives had agreed to their suspensions.”

Paragraph 58.1.

MR PAMENSKY: What page sir?

CHAIRPERSON: What suspensions?

20 **ADV SELEKA SC:** Page 393.

CHAIRPERSON: To what suspensions, had agreed to?

ADV SELEKA SC: The remaining three executives had agreed to their suspensions.

CHAIRPERSON: They had agreed to their suspension?

ADV SELEKA SC: Yes. So that they agreed to them

being suspended.

MR PAMENSKY: Sorry Mr Seleka I cannot find the page number one.

ADV SELEKA SC: Page 393.

MR PAMENSKY: On the left, 393?

ADV SELEKA SC: Ja, oh you got to go to your very first affidavit paragraph 58. If you follow the paragraph number, you will find it quickly.

MR PAMENSKY: Yes, I...[intervene]

10 **ADV SELEKA SC:** 58.1.

MR PAMENSKY: Yes, 58 point?

ADV SELEKA SC: One.

MR PAMENSKY: Yes, Chair.

ADV SELEKA SC: Go through to the last line, the sentence that starts as far as I was aware. No, you are on the wrong page. Paragraph 58.

MR PAMENSKY: Sorry, Chair.

ADV SELEKA SC: The last line and the sentence starts, as far as I was ware.

20 **MR PAMENSKY:** Yes, sir I see sorry can you repeat your question to me, I see where it is I am just trying to get some clarity.

ADV SELEKA SC: Ja, the remaining executive had agreed to their suspensions, you understood that.

MR PAMENSKY: Yes, they were suspended I would have

assumed that they agreed to their suspensions.

ADV SELEKA SC: You would have assumed?

MR PAMENSKY: Well they got suspended and they agreed to being suspended, they were on suspension.

ADV SELEKA SC: Okay, so you assume that they agreed to be suspended?

MR PAMENSKY: No, no sorry, they were suspended whether they agreed or not they were suspended.

ADV SELEKA SC: Yes, but you see the point I am making
10 with you that you understood that they had agreed to their suspensions.

MR PAMENSKY: Yes, because they got suspended sorry. I see your point.

ADV SELEKA SC: Ja.

MR PAMENSKY: Sorry I - your point am I right the meaning is that because they got suspended, they agreed to be suspended and go on the Board.

ADV SELEKA SC: Yes, which is not correct they did not agree to be suspended.

20 **MR PAMENSKY:** I am unaware of that, Chair.

ADV SELEKA SC: Mr Matona will not go to court if he agreed to be suspended.

MR PAMENSKY: The remaining executives I say, not Mr Matona.

ADV SELEKA SC: There are three executives.

MR PAMENSKY: There is four, Mr Matona is one we know him now that he has gone to court and then there is three.

ADV SELEKA SC: Mr Marokane will not write a letter saying I want to come back if he agreed to be suspended.

MR PAMENSKY: Oh, that if you want to come back to Chair, of course they want to come back to work, no one wants to be suspended, but they managed to stay suspended because that was what the law was.

ADV SELEKA SC: Ja, but you are not addressing the
10 point.

CHAIRPERSON: Let me just try, the one way, the one version or the one meaning you might be intending when you say they agreed is that they were in support that they be suspended.

But maybe what you intend saying is they might have been opposed to it but they accepted that the Board had decided to suspend them and acted on the basis that there was such a decision by the Board but not necessarily that they agreed that it was the right thing for the Board to
20 suspend them.

MR PAMENSKY: Your letter is correct, Chair.

CHAIRPERSON: Yes.

MR PAMENSKY: So what I was probably meaning of the remaining executives were obviously on suspension they having left, I did not know, I mean I was not liaising with

them I did not know. So the remaining executives were going to stay on suspension and they were going to come back thereafter when Dentons report was finished.

CHAIRPERSON: Yes, but just to understand in terms of what I was putting to you, are you saying the correct one is that they accepted that the Board had made a decision to suspend them and they had gone on suspension on the basis that the Board had made the decision, not necessarily that they were in support of a decision?

10 **MR PAMENSKY:** That is correct, Chair.

CHAIRPERSON: Okay, well, it may or may not be what you are thinking it means, Mr Seleka but I wanted to clarify in my own mind.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Because I – it is difficult to think that they would have been in support of their own suspension.

MR PAMENSKY: I am going with your same.

CHAIRPERSON: Ja.

20 **MR PAMENSKY:** They may have not supported it but at this point in time, they were on suspension and remaining on suspension.

CHAIRPERSON: They acted on the basis that they were on suspension.

MR PAMENSKY: Correct.

CHAIRPERSON: Ja, well Mr Seleka I do not know if you

are following up but I want to ask something relating to the exits.

ADV SELEKA SC: Well let me follow up before that, Chair.

CHAIRPERSON: Ja, follow up, ja.

ADV SELEKA SC: Ja, Mr Pamensky that explanation is difficult to follow but here is another one in that same sentence they agree to the suspensions and the position remained that they would return and you are writing about
10 this, the position as at the 23rd of April 2015.

MR PAMENSKY: That is correct.

ADV SELEKA SC: Ja, and you say:

“The position remained that they would return to work, once the investigation was completed.”

And then you put in brackets:

“(Provided, no misconduct on their part was uncovered.)”

You close the brackets, but that too was not correct.

MR PAMENSKY: Why sorry Mr Seleka I am not
20 understanding your question, as I said to you before, is provide those numbers conduct uncovered because as I said to you investigations do involve into these areas, the terms of reference was not looking for any wrongdoing, correct but investigations do lead into areas of misconduct which could land up – so I was saying provided nothing

was uncovered.

Who knows what comes out in these reports, you do not know.

ADV SELEKA SC: But that that was not the Board's position.

MR PAMENSKY: No the Board's position was very clearly to do the investigation, and that they would come back to the company, provided there is obviously nothing wrong in my mind.

