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10

24 JULY 2019

DAY 59

20

PROCEEDINGS HELD ON 24 JULY 2019

CHAIRPERSON: Morning everybody.

ADV JANNIE LUBBE SC: Good morning Mr Commissioner and members. We're ready to proceed but perhaps my learned friend should take the floor first.

ADV ALEXANDER ROELOFSE: Thank you Commissioners as we informed you this morning we were provided with documentation by the evidence leader 15 minutes before we were due to start this morning but we appreciate the indulgence that you've given us in order to study
10 that documentation and Dr Matjila's in a position to proceed with that. The documentation consists of some timelines and other documentation to do with Ayo and then some WhatsApp messages concerning the issue with the servers and Ms Menye. So that's an issue that we've already dealt with but so as not to interrupt the flow I think let's deal with the WhatsApp messages and then we can proceed with where we were yesterday with the TGR agreement and the Sagarmatha INMSA transactions.

ADV JANNIE LUBBE SC: Thank you. Mr Commissioner with regards to the WhatsApp messages I received it this morning from Ms Menye
20 and I handed it to Dr Matjila at about 20 to nine this morning. It only deals with a notification she has given to the CFO and the head of risk regarding the server problem. It is before the Commission. Dr Matjila can I just ask you perhaps on those WhatsApp messages that I've given you, do you accept it?

CHAIRPERSON: Let's just remind him you're still under oath. Dr

Matjila you're still under oath.

DR DANIEL MATJILA: Yes Commissioner.

ADV JANNIE LUBBE SC: It would seem to me and I'd just like your comment that the people who gave you information about this gave you the incorrect information.

DR DANIEL MATJILA: Commissioner as far as I know the information that I have presented in my statement regarding servers is the correct one, I was not informed about server being fixed for the whole night. So even the WhatsApp here you know I'm seeing them for the first time.

10 **ADV JANNIE LUBBE SC:** Thank you Mr Commissioner that deals with the WhatsApp messages then my colleague can continue with Sagarmatha.

CHAIRPERSON: Am I correct that we're at paragraph 407?

ADV ISAAC MONNAHELA: Mr Commissioner there was an arrangement yesterday that we would return to that agreement that Dr Matjila wanted to be given an opportunity to look at.

ADV ALEXANDER ROELOFSE: That's correct Mr Commissioner.

CHAIRPERSON: That's the sale of shares and claims agreement.

ADV ALEXANDER ROELOFSE: Indeed.

20 **ADV ISAAC MONNAHELA:** Yes Mr Commissioner.

CHAIRPERSON: DD60 was the document?

ADV ISAAC MONNAHELA: Yes Mr Commissioner, actually it is DD60.1. DD60 and 60.1. Mr Commissioner before I proceed on the agreement may I just ask to be given an opportunity to deal with the documents that I gave to Dr Matjila this morning and the e-mails that he

forwarded to Dr Survé?

CHAIRPERSON: E-mails that you talked about yesterday?

ADV ISAAC MONNAHELA: Yes Mr Commissioner.

CHAIRPERSON: Yes you want to ask further questions relating to those?

ADV ISAAC MONNAHELA: Yes Mr Commissioner.

CHAIRPERSON: Alright.

ADV ISAAC MONNAHELA: Dr Matjila yesterday I asked you questions on the e-mails that you forwarded to Dr Survé, is it correct that I gave
10 you those e-mails last week, you and your counsel?

DR DANIEL MATJILA: Commissioner I'm not sure which e-mails are you talking about, what is the content because you've given us so many things we've lost tracked in terms of ... (intervention)

ADV ISAAC MONNAHELA: The e-mails dealing with the allegations against you by James Nogu and ... (intervention)

DR DANIEL MATJILA: Yes those were received last week I think.

ADV ISAAC MONNAHELA: Yes and then this morning I gave you copies of Dr Survé's statement and Mr Lebogang Molebatsi's statement is that correct?

20 **DR DANIEL MATJILA:** That's correct.

ADV ISAAC MONNAHELA: May I ask you to go to paragraph 415 of your statement?

DR DANIEL MATJILA: 415?

ADV ISAAC MONNAHELA: Yes.

ADV ALEXANDER ROELOFSE: Sorry Mr Commissioner Dr Matjila

hasn't given his evidence on these paragraphs, perhaps if he's going to be asked questions about them he should first give his evidence?

ADV ISAAC MONNAHELA: Mr Commissioner I'm not asking questions on the Ayo transactions it's not – I'm just trying to establish that Dr Matjila is not seeing Mr Lebogang Molebatsi's statement for the first time today.