10 **ADV SELEKA SC:** Ja, but that proviso was not there.

MR PAMENSKY: But Chair, if they have done something wrong, and you do the investigation, and it picks up something like a misdemeanour or a misconduct, well, then we have a problem but it was not there to look for those.

ADV SELEKA SC: That is number one, number two Ms Mariam writes a letter to Dentons and they write back, saying but we were not asked to investigate misconduct.

MR PAMENSKY: That is correct.

ADV SELEKA SC: Yes.

20 **MR PAMENSKY:** But it could lead there that is what I am saying, sorry, Mr Chair, I am saying that the terms of reference had nothing – they were not looking for wrongdoing but in an investigations wrongdoing could come out. So for argument's sake, you say to me, go investigate that chair, and then just go look if that chair is put right

and when I go to that chair I find out oh, the arms taken away, so that is misconduct for the arm. So they do evolve into that it just happens.

CHAIRPERSON: But if Dentons was not investigating allegations of misconduct involving them, or any allegations of misconduct, why would you expect that they would investigate allegations of misconduct? In other words, if their terms of reference did not include investigating allegations of misconduct, why would you
10 expect them to act outside of their terms of reference?

MR PAMENSKY: Sorry Chair, I would not expect them to go outside the terms of reference, so you stay within the terms of reference. And when you in those terms of reference, something could come up while they doing it. for argument sake they looking at loopholes and one person comes forward and says, well, this person did A, B, C, D and this is the reason and all of that.

Well, that is when something comes up, you know, they were not looking for it, but that could come up Chair.
20 So that is what I was meaning, they are not going to do it. If this report came out with something that was wrong with them well then could not return.

CHAIRPERSON: But what you do not deny, I assume is that to the extent that you had in mind that their return to work was subject to such a proviso what you cannot deny

is that in its decision the Board had never included such a proviso.

MR PAMENSKY: Yes, that is correct Chair. There was no that provision, this was in my mind, no there was nothing.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja, that is what I wanted Chair, and then I do not need to go any further because Dentons...[intervene]

10 **MR PAMENSKY:** Well you just had to ask my mind, sorry.

CHAIRPERSON: Well let me deal with this before I forget and it relates to the exit of the three executives at page 394, of bundle 17, Eskom bundle 17 your affidavit, Mr Pamensky paragraph 58.2. You say:

“On 5 may 2015 a round robin resolution, attached as RFF115 was circulated to the Board stating that.”

And you quote:

20 “The four executives have, in various ways, approached the company and have indicated that they are amenable to a settlement in May, in terms of which they would resign from their positions and accept an exit.”

When I read that resolution it suggests to me, that Eskom or the Board may have been the ones who said to the executives, would you be amenable to resigning or to a

settlement in terms of which you would resign if we give you an acceptable exit package. That is the impression that I get from the formulation of that resolution. What would you say about that interpretation of it on my part?

MR PAMENSKY: I did not see it that way.

CHAIRPERSON: Yes.

MR PAMENSKY: And if I read the whole element was that they wanted to leave and I wanted to alleviate the risk of potential litigation.

10 **CHAIRPERSON:** Yes.

MR PAMENSKY: So it was that they will come in.

CHAIRPERSON: Yes.

MR PAMENSKY: And they would settle because they wanted to leave. No I did not see how you just read it now sorry.

CHAIRPERSON: Yes, yes. So you looked at it as they approached.

MR PAMENSKY: That is correct.

CHAIRPERSON: And said would you give us a package if we are prepared to resign? Is that how you – you saw it –
20 you understood it?

MR PAMENSKY: Yes that they had approached and they would leave if they could get an exit packaging.

CHAIRPERSON: Yes.

MR PAMENSKY: And to avoid in my mind the potential litigation.

CHAIRPERSON: Yes but then if – if it came from them in that way then it means – it would mean would it not that the idea of them being given a package came from them on the basis that they were offering to resign. Is ...

MR PAMENSKY: That is how I interpret it, it is coming from them.

CHAIRPERSON: Yes. Yes.

MR PAMENSKY: And that they want to resign.

CHAIRPERSON: Yes. But do you say about this other
10 interpretation that I am putting – that I am putting what do you say about it? You feel that it is not – it is at odds with your – with your understanding or you see it as potentially also a reasonable interpretation?

MR PAMENSKY: Chair I think we each read it differently
Chair.

ADV BLOU: Sorry.

CHAIRPERSON: Yes.

ADV BLOU: Sorry Chair I did not get – I did not get your alternative interpretation.

20 **CHAIRPERSON:** My interpretation.

ADV BLOU: I might be able to assist you.

CHAIRPERSON: Yes, yes.

ADV BLOU: If you could just tell me what it is.

CHAIRPERSON: Yes, no the interpretation was that it seems to me as if it was Eskom or the board which made an

approach to the executives to say would you resign if we give you an acceptable exit package. That is what I – that is the impression that I said I got.

ADV BLOU: Sorry I can just say Chair that what has been quoted here at 58.2.

CHAIRPERSON: Ja.

ADV BLOU: Is an extract from the actual Round Robin minute.

10 **CHAIRPERSON:** Ja.

ADV BLOU: Which appears at your 482.

CHAIRPERSON: Yes.

ADV BLOU: So it is verbatim but it does say that the four executives had in various ways approached the company.

CHAIRPERSON: Yes.

ADV BLOU: I was not sure what the (speaking over one another).

CHAIRPERSON: Yes that part yes.

ADV BLOU: As the other way around. It is actually just to
20 tell you it is verbatim quote from...

CHAIRPERSON: Yes.

ADV BLOU: From 482 and then having recorded what the four executives had approached them for it then says the board has considered the issue and delegates with acting Chairman to enter into negotiations with the four suspended

executives. So it seems that initiative – where that goes Chair I do not know but it – initially it came from them.

CHAIRPERSON: Yes.

ADV BLOU: And then they delegated it to the four people.

CHAIRPERSON: Yes.

ADV BLOU: To go and resolve it by negotiation I just thought I would tell you that –

CHAIRPERSON: Yes, no, no.

ADV BLOU: That is what the minute itself says.

10 **CHAIRPERSON:** No, no that is fine.

MR PAMENSKY: Sorry Chair so...

CHAIRPERSON: Yes.

MR PAMENSKY: Chair I understood they approached the company not that we are going to approach them.

CHAIRPERSON: Yes.

MR PAMENSKY: They approached us and it accords with my understanding on the 23rd which we said is only if the executives approach the company will we engage. It is in the minutes of the 23rd.

20 **CHAIRPERSON:** You see I think where my impression comes is the word amenable to a certain settlement my understanding is that if I say to you I amenable to a certain settlement normally it would be because you have indicated – you have made an approach to me to say would you consider this kind of settlement? Maybe I say let me go

away and reflect. I come back and say I am amenable to it. You know what I am talking about because you are the one who came to me with this offer. That is where I am coming from?

MR PAMENSKY: Chair I see your point.

CHAIRPERSON: Ja.

MR PAMENSKY: And I do concur for it but if I go back before which the gates that hopefully my mind is they are – they have in various approached the company.

10 **CHAIRPERSON:** Yes, yes.

MR PAMENSKY: Not that we go onto them.

CHAIRPERSON: Yes. But it could be that you have a situation where you raise – you make the offer to me I go away and then later on I come back to you and say remember that offer that you made I am amenable to it.

MR PAMENSKY: Chair I hear your point but at all nothing
Chair remember my sequence of events.

CHAIRPERSON: Yes, no.

MR PAMENSKY: But I see your point or you are amenable
20 because you would approach that person further.

CHAIRPERSON: Yes.

MR PAMENSKY: But my understanding is they approached
us.

CHAIRPERSON: But it is possible maybe that it could be
looked at different ways but I just wanted to say that is the

impression I got when I looked at (speaking over one another.).

MR PAMENSKY: Chair why I also did not read it like that way because no one was engaging them as I understand. You know no one was engaging them. We said only if they come and engage will we engage at that time. So not my understanding that no one was engaging them I am unaware of all the events that had transpired here.

CHAIRPERSON: Of course Mr Matona testified that the – as
10 suggestion of negotiations to settle his matter came from the board side because he went to the labour court to have the suspension set aside so he could be allowed to come back but he said I think Dr Ngubane I think he said – I do not know I think he was with two others.

ADV SELEKA SC: He had not...

CHAIRPERSON: Board members said or one of them it might not have been Dr Ngubane but one of them said there is no way you are going to get a reinstatement. We have spoken to the shareholders Minister so we can talk about
20 money. And in that event to if his evidence is true then certainly the idea of him resigning and getting money came from the Eskom side if his evidence is true. I just cannot remember what the relevant members of the board said in terms of their version.

MR PAMENSKY: Chair I know none of these things.

CHAIRPERSON: Ja.

MR PAMENSKY: The first time I hear is on the 23rd again I see this and a settlement fact.

CHAIRPERSON: And then of course you have the question – you have the financial director Ms Molefe. You may have seen or heard that her settlement was higher than the other two. I think she was paid the equivalent of eighteen months remuneration and she said how Eskom ended up agreeing to give that much from – in circumstances where as I recall the
10 board had put the limit of twelve months.

MR PAMENSKY: Up to twelve months.

CHAIRPERSON: Up to yes – up to twelve months. She said it is because I did not want to go away. I did not want to leave Eskom. So they were – they increased their offer so that it reached a point where I would agree to leave. You see. So when you think about that and you think about Mr Matona's version and you see this resolution against my impression of what it means you begin to see that...

MR PAMENSKY: Chair.

20 **CHAIRPERSON:** The idea of leaving Eskom in regard to at least those two does not come from them. If Mr Matona's version is correct and if Ms Molefe's version is correct. But Ms Matona's – Ms Molefe's version does appear to be – to have some credence because otherwise why was she given eighteen months remuneration when others were given

twelve months? That explanation we have not been given or if anything has been said it is nothing that provides a satisfactory explanation.

MR PAMENSKY: Chair may I answer that for a second what?

CHAIRPERSON: Ja.

MR PAMENSKY: I heard that question from you. Ms Venete Klein was the head of PMG she did not know about that extra six months. I then asked Advocate Seleka to give me the
10 transcripts of that extra six months because I do not recall that at all given the extra money. And in the evidence that has been here I think one of the witnesses said that he went and met with Ms – the CFO Ms Molefe’s attorneys or – and they agreed at that meeting. So you know I did not know about it – I am unaware of it Chair.

CHAIRPERSON: Ja.

MR PAMENSKY: But again Chair just to reiterate I see your point come in there but the facts of the matter is they us clearly that they approached the company in my mind.

20 **CHAIRPERSON:** Yes.

MR PAMENSKY: Not that we have spoken to them. They were not allowed to speak to them because not they were allowed but you said if they engage then we will deal with it at that point.

CHAIRPERSON: But we already have two of the three

executives who were not allowed to 00:10:34 whose version is clear I did not want to leave. In the case of Mr Matona I had – I even went to court to try and get back but I was told that the Minister had been approached and there was no way I would get reinstated. If we could talk about anything it would have to be money and I went away to think about this whole thing and after a few days or something I realised that I could not force Eskom to take me back and we talked about money.

10 In the case Ms Molefe they had to give me much more than the others in order to get rid of me. I wanted to go back. I am putting it in my own words.

MR PAMENSKY: Chair. Yes Chair I am completely unaware of those (speaking over one another).