CHAIRPERSON: Why can't that wait until we get there?

ADV ISAAC MONNAHELA: Because when we deal with Sagarmatha I'm going to ask him questions based on Mr Molebatsi's statement.

10 **CHAIRPERSON:** Alright let's hear I don't know what you want to establish but alright let's hear what ... (intervention)

ADV ISAAC MONNAHELA: May I just ask this question without necessarily having to refer to the paragraphs. Dr Matjila did you read Mr Lebogang Molebatsi's statement?

DR DANIEL MATJILA: Yes I've read it but the Commissioners must understand that there have been many other statements that I had to go through so I wouldn't say I know the content 100% which need to keep referring to those paragraphs that are important from time to time.

20 **ADV ISAAC MONNAHELA:** When you read the statement did you read the entire statement?

DR DANIEL MATJILA: Yes.

ADV ISAAC MONNAHELA: And then in your statement you refer to Mr Tatenda Makuti who is in the legal division. Did you read his statement or did you watch when he was testifying before this Commission?

DR DANIEL MATJILA: I read his statement.

ADV ISAAC MONNAHELA: Thank you Mr Commissioner. Now the e-mails, from the documents that I have read it seems that the practice at the PIC when the media made enquiries the practice was for them to approach the Corporate Affairs Division which handles communications within the PIC am I correct?

DR DANIEL MATJILA: That's a process yes but it's not the process, it can be, in fact the Board has given new authority to be the spokesperson of the organisation.

ADV ISAAC MONNAHELA: Okay so there was no need for you to refer
10 Dr Survé?

DR DANIEL MATJILA: There was no need.

ADV ISAAC MONNAHELA: Thank you. And then there is an e-mail which formed part of the e-mails that I gave to you last week it is apparent from that e-mail that you requested the Ecobank officials to do research for you on e-commerce in Africa is that correct?

DR DANIEL MATJILA: They were not doing research for me they were sharing research that they have on e-commerce with us.

ADV ISAAC MONNAHELA: And then you forwarded that information to Dr Survé on the same day you received it?

20 **DR DANIEL MATJILA:** Yes because he requested if the PIC has any, has done any work on e-commerce in Africa and I said to him well we don't have but perhaps our partners, which is Ecobank might have because they are invested in a lot of countries and they are very much into technology, they will be able to assist in that regard and indeed they were able to provide something in that regard which I then passed

on to Mr Survé, I mean Dr Survé as requested.

ADV ISAAC MONNAHELA: And when you contacted Ecobank did you do that in your capacity as CEO of the PIC?

DR DANIEL MATJILA: Yes I mean I've used the e-mail if my memory served me well, this e-mail is from the PIC I think.

ADV ISAAC MONNAHELA: Okay don't you think that that might be interpreted as you using your position as CEO of the PIC to benefit a third-party?

DR DANIEL MATJILA: I don't know the nature of the benefit, if it's
10 knowledge, benefitting knowledge I mean we are in, we do share knowledge across, there are people who share knowledge with us, expertise, research and all that it gets exchanged in the Eco system so I don't see any problem with knowledge sharing.

ADV ISAAC MONNAHELA: Mr Commissioner I will now move to the agreement. Dr Matjila I handed you a copy, two pages, which contain the transcribed evidence of Mr Tatenda Makuti is that correct?

DR DANIEL MATJILA: That's correct.

ADV ISAAC MONNAHELA: Then if you look at page 127 of that document from line 20 Mr Makuti said the following:

20 "The Acting CEO Matshepo called various members, myself, my manager Sasha, I think and guys from the unlisted side because she wanted also to understand the history of the agreement I think it was also new to her. So we, I rather think she wanted to know if the agreement was still valid and all those kind of things so I was then tasked by my manager just

to provide a summary of the issues and whether we can cancel the agreement.”

May I ask you to move to the next page. And then I asked him a question:

“If I may ask you once again are you aware that PIC internal processes were complied with before the agreement was signed or not?”

And the following was his answer:

10 “Definitely I’m not really sure, that’s something that we were also trying to figure out when we contacted TGR Attorneys just to check if you know, especially on the part of legal, whether we followed our process before signing off the agreement.”

That Mr Makuti seems to be saying in those passages that I have read that no one within the PIC knew about the agreement, do have any comment on that?

DR DANIEL MATJILA: I don’t understand what Mr Makuti says, this agreement captures discussions that had been had from September 2017 around the possible restructuring INMSA and possible exit of the PIC and part of the process as we have outlined Commissioner was that
20 INMSA may be absorbed into the new entity and the process of doing that required all shareholders to agree to subordinate the loans and claims or converting their loans and claims into equity and that had also the effect of fixing the balance sheet of Independent News Media which was already in distress so in preparation for that all shareholders were requested to subordinate their claims or convert them into equity

and so this document here captures exactly that that we support as PIC and other shareholders would have signed the same thing as well that says that we support conversion of our loans and claims into equity of a company that's going to be listed earlier on subject to certain conditions that are highlighted here some of which were not met and most importantly I need to highlight that this document was signed on the 13th. The meeting as we discussed yesterday of IC was held on the 6th December and the reason why this was signed on the 13th the discussions have happened, I was not in that meeting on the 6th December that decided on separating the listing from the settlement of loans and claims by the PIC against INMSA. But the gist of it was that this memo or this contract was signed in order to fix the balance sheet of INMSA in preparation for the listing and this was a request for all shareholders to do, that's the basis. We were ... (intervention)

CHAIRPERSON: Just for the record the document that is referred to is the document that we marked yesterday DD60.1.

ADV ISAAC MONNAHELA: Yes Mr Commissioner.

DR DANIEL MATJILA: I think so, I think so Commissioner.

CHAIRPERSON: Yes but can I ... (intervention)

20 **DR DANIEL MATJILA:** The TGR.

CHAIRPERSON: Ja can I just say that insofar as the signing of the document it appears that you signed, if that's your signature on the last page?

DR DANIEL MATJILA: Yes.

CHAIRPERSON: You signed on the 13th December but there's another

signature on the 14th?

DR DANIEL MATJILA: That's right ja, yes that's correct. So this was to fix the balance sheet of Independent News Media ahead of the listing of Sagarmatha and it has conditions that should be fulfilled including the listing of Sagarmatha itself. And so in January then Mr Muller then explained to me that the IC has decided not to support fuller conversion but only the conversion part of equity and separate the listing from the actual settlement of all claims, loans and claims due to the PIC and that was captured in the letter that was written by Mr Muller to
10 Independent News Media therefore nullifying this agreement in other words.

ADV ISAAC MONNAHELA: May I ask you this question, do you know if there was a resolution that said that the PIC could enter into an agreement with Sagarmatha in terms of which INMSA and SIM's debt to the PIC could be swapped for shares in Sagarmatha?

DR DANIEL MATJILA: There was no resolution but there was an agreement within the PIC that it's something that can be done because if you look at the value of shares that are going to be converted it's at a reasonable premium versus our entry price and that was the
20 attraction, it's around 883.3 million versus 1.5 billion potential exit if that listing happens. So I was happy as a CEO to agree to such a conversion taking place if it can take place.

ADV ISAAC MONNAHELA: Do you know when that agreement was reached and by whom?

DR DANIEL MATJILA: This agreement has been negotiated among all

the other shareholders as I said and the PIC was then requested to support.

ADV ISAAC MONNAHELA: Follow up on that question, do you know ... (intervention)

CHAIRPERSON: Sorry was the PIC part of the negotiations to get to that ... (intervention)

DR DANIEL MATJILA: Yes, yes Commissioner ja this has been a to and fro negotiation between the different parties that culminated into this agreement.

10 **ADV ISAAC MONNAHELA:** Do you know who represented the PIC in the negotiations?

DR DANIEL MATJILA: This would have been the transaction team because the essence of it was simply a conversion, there was nothing, if you read the contract it's nothing extraordinary, it's just about you know subordinating the claims of the PIC in order to fix the balance sheet of Independence News Media and this is something that we do most of the time, there has been several such transactions where we subordinate.

20 **ADV ISAAC MONNAHELA:** Mr Commissioner may I just place it on record that we will consult with the transaction team regarding the alleged agreement.

CHAIRPERSON: Do you mind if we ask some questions in relation to this or are you moving to some other topic?

ADV ISAAC MONNAHELA: Yes I still have questions on the agreement Mr Commissioner.

CHAIRPERSON: Alright carry on.

ADV ISAAC MONNAHELA: Dr Matjila may I ask you to go to page 3 of that agreement and may I specifically refer you to clause 2.4.16 that's offer price it reads as follows:

“Offer price means R39,62 per ordinary share of the purchaser.”

Do you know if any due diligence was done before the offer price was agreed upon?