CHAIRPERSON: I think your counsel wants to say something.

ADV BLOU: Yes Chair what I am saying is that I those and it is not for me to dictate how the commission should run its business but clearly those questions or that line of questions
20 should be put to the person who wrote this Round Robin Resolution and represent it to the board that the approach had come from the four executives. Mr Pamensky was neither at the cold front of those – of the PMG committee and he did not draw this Round Robin. He acted on the strength of the representation so I am just mindful of time

that – and whatever findings you make. I just wanted to say that obviously what you have just said is inconclusive – counter distinction to the manner in which this has been portrayed in the Round Robin. But he has also got the author of the Round Robin I just wanted to point that out.

CHAIRPERSON: No, no I understand what you are saying but the reason why we raise it with him is because he had said that the board wanted them back and he was one of the board members who wanted them back. So what is being
10 pointed out is but the way the board seems to have acted or those who acted on its behalf in negotiating with them does not appear like they wanted them back. So – so it is only at that level.

ADV BLOU: I do understand but Mr Pamensky was not one of those board members.

CHAIRPERSON: Yes ja.

ADV BLOU: Thank you. Thank you.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Mr Pamensky what you have given there
20 is the Reference Bundle, Eskom Bundle 12. This is the board noting and ratifying the remuneration of eighteen months for Ms Tsholofelo Molefe. On the 2nd of July 2015 look who was present as the last member on the list.

MR PAMENSKY: Thank you that. I think I was present but I asked you for the transcript because I really do not recall.

You know I would remember in my mind if someone is explaining to us why you paying someone this extra, extra money. So I do not recall.

ADV SELEKA SC: The reason...

CHAIRPERSON: Well...

MR PAMENSKY: We gave up to twelve months and this says you gave eighteen months.

ADV SELEKA SC: Ja.

MR PAMENSKY: So I would want to understand the extra
10 six months and I really do not recall anyone telling me that.

CHAIRPERSON: Well – well part of the problem is that there seems to have been nobody who said but why are we paying an extra six months on the evidence that I have heard and I would have expected that somebody would ask that question to say but we want these people back. If they want to go why do we go as far as paying so much.

MR PAMENSKY: Chair I am in agreement with you that is why I do not recall this at all.

CHAIRPERSON: Ja.

20 **MR PAMENSKY:** I just sitting here I saw the head of PMG.

CHAIRPERSON: Yes.

MR PAMENSKY: I saw Ms Naidoo's affidavit and I just do not recall anyone explaining to me and I think I would have remembered

CHAIRPERSON: Yes.

MR PAMENSKY: If – why you giving someone extra than what you were authorised for her. It would have to be a justification so I just do not recall.

ADV BLOU: Sorry Mr Seleka can you give me the page number to that?

ADV SELEKA SC: It is Eskom Bundle 12

ADV BLOU: Yes.

ADV SELEKA SC: Page 251.6 the minutes of 2 July 2015.

ADV BLOU: I will see if I can find any way to carry on.

10 **CHAIRPERSON:** Okay no that is fine. Okay let us move on.

ADV SELEKA SC: Yes. And by this time 2 July 2015 Mr Pamensky Dentons has already received a request from Eskom I think on the 11 June 2015 to provide an interim report. And they made a presentation on 20 – is it 23, 24 or 24 45.

MR PAMENSKY: 25, 26.

ADV SELEKA SC: 25, 26 of June 2016. And thereafter they were told we are accepting this report. Dr Ngubane writes to Minister Lynne Brown and says and this is where I am
20 coming about cutting short the process. He writes a letter to Minister Lynne Brown and say we have stopped the process because the investigation of Dentons does not produce anything unfamiliar to us so we do not see a reason why it should continue.

CHAIRPERSON: What – what date is that letter?

ADV SELEKA SC: Of the letter Chair?

CHAIRPERSON: If you able to...

ADV SELEKA SC: Let me –

MR PAMENSKY: I would like to say I am completely unaware.

CHAIRPERSON: Ja. Ja.

ADV SELEKA SC: I will get you the reference to the letter. It is 25 August 2015. It is on Eskom Bundle 13 page 553.

CHAIRPERSON: But the – the settlement in regard to the
10 financial director is early July 2015?

ADV SELEKA SC: I will have to remember the date Chair.

CHAIRPERSON: You are referring to 2 July I think.

ADV SELEKA SC: Ja that is the board meeting.

CHAIRPERSON: Ja.

ADV SELEKA SC: Where there is...

CHAIRPERSON: It was ratifying.

ADV SELEKA SC: Where they ratify and condone the payment of eighteen months.

CHAIRPERSON: Oh okay.

20 **ADV SELEKA SC:** So one has to look at the dates.

CHAIRPERSON: So it would have been a little earlier.

ADV SELEKA SC: Ja.

CHAIRPERSON: Well maybe not a little earlier but it would have been earlier than that.

ADV SELEKA SC: Yes we will check the date now.

CHAIRPERSON: But my – was the position not that already sometime in June the board took a decision to say that Dentons 00:17:44 must end.

ADV SELEKA SC: That is the date of the is it 11 or 13 June?

CHAIRPERSON: What is the date for that Mr Seleka?

ADV SELEKA SC: It is 11 June Chair.

CHAIRPERSON: 11 June.

ADV SELEKA SC: Yes. The board...

10 **CHAIRPERSON:** And what is the date for the settlement agreement between the financial director and Eskom?

ADV SELEKA SC: We trying to get the date but the board decision in the minutes is 2 July.

CHAIRPERSON: Yes.

ADV SELEKA SC: 2015 but we will get the date of that.

CHAIRPERSON: Yes. You see the question that arises for me and it may well be that Mr Seleka was going to that question is it would – it may well be that when these settlements were reached and maybe for argument sake let
20 us focus on the last one involving the financial director. At that stage the board knew that it was not going to be long before the investigation ended.