DR DANIEL MATJILA: Commissioner let me explain here, this is an
10 agreement that simply says we will do this kind of thing into the future, there's not even a PLS at that point, the listing is still going to happen so there's a lot of conditions that need to be fulfilled for this to take effect, it's just an idea that we should subordinate and this is the basis of which a subordination will be made as and when this eventually happens.

ADV ISAAC MONNAHELA: And then may I ask you to go to, I think it's clause 5, it deals with purchase price and payment. Clause 5.1 deals with the purchase price which is about R1.5 billion and it sets out how it is made up and then clause 5.2 reads as follows:

20 “On the effective date the purchase price shall be discharged by the purchaser allotting and issuing to the seller the purchaser shares credited as fully paid up at a price equal to the offer price.”

I understand that clause to mean that no cash payment will be made, do you agree?

DR DANIEL MATJILA: That's an agreement, Commissioner we said that this is swapping of shares into a listed entity, I think we have made that clear before.

ADV ISAAC MONNAHELA: And at its meeting of the 6th November 2017 the PEPSS FIP took a contrary resolution do you agree or the resolution that it took is contrary to what is stated in clause 5.2 do you agree?

DR DANIEL MATJILA: Commissioner what's important here is they say the PEPSS committee says any settlement must be separated from the
10 listing so in other words the PEPSS says we want cash for our shares or any loans and claims that's what it means.

ADV ISAAC MONNAHELA: Mr Commissioner I have no further questions.

MS GILL MARCUS: Dr Matjila just on this we're going to come to Sagarmatha itself and we will deal with a lot of the things there but it is not as simple in terms of the conditions precedent as was determined on the meeting of the 6th December. You signed on the 13th December and you weren't in that FIP's meeting. Is it not correct process in the PIC that before you went into an agreement you would see what the
20 decisions were in a FIP's meeting whether there was actually approval agreement, did you not look at the decision of that 6th December meeting?

DR DANIEL MATJILA: Ja I didn't I mean I never had a chance to do that and most of my colleagues had left already who were in the meeting to appraise me on what the IC has decided on.

MS GILL MARCUS: But wouldn't that be a precondition of moving onwards that you know what the decision of an investment committee is?

DR DANIEL MATJILA: It would be but I didn't see any harm in signing this because it had enough safeguards for the PIC including the listing so I was comfortable signing without the knowledge of what the IC has decided.

MS GILL MARCUS: We're going to come to that but I mean so you were comfortable signing again on something that I would have thought
10 process would require especially once you saw what the, even subsequently, even if you didn't check it before you took the decision and you saw the preconditions and the preconditions as contained in the resolution and in Mervin Muller's letter which was obviously in January but the preconditions in this document that we've been referring to DD60A the preconditions are very different. So were the preconditions that were, did it make you, when you saw, when you found out subsequently what the preconditions where did you review your agreement with that you had agreed to ... (intervention)

DR DANIEL MATJILA: I think the, Commissioner the issue here is that
20 this fell away because any decision of the next committee will nullify any agreement that is entered into by somebody below that.

MS GILL MARCUS: But is there any formal resolution that that was done because the Sagarmatha deal continues right up until the listing proposal?

DR DANIEL MATJILA: It continues ... (intervention)

MS GILL MARCUS: So it didn't fall away?

DR DANIEL MATJILA: Ja I think it continues but it's separated as per the committee's approval, it separate from the loans and claims and ... (intervention)

MS GILL MARCUS: Okay we'll come back to the Sagarmatha let's look at it in context so just to be clear around this you did not, you signed the agreement knowing there was a meeting that you were not at that there would have been a decision but you did not as you say had the time to look at that decision and have it influence what you were
10 signing?

DR DANIEL MATJILA: That's correct.

MS GILL MARCUS: Okay thank you.

ADV ISAAC MONNAHELA: Mr Commissioner may I just refer the Commission to paragraph 66 of Mr Lebogang Molebatsi's statement.

MS GILL MARCUS: The paragraph 66 of Molebatsi's statement?

ADV ISAAC MONNAHELA: Yes.

MS GILL MARCUS: Okay so an you read it into the record?

ADV ISAAC MONNAHELA: Yes it reads as follows:

20 "Based on minutes from the PMC meeting held on 6th April 2018, the Sale Agreement was nullified. I was not part of the discussions that resulted in this nullification. The sale agreement was signed by Dr Dan and I therefore assume that he would have been the one who negotiated this."

I just wanted to point out that according to Mr Molebatsi the sale agreement was nullified on the 6th April 2018 whatever that means.