MR PAMENSKY: Chair to give you my recollection.

CHAIRPERSON: Ja.

MR PAMENSKY: Because again I was not involved in the...

CHAIRPERSON: Negotiations.

MR PAMENSKY: Dentons element. It is in my affidavit the first time we hear Dentons is on the 11th and they are going to start on the 20th. The next interaction with us is their presentation to the board. I do not recall the earlier – the presentation to the board on the 25th and at that meeting both Dentons and Arc said there was sufficient information to prepare a report. I was only at the meeting of the 25th I was not there on the meeting of the 26th. So moving a bit
10 forward on Chair my understanding was and it is in the minutes of the Audit and Risk Committee meeting on the 14th of August as well as the debtors report that they both reported that there was sufficient information to issue this report and it had 00:19:57 objectives. That was my understanding on this entire Dentons picture. You know it is a real report and then in preparing – sorry for the commission after I had submitted my report there was a Dentons letter and to me it indicated that the task had reached its objectives and that is what the letter seemed to
20 indicate to me and that was my entire understanding the entire time Chair.

CHAIRPERSON: Yes. Well I see in your affidavit page 58.4 no, no paragraph and the page is 395 of Eskom Bundle 17 says:

“Subsequently I have learnt that on 26 June

2015 PMG had reported to the board that it was still dealing with the remaining suspended executives.”

But from what you said earlier I think you – oh they would be two – it would have been Mr Koko and Mr...

MR PAMENSKY: Yes.

CHAIRPERSON: Mr – and the financial director.

MR PAMENSKY: So Chair I tried to also work it myself as I had to get back.

10 **CHAIRPERSON:** Yes.

MR PAMENSKY: What I understood was we had on the 5th or 6th of May that four people wanted to leave the first time.

CHAIRPERSON: Yes, yes.

MR PAMENSKY: The next report back was on the 28th of May where they said two have signed and one is about to sign.

CHAIRPERSON: Yes, yes.

MR PAMENSKY: Okay. Now that is – that is me. I am not here on the 26th.

20 **CHAIRPERSON:** And the...

MR PAMENSKY: But if I look on the 26th the minutes it says there is one still remaining executive left. I did not attend that meeting.

CHAIRPERSON: The Round Robin Resolution is on the 5th May 2015.

MR PAMENSKY: Yes Sir sorry.

CHAIRPERSON: That is when it is. Okay alright Mr Seleka.

ADV SELEKA SC: Thank you Chair. So the letter that Dr Ngubane wrote the date seems to be – sorry Chair the date for the settlement with the FD Mr Lofelo seems to be 30 June 2015 but we want to get the agreement itself because she mentions that in her affidavit.

CHAIRPERSON: Oh.

ADV SELEKA SC: Ja 30 June. So...

10 **CHAIRPERSON:** But if – if the settlement between her and Eskom is 30 June in circumstances where about two weeks earlier the board had decided that there should be no further investigations and Dentons should prepare its report. Then the question would arise at that stage there would have been no threat of litigation. Yes would you agree?

MR PAMENSKY: Fairly I agree with you. I do not know those dates you know. Whether it is litigation or not but you know I do not know anyone cutting anything short or anything to that extent. I told you my dates are unknown so

20 I cannot really answer you on that.

CHAIRPERSON: Yes but basically what I am saying is because other board members have said what you have said namely they believed that there was a threat of litigation and they paid – agreed that these amounts should be paid because it was a way of settling or avoiding litigation. So I

am simply saying at least in regard to the financial director if the settlement with her was on the 30 June 2015 but two weeks earlier around the 18th June the board had already decided.

ADV SELEKA SC: 11 June.

CHAIRPERSON: 11 June.

ADV SELEKA SC: Yes.

CHAIRPERSON: The board had already decided that there should be no further investigations Dentons should prepare
10 its report then it could not say – the board could not say we do not want to allow her back because she will interfere with the investigation because at this stage there was going to be no further investigation. And – and there would be no litigation because they would say no come back.

MR PAMENSKY: Chair first of all who from the board on the 11th said that because I am totally unaware and what you do say does sound correct to me. Yes it definitely sounds correct to me. If you were stopping this report and there was no problem bring her back. She was excellent Chair.
20 So that – but I do not know those things Chair.

CHAIRPERSON: Yes.

MR PAMENSKY: And I do not know that the board cut – cut Dentons short this was in the purview of Audit and Risk so they would handle it we had no involvement so I am unaware of that.

CHAIRPERSON: Ja okay alright. Mr Seleka.

ADV SELEKA SC: Have you not seen Dentons Report Mr Pamensky?

MR PAMENSKY: Sorry.

ADV SELEKA SC: Have you not seen Dentons Report?

MR PAMENSKY: No.

ADV SELEKA SC: You have not?

MR PAMENSKY: No I saw Dentons – what happened with Dentons Report just to let you know we got a copy and we
10 had to return it we were not allowed to keep it so I cannot really remember the contents.

ADV SELEKA SC: Because that statement of – with the date with the instruction to provide an interim report is in Dentons Report in the executive summary.

MR PAMENSKY: What date was that report Chair?

ADV SELEKA SC: 11 ...

MR PAMENSKY: No what date was the date that we received the report?

ADV SELEKA SC: The date of the report is 2 July 2015.

20 **MR PAMENSKY:** I do not recall the board never cut that down Chair so I do not recall them ever cutting that down. It must have been Audit and Risk I do not recall Chair.

ADV SELEKA SC: Okay.

ADV BLOU: You might look – is there – there is a date issue here can someone just tell me which date we are looking for

because we have got some Dentons documents here and maybe we can get from here.

ADV SELEKA SC: Ja the report – there is a report which is dated 2 July.