DR DANIEL MATJILA: Ja.

CHAIRPERSON: And that's the agreement 60.1?

ADV ISAAC MONNAHELA: Excuse me Mr Commissioner?

CHAIRPERSON: Is the agreement that Mr Molebatsi refers to the TGR agreement the sale of shares and claims agreement or is it something else?

ADV ISAAC MONNAHELA: Yes, yes Mr Commissioner.

CHAIRPERSON: Alright.

ADV ISAAC MONNAHELA: And if I may refer the Commission to
10 paragraph 60 of the statement he says the following ... (intervention)

CHAIRPERSON: Whose statement?

ADV ISAAC MONNAHELA: Mr Molebatsi he says the following:

“However, as per the request from Fidelis to make a
submission to PMC, Victor proceeded to put the submission for
PMC1. In our submission, we had already highlighted that our
fair value was much lower at R7.06 compared to Sagarmatha's
IPO asking price of R39.62. In addition we outlined that part
of the capital raised from the IPO would be used by
Sagarmatha to buy PIC's shares in and loan claims against
20 Independent Media and Sekunjalo Independent Media. This
information was disclosed in the draft PLS where it referenced
a Sale Agreement entered into on or about 1 December 2017.”

I believe that that was a mistake I think the intention was to refer to the
agreement that was signed on the 13th December 2017, unless there is
another agreement that Dr Matjila signed on the 1st of December 2017.

CHAIRPERSON: Well, is there? Is there another agreement that you signed on that date Dr Matjila?

DR DANIEL MATJILA: No, Commissioner. Let me quickly clarify the issues here, I think there's a misunderstanding.

The price of R 7.06 its been dealt with later on by the Listed investment team as per the recommendation of the FIP that this should then be taken over to IC to test appetite and that would have been later on, after January I think, as part of the process of investing or analysing Sagarmatha.

10 **ADV ISAAC MONNAHELA:** Mr Commissioner.

DR DANIEL MATJILA: So this price of R 7.06, it's for later not at the time when this document is signed. There's a proposal of R 39.00 but that will be subject to certain internal processes including price verification. Once the PLS is out which is what happened, the team then started analysing and came to a different value from what the PLs was prescribing.

ADV ISAAC MONNAHELA: Mr Commissioner, there was a question from you whether the paragraph that I had read, Mr Molebatsi- in the paragraph that I had read, Mr Molebatsi was referring to Annexure
20 DD60.1. I just wanted to confirm that that was the agreement that he was referring to. I wasn't focussing on the share price.

CHAIRPERSON: Are you done, no further questions?

ADV ISAAC MONNAHELA: Yes, Mr Commissioner.

CHAIRPERSON: You didn't tell us, I had any further questions.

ADV ISAAC MONNAHELA: I thought I said it earlier, Mr Commissioner

that had no further questions.

CHAIRPERSON: No question? None from our side, so I think we can continue.

ADV ALEXANDER ROELOFSE: Just a couple, Mr Commissioner.

Dr Matjila, so we've now established that Mr Molebatsi confirms your evidence that this sale of shares as per what I can call the TGR agreement, Annexure DD60.1 was quote unquote nullified, is that correct?

DR DANIEL MATJILA: That's correct.

- 10 **ADV ALEXANDER ROELOFSE:** But if I can just take you to that agreement none the less and if we just look at the conditions precedent in paragraph 3.1, it says that;

This agreement by which the party shall be bound with effect from the signature date is subject to the following conditions precedent which must be fulfilled on or before the effective date.

Okay and if we have a look at what effective date means at paragraph 2.4.7 it means;

Either the date on which the SENS announcement is to be released

What is a SENS announcement?

- 20 **DR DANIEL MATJILA:** This is the stock exchange new services.

ADV ALEXANDER ROELOFSE: As notified by the purchaser to the seller in writing or if no such SENS announcement is to be released, the second business day following the date on which the purchaser notifies the seller in writing that the listing will proceed.

So that's the date by which these conditions precedent must

be fulfilled. One of the conditions precedent in paragraph 3.1.1 is the SIM sale agreement being entered into and becoming unconditional in accordance with its terms. Now that SIM sale agreement is also defined in the sales agreement in paragraph 2.4.37 which means;
The agreement to be entered into between SIM consortium 1, SIM consortium 2, SIM consortium 3 and the purchaser in terms of which SIM consortium 1, SIM consortium 2, SIM consortium 3 sell and the purchaser agrees in agreed of 92% of the issued ordinary shares in SIM.