CHAIRPERSON: Ja.

ADV SELEKA SC: 2015.

ADV BLOU: Which only came before the board I think at the end of July.

ADV SELEKA SC: Ja they – they meet and they presented a
10 DPE to the Minister and they explain all that but this report we have is dated 2 July 2015.

MR PAMENSKY: What date did us as a board get that report, do we know?

ADV SELEKA SC: I do not know.

CHAIRPERSON: But I am not sure Mr Seleka whether it makes any difference.

ADV SELEKA SC: Ja.

CHAIRPERSON: What date the report is – is given to the board if one is looking at the question of whether the board
20 should have pursued a settlement agreement with the financial director after it had made the decision that the investigation should end and Dentons should replace them.

ADV SELEKA SC: Yes.

CHAIRPERSON: You know because I think that is the important part.

ADV SELEKA SC: Yes.

MR PAMENSKY: I see what you are saying Chair.

CHAIRPERSON: Ja.

MR PAMENSKY: I tend to agree with you I am unaware of those dates but I tend to agree with you and I am not aware of that.

CHAIRPERSON: Ja. No that is fine. Do you want to deal with the charges Mr Seleka?

ADV BLOU: Chair I am sorry but we just trying to get clarity
10 here. Mr Pamensky has dealt with in the affidavit we have got a different date as – for the date on which the board decided that Dentons had gathered sufficient information and that they has find – whatever in the interim must be made final but they indeed got the interim draft report to the board of about 25 June 2016, 26 June 20 – sorry 2015, 26 June 2015 and the interim report given to the board on 3 July 2015 and Arc and Dentons reported that they would produce a final report by 21 July 2015. So you put it to him I am just saying we have got no – we – the evidence that Dentons had
20 been told to stop working by the board.

CHAIRPERSON: Ja.

ADV BLOU: We do not have evidence that Dentons had been told by the board to stop working any earlier than ...

MR PAMENSKY: No 2 June would be 2 July would be the earliest time.

ADV BLOU: It was 10th July.

CHAIRPERSON: Or 10th of July but it is well past that event date.

ADV BLOU: Then ja – okay. So I just think the date is important but it is a matter of record.

CHAIRPERSON: No, no the dates are important but for me in regard to this aspect.

ADV BLOU: Yes.

CHAIRPERSON: The important date is the date of the board
10 saying Dentons must stop the investigations.

MR PAMENSKY: Yes.

CHAIRPERSON: And provide their report.

ADV BLOU: That is the date that we finding.

CHAIRPERSON: As well as the date of the conclusion of the settlement agreement with the financial director. Now I understood Mr Seleka to be saying that the date when the board said to Dentons stop the investigation was around 18 June or 11 June.

ADV SELEKA SC: It is 11 June Chair.

20 **ADV BLOU:** And I am asking you to please tell me which document he is referring to there so we can confirm this.

CHAIRPERSON: Oh okay.

MR PAMENSKY: And – and was it the board or was it Audit and Risk Committee?

CHAIRPERSON: Hang on Mr Pamensky.

ADV BLOU: Wait Mr Pamensky.

CHAIRPERSON: Hang on Mr Pamensky you want to tell.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Pamensky's counsel.

ADV SELEKA SC: Yes.

CHAIRPERSON: The document you looking at.

ADV SELEKA SC: Yes. Sorry Eskom Bundle 13 on page 13
it is a page trolling within the affidavit of Dentons Mr Kapdi.

ADV BLOU: Yes, yes.

10 **ADV SELEKA SC:** Paragraph 8.3 says:

“On 11 June 2015 the firm was requested to prepare a
detailed presentation to the board in addition to a draft
report dealing with the state of the investigation to date.
The firm undertook that this was due to the need to meet the
deadlines of various other committees. That ...[indistinct –
word cut off] ... to the board was delivered on 25,

26 June 2015 which was followed by our draft
preliminary report.

20 For these purposes, investigatory activities
seized shortly after 11 June 2015 and
resources were directed from the normal
course of the investigation to the development
of a preliminary finding, declaration of the
above-mentioned presentation and preparation
of a draft preliminary report...”

MR PAMENSKY: But that is a document internal to Tegeta. There is nothing here that says the board made the decision.

CHAIRPERSON: Yes, from what you ...[intervenes]

MR PAMENSKY: [Indistinct]

CHAIRPERSON: ...from what you read ...[intervenes]

ADV SELEKA SC: Yes, that is ...[intervenes]

CHAIRPERSON: What you read, does not say the board made that decision on the 11th. It simply says, Dentons
10 were ...[intervenes]

MR PAMENSKY: [Indistinct]

CHAIRPERSON: ...told on the 11th.

MR PAMENSKY: Yes, and ...[intervenes]

CHAIRPERSON: But it does not say who told them.

ADV SELEKA SC: They do not say here Chair.

CHAIRPERSON: It might have been some functionary. But it seems from what you read that the board may have had the occasion to deal with the matter around 25, 26.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Which may appear to be in line for what counsel for Mr Pamensky was saying.

ADV SELEKA SC: Mr Pamensky is shaking his head.

CHAIRPERSON: [laughs] Yes. But let – before he says anything. I understood you to be saying. In terms of what you could find, it looked like the board may only have

made that decision around 25, 26 June. Was my understanding correct?

MR PAMENSKY: [Silence] Sorry.

CHAIRPERSON: Okay.

MR PAMENSKY: I am sorry Chair.

CHAIRPERSON: No, I ...[intervenes]

MR PAMENSKY: Are you looking at the same affidavit of ...[intervenes]

CHAIRPERSON: No, I was just asking whether my
10 understanding of what you said was correct.

MR PAMENSKY: Yes.

CHAIRPERSON: And my understanding was that, you were saying from what you had been able to look at it, it appeared that the board might only have made that decision around 25, 26 June.

MR PAMENSKY: We say 21 July, is when the board ...[intervenes]

CHAIRPERSON: July?

MR PAMENSKY: ...got the final report. If some else
20 ...[intervenes]

CHAIRPERSON: No, no. The decision to say to Dentons stop ...[intervenes]

MR PAMENSKY: Ja, I think someone who is in the board told Dentons to stop investigating in 2016.

CHAIRPERSON: Ja.

MR PAMENSKY: That is one thing. But the board got a final report on 21 July 2015 and that is when the board ...[intervenes]

CHAIRPERSON: Yes.

MR PAMENSKY: ...as I understand it ...[intervenes]

CHAIRPERSON: Yes.

MR PAMENSKY: ...that nothing further would be required.

CHAIRPERSON: Okay, no, no. That is fine.

MR PAMENSKY: But it is an important question.

10 **CHAIRPERSON:** No, it is. The board would not have made that decision when they got the final report because at the end when they get the final report, I think it would have made such a decision earlier ...[intervenes]

MR PAMENSKY: And I ...[intervenes]

CHAIRPERSON: ...it is just a question of when earlier. Mr Pamensky, I can see you are dying to tell us when.

MR PAMENSKY: Yes, can I help you, Chair, from what I have seen?

CHAIRPERSON: Ja, ja.

20 **MR PAMENSKY:** The first presentation of Dentons to the board was the 25th followed on the 26th of June. And what I understand from some of the evidence was on the 26th of June, Dentons got a phone call from someone. I did not attend the meeting on the 26th, so I cannot comment on that Chair but that is when the board said,

please, can you prepare a report.

CHAIRPERSON: Okay. But are you saying there was a board meeting around 25, 26 June?

MR PAMENSKY: There were two board meetings. A presentation on the 25th by Dentons.

CHAIRPERSON: Dentons' presentation.

MR PAMENSKY: And then again, they presented on the 26th of June but ...[intervenes]

CHAIRPERSON: Oh, you say you were not present at the
10 ...[intervenes]

MR PAMENSKY: At the 26th, I was not there.

CHAIRPERSON: Yes.

MR PAMENSKY: I were on the 25th.

CHAIRPERSON: But you were made to understand that at that meeting of the board on the 26th, the board may have issued the instruction?

MR PAMENSKY: No, Chair.

CHAIRPERSON: You are not saying that.

MR PAMENSKY: No, Chair.

20 **CHAIRPERSON:** Okay. But you are saying, it looks like after that meeting, somebody issued an instruction to Dentons.

MR PAMENSKY: To prepare the report.

CHAIRPERSON: To prepare the report?

MR PAMENSKY: Yes.

CHAIRPERSON: Whether or not they or whoever it was who gave that instruction, whether they took it from the board or not, you do not know?

MR PAMENSKY: I do not know that Chair.

CHAIRPERSON: Okay alright.

MR PAMENSKY: Yes

CHAIRPERSON: Do we have the minutes of those two meetings of the board? Maybe that they will... Well, we do not have to look at them now.

10 **MR PAMENSKY:** Yes.

ADV SELEKA SC: Ja.

CHAIRPERSON: But I think that is where we should look.

MR PAMENSKY: Yes, yes.

ADV SELEKA SC: Yes.

COUNSEL: Chair, just to finalise on this, on this topic. I am sorry Mr Seleka. If the proposition is that the settlement took place with the former Financial Director only on 30 June 2015, even assuming that someone in the board or not Mr Pamensky said stop investigating and just
20 finalise the report four days before the 26th of June.

It does not follow automatically from that that there was not a thread of litigation. Whether there was a thread of litigation when the settlement happened, it is a different question. If Mr Pamensky, I do not think he will know.

CHAIRPERSON: No, no. The proposition was. If on a certain date, that is prior to the said conclusion of the settlement agreement with – between Eskom and the Financial Director is prior to that date, there was a board meeting which said Dentons should stop the investigations and prepare their report...

Who was negotiating with the Financial Director and he was a member of the board, would be expected to know that we were negotiating for a settlement because we
10 did not want these directors to return while the investigation was going on but now the investigation has been stopped. Therefore, why should we continue to negotiate and pay them? They best ...[intervenes]

COUNSEL: I do understand that but I think that may be in very close proximity. Sorry, so that ...[intervenes]

CHAIRPERSON: The proximity might be something but I think and we can deal with this.

COUNSEL: Yes, with the witness.

CHAIRPERSON: If somebody who was not there at the
20 meeting, it might paint a different picture.

COUNSEL: Yes.

CHAIRPERSON: But if the person was there ...[intervenes]

COUNSEL: Understood.

CHAIRPERSON: Yes.

COUNSEL: Understood.

CHAIRPERSON: Ja.

COUNSEL: But I am simply saying, you will probably find that it was somebody on the 26th of June.

CHAIRPERSON: Ja.

COUNSEL: And then the settlement a few days later.

CHAIRPERSON: Ja.

COUNSEL: So I think that is... And then the report follows after that.

10 **CHAIRPERSON:** Ja.

COUNSEL: No, Johnny. Sorry, Chair.

COUNSEL: Okay.

MR PAMENSKY: The settlement was signed, I have just heard, on the 25th of June.

CHAIRPERSON: It was signed on the 25th of June? Is that correct?

MR PAMENSKY: 30th of June? No, 25. 25.

CHAIRPERSON: 25. Okay that could change the picture in regard to this point.

20 **COUNSEL:** Yes, that will.

CHAIRPERSON: Ja.

COUNSEL: But I am pretty certain that the date that Mr Seleka read into the record was 30 June.

CHAIRPERSON: Ja.

ADV SELEKA SC: 30 June is from her affidavit. That is

why I said I want to check from the settlement.