10 As a fact, that SIM sale agreement, never came into existence?

DR DANIEL MATJILA: As far as I know, I haven't seen such an agreement.

ADV ALEXANDER ROELOFSE: And did this SENS announcement occur or not?

DR DANIEL MATJILA: The SENS announcement I'll have to check but it would have happened once the Sagarmatha was about to list, there would have been a SENS announcement. We'll have to find out.

ADV ALEXANDER ROELOFSE: But Sagarmatha didn't list.

20 **DR DANIEL MATJILA:** Sagarmatha didn't list eventually.

ADV ALEXANDER ROELOFSE: And there was no SIM sale agreement as defined in this contract either?

DR DANIEL MATJILA: We haven't seen that either.

ADV ALEXANDER ROELOFSE: So the condition precedent there wasn't fulfilled?

DR DANIEL MATJILA: As far as I can remember.

ADV ALEXANDER ROELOFSE: And you stated that the reason that you concluded this contract is because you are unaware of the decision taken at the FIP's, is that correct?

DR DANIEL MATJILA: That's correct.

ADV ALEXANDER ROELOFSE: And once you were aware of that decision at the FIP's, in fact you signed a new contract which is attached as Annexure DD60.

DR DANIEL MATJILA: Yes which if I recall we were looking for the
10 signed copy.

ADV ALEXANDER ROELOFSE: Yes.

DR DANIEL MATJILA: Yes.

ADV ALEXANDER ROELOFSE: That's an unsigned copy that you've provided us but you recall that you signed a copy.

DR DANIEL MATJILA: Yes.

ADV ALEXANDER ROELOFSE: And that new contract that you signed then gives effect to the FIP's decision to separate the exit from INMSA from the entry into Sagarmatha?

DR DANIEL MATJILA: That's correct, Commissioner.

20 **ADV ALEXANDER ROELOFSE:** I don't have any further questions.

CHAIRPERSON: Thank you.

ADV ISAAC MONNAHELA: Mr Commissioner, may I just ask one question on the issue of whether Dr Matjila was aware of the FIP's resolution?

Dr Matjila, Ms Bongani Mathebula testified before this

Commission that she emailed you the PEPSS FIP resolution and that you would have been aware thereof. Do you have any comment on that?

DR DANIEL MATJILA: I don't know when and what time, I haven't seen that. It may have been sent but I may not have seen it.

CHAIRPERSON: Is that to say or to interpret your response as you don't recall?

DR DANIEL MATJILA: Ja, I don't recall seeing such a resolution.

ADV ISAAC MONNAHELA: Thank you, Mr Commissioner.

10 **MS GILL MARCUS:** Ja sorry. Can I just ask in relation to DD60 then on the conditions precedent and the point you've made about meeting the conditions precedent of the FIP agreement.

Do you reflect that at all in this agreement because I can't see a definition in relation to it?

DR DANIEL MATJILA: Commissioner, we are lost.

MS GILL MARCUS: Yeah, I'm just saying that you just confirmed that your DD60 met the FIP preconditions, the conditions precedent.

DR DANIEL MATJILA: Yes.

20 **MS GILL MARCUS:** And I'm just trying to see where the definition is of separation that this does not in this document where the separation is that there cannot have- that you would be getting funding not linked to the Sagarmatha listing.

Does that get reflected at all in this agreement?

DR DANIEL MATJILA: Ja, I think this is the payment schedule already dealing with how payment is going to be done. So the two are now

separated, the settlement is separate from the listing and this captures ... (intervenes)

MS GILL MARCUS: Just the settlement?

DR DANIEL MATJILA: Just the settlement, cash settlement Commissioner.

MS GILL MARCUS: Okay, thank you.

ADV ALEXANDER ROELOFSE: If we can then move on to Sagarmatha itself which is paragraph 408, Dr Matjila.

DR DANIEL MATJILA: Paragraph 408, Commissioner.

10 I was invited by Dr Iqbal Surve to attend a meeting with Sagarmatha senior management in Cape Town the 14th of November after the PIC meeting with standing committee of finance on the new bill to discuss the new PIC bill.

Mr Paul La Montagne who was intended to become CEO of the listing gave a full presentation on Sagarmatha and the plan to list.

Mr Fidelis Madavo accompanied me to this meeting. I asked them to provide Mr Madavo with the transaction material and a prelisting statement once finalised. Mr Madavo led the process from then on.

20 Mr Madavo passes on the information to the relevant team-passed the information to the relevant team for processing.

The transaction team on the 29th of January 2018 reported to PEPSS FIP meeting that Sagarmatha was preparing to list in two months. As previously mentioned, Sagarmatha will be the exit strategy for the PIC investment in INMSA.

The committee formerly clarified that the Listed team can proceed with the due diligence and the IC should be approached for comfort.

According to the Sagarmatha prelisting statement, a copy which is attached and marked as DD61, the listing price of Sagarmatha was set at R 39.62 per share. The Listed investment team did all the analysis and arrived at an evaluation of R 7.06 per share.

The IC was approached to their appetite as per FIP requirement. The IC did not support the deal but referred it back to
10 management to decide that this was within the delegated authority of PMC Listed.

There were various proposals from Sekunjalo investment holding led by Dr Iqbal Surve which included an issuing of a R 1.00 strike call options to the PIC to bring down the average entry share price to a figure closer to R 7.06 per share valuation of the PIC.

This was considered by the PIC but will not be possible to implement as all other potential subscribers will have to be offered the same. This will require this change to be reflected in the prelisting statement of Sagarmatha.

20 The PIC withdrew his support for the listing because the differences in the share prices were too high. The listing was subsequently withdrawn by the JSE sighting non compliance with competition Act, Companies Act therefore the conversion of independent news media into Sagarmatha fell through.

The IC met on the 16th of October to consider a new proposal

from SMS. At that point 50% of the outstanding balance of 677 million was due on the 16th of August 2018 and the rest was due 16th of August 2020.

Furthermore Sekunjalo and INMSA we're obliged to settle an amount of 604 214 747 rands due to intercom investment holdings.

SIM and INMSA were in default, the PIC had issued a default notice to SIM and INMSA say to remedy the breach within 20 days of receipt of notice as per relevant legal contract. Failure to remedy would result in the PIC exercising its rights as per legal contracts.

10 SIM had approached to PIC 330 million which is about 37% of capital owing within 5 years payable as follows;

R 30.00 within 7 days after agreements are signed.

40 million within 90 days

30 million within 120 days of the signature of the agreements

57.5 million paid annually ... (intervenes)

CHAIRPERSON: Sorry, that first figure is 330 million, isn't it?

DR DANIEL MATJILA: 330 million, Commissioner.

57.5 million paid annually for 4 years and then balance will be payable based on the performance of the company.

20 The IC was concerned that even if the offer is accepted SIM will still be in default in the near future. The IC approved the proposal and stressed that there should not be anymore tolerance for default.

I understand that this decision was reversed after I've left the PIC.

The PIC currently has 1.275 billion investment in independent

media group. However it did not invest in Sagarmatha Technology Limited which would have become the new holding vehicle for independent news media and its ambitious electronic and digital expansion plans.

MR EMMANUEL LEDIGA: Just a clarification here.

The 1.275 versus the 1.3 like if you look at page 143, I just wanted to see how those numbers add up. If you look at the valuation in that column, the valuation column, it says the PICs owed 1.3 billion when you add the interest and the other things or is this a PIC figure or
10 what?

DR DANIEL MATJILA: Commissioner, these figures must be the same. It must be a typo.

MR EMMANUEL LEDIGA: Yes.

DR DANIEL MATJILA: We expect them to be the same.

MR EMMANUEL LEDIGA: Yes. So does it mean then that the PICs owed 1.3 billion rand?

DR DANIEL MATJILA: Yes, 1.3 billion.

MR EMMANUEL LEDIGA: And then when you sort of gross up the interest and the other things. Ja.

20 **DR DANIEL MATJILA:** Ja, I explained that.

MR EMMANUEL LEDIGA: And then the 1.275 then is not a correct figure or do we gross it to 1.3 billion? Maybe it's rounded up to 1.3

DR DANIEL MATJILA: Ja, I think we'll have to check why it's different.

MR EMMANUEL LEDIGA: 1.275 ... (intervenes)

DR DANIEL MATJILA: Although it's not material but that ...

(intervenes)

MR EMMANUEL LEDIGA: Ja, but it's around 1.275 ... (intervenes)

DR DANIEL MATJILA: I expect them to be the same. I think this must have been a typo somehow.

MR EMMANUEL LEDIGA: This should be the same figures I guess. Ja, okay.

DR DANIEL MATJILA: Yes.

MR EMMANUEL LEDIGA: You can continue its fine.

DR DANIEL MATJILA: Okay, thank you.

10 **MR EMMANUEL LEDIGA**: You must just establish.