COUNSEL: Indeed. So there you are right. But I do not want Mr Pamensky ...[intervenes]

MR PAMENSKY: No, I understood it was the 25th because... the 25th ...[intervenes]

COUNSEL: Sorry.

MR PAMENSKY: I understood it to be the 25th because I heard it was the 25th ...[intervenes]

CHAIRPERSON: Okay let us wait for Mr Seleka.

10 **COUNSEL**: Mr Seleka will clarify what our position is.

CHAIRPERSON: Ja.

COUNSEL: We know that there is a 26 June indication somewhere to Dentons – according to Dentons to stop the investigation and the report comes later ...[intervenes]

CHAIRPERSON: Ja. What is the settlement?

COUNSEL: What is the date of the settlement?

ADV SELEKA SC: The dates of the settlement is 25 June.

CHAIRPERSON: Okay.

ADV SELEKA SC: 2015.

20 **CHAIRPERSON**: Okay. No, no. Then there might be a problem then if the board only made their made decision on the 26th.

COUNSEL: 26th of June, indeed.

CHAIRPERSON: Yes.

COUNSEL: Indeed, Chair.

CHAIRPERSON: So but apply your mind. We are all talking about it without the ...[intervenes]

COUNSEL: ...and everyone is actually trying to get to the true fact here because Mr Pamensky was not involved but I understand your thinking.

CHAIRPERSON: Ja.

COUNSEL: But I think it may be the chronology that we just... It certainly just was not weeks before. Thank you.

CHAIRPERSON: Ja, okay.

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

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Ja.

CHAIRPERSON: We are at twenty-two.

ADV SELEKA SC: We are way out of time.

CHAIRPERSON: [laughs] Well, apart from the charges, what are the other topics you still need to deal with?

ADV SELEKA SC: The other ones I wanted to put to Mr Pamensky. The affidavit – particular emails attached to the affidavit of OUTA which is an annexure to the court
20 application by Corruption Watch seeking to have them declare delinquent directors.

CHAIRPERSON: H'm?

ADV SELEKA SC: It is emails ...[intervenes]

CHAIRPERSON: What topics does it deal with?

ADV SELEKA SC: It is again an apparent conflict on the

part of Mr Pamensky when he is within the Board of Eskom and the emails he exchanges with Mr Atul Gupta. Now these are emails that we did not have. Ja.

CHAIRPERSON: Okay. So it is the charges ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...against Mr...

ADV SELEKA SC: Tsotsi.

CHAIRPERSON: Tsotsi.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: And then that part – that issue.

ADV SELEKA SC: Yes.

CHAIRPERSON: And what else?

ADV SELEKA SC: Ja, and that is – I think will cover all the points Chairperson.

CHAIRPERSON: Okay. Maybe despite us trying to finish today, maybe we are not succeeding. Maybe we should adjourn and we will arrange for another time and then it should not take long. Maybe just an hour.

20 **COUNSEL:** It seems to be, if we try find an hour ...[intervenes]

CHAIRPERSON: Ja.

COUNSEL: ...if everyone schedules.

CHAIRPERSON: Yes.

COUNSEL: We will make a plan without to be there or

Ms Goodman only.

CHAIRPERSON: Yes.

COUNSEL: ...Mr Pamensky I am sure wanted to see but not personal. Do not want to see the back of the Commission.

[laughs]

COUNSEL: So I think we will find an hour somewhere sometime.

CHAIRPERSON: Ja, yes.

10 **COUNSEL:** If you will slip us in.

CHAIRPERSON: Ja.

COUNSEL: Give us just as much load as you can and one of us will try to be here.

CHAIRPERSON: Ja-no, that is fine. That is fine. Mr Pamensky, that is fine with you?

MR PAMENSKY: [No audible reply]

CHAIRPERSON: [Indistinct] ...[intervenes]

COUNSEL: And just there is just also a small amount of re-examination ...[intervenes]

20 **CHAIRPERSON:** Yes.

COUNSEL: ...about Melrose Arch, but that will be five minutes.

CHAIRPERSON: Ja-no, that is fine. That is fine.

COUNSEL: Ja, Chair, I think everyone is getting tired.

CHAIRPERSON: [laughs] Ja, that is true.

COUNSEL: I am sorry. I am not going to the time...

CHAIRPERSON: [laughs] No, that is alright.

MR PAMENSKY: Thank you for staying so late, both of you, because I know it is late.

CHAIRPERSON: No, thank you very much to all of you and it is tough.

COUNSEL: It is ...[intervenes]

CHAIRPERSON: Thank you, Mr Seleka and your team. Mr Pamensky's legal team. And Mr Pamensky, thank you
10 very much for all the cooperation.

MR PAMENSKY: Thanks so much.

CHAIRPERSON: We will adjourn. And then for the public tomorrow. I am hearing the evidence of former Minister Brown. Mr Seleka, is that right?

ADV SELEKA SC: That is correct Chair.

CHAIRPERSON: As well as ...[intervenes]

ADV SELEKA SC: Mister ...[intervenes]

CHAIRPERSON: ...Mr Mantashe and Deputy Minister Makwetla.

20 **ADV SELEKA SC:** From Eskom.

CHAIRPERSON: From Eskom, yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Oh, yes, ja. You only know about Ms Brown.

ADV SELEKA SC: And... unless if the Chair has changed

...[intervenes]

CHAIRPERSON: And Ms Daniels.

ADV SELEKA SC: That is right.

CHAIRPERSON: Yes. No, no. That is true. No, it is Ms Brown, then Ms Daniels ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Then your work stream leaves.

ADV SELEKA SC: That is right.

CHAIRPERSON: Then for the evening session, I will have
10 Mr Mantashe and Mr Makwetla. You do not know about
that but of course it is a different work stream. Okay
alright. Thank you very much. We will adjourn for the day.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS TO 19 MARCH 2021