DR DANIEL MATJILA: Thank you, Commissioner.

Through the PIC involvement with Sagarmatha, AYO Technologies and independents media group, it was widely supported that this dealings came about as a result of a close personal relationship or friendship that existed between me and Dr Iqbal Surve.

I would at this opportunity like to set the record straight. Yes, there was a continuous engagement with Dr Surve and the reason for this was not because of friendship per se but I and my colleagues were worried that the PIC was increasingly exposed to high risk and I needed
20 to be closely involved with the major player so as to enable continuous-
to be able to continually assess the situation.

There was a talk of restructuring the organisations involved and I needed to be at the forefront so as to influence decisions which will be in the best interest of the PIC and I strongly believe that not having this continuous engagement would have been reckless.

ADV ALEXANDER ROELOFSE: I don't have any questions, Mr Commissioner.

CHAIRPERSON: Yes, Mr Monnahela.

ADV ISAAC MONNAHELA: Thank you, Mr Commissioner. And if I may refer the Commission again before I start my questioning to paragraph 65 of Mr Lebogang Molebatsi statement, he also makes it clear in that paragraph that he was referring to the agreement signed by Dr Matjila on the 13th of December 2017. He says in the third sentence of that paragraph;

10 The final prelisting statement did not make reference to the previously mentioned sale agreement wherein Sagarmatha would buy PIC shares in and loan claims against independent media and Sekunjalo Independent Media.

Dr Matjila, may I refer you to paragraph 67, 68 and 69 of Mr Molebatsi statement? He says at paragraph 67;

On the 4th of April 2018 we submitted a request for IC to approve participation in the Sagarmatha IPO not at that asking price of R39.62 but at the PICs estimated intrinsic value of R 7.06

20 Paragraph 68;

On the 6th April 2018, a special PMC was held in resolved to approve the transaction. But at the intrinsic value per the report we submitted to IC and PMC that is R 7.06

IC subsequently held a telecom on the matter and resolved that PMC had the delegation of authority to deal with the

transaction.

Now paragraph 69;

Based on an email received from Dr Dan on 10 April 2018, it became clear that Sekunjalo had continued negotiations on the transaction with Dr Dan. In this email, Dr Dan proposed that we submit a new PMC document. The salient features of the deal that was reached was;

10 69.1 PIC would subscribe as Sagarmatha original requested listing price of R 39.90- I think he made a mistake, it should be R39.62, for 3 billion rand worth of shares.

69.2 In addition Sagarmatha would issue PIC a call option of R 1.00 on enough number of shares so as to give us an average price of R 8.50 per share.

69.3 In effect the PIC would be receiving exposure to Sagarmatha at a lower price that is R8.50 than the IPO price on the same day that other subscribers would be paying the full price.

But I want to focus specifically on the first sentence of paragraph 69 where Mr Molebatsi said;

20 Based on an email received from Dr Dan on 10 April 2018, it became clear that Sekunjalo had continued negotiations on the transactions with Dr Dan.

It appears as if Mr Molebatsi and the team were not aware that you were dealing directly with the Sekunjalo officials. Do you have any comment on that?

DR DANIEL MATJILA: I don't understand this Commissioner because I've- we interacted with the team a lot on various proposals that were coming from Sekunjalo including all forms of protections that we were putting forward. This is just one of the proposals that I put forward to the PIC which I communicated directly to the team that they consider it if it's doable. So it's not a secret that there was a lot of proposals that were coming from Sagarmatha.

ADV ISAAC MONNAHELA: But according to the evidence before this Commission, they had made a final decision to recommend that the PIC
10 shall subscribe at R 7.06 per share and they were not willing to change their minds on that.

DR DANIEL MATJILA: I don't agree with that, I don't know what he means by not willing because we have been negotiating and different scenarios have been put on the table as I've explained earlier.

CHAIRPERSON: Can I just get clarity on this. Are you saying that whilst the transaction team was busy with negotiations, you were also on the side having dealings with the Sagarmatha people?

DR DANIEL MATJILA: There has been a lot of interaction on different scenarios that they were proposing which I had passed on to the team.
20 Commission, it was not a bilateral. I've always passed on information to the team because they are the ones that are processing information. I can't take a decision without them saying yes or no.

MS GILL MARCUS: When you met with or interacted with Dr Surve coming back to a previous question, did you meet him on your own? Did members of the team, did you ever meet him on your own or did

you always take a member of the team with you?

DR DANIEL MATJILA: I think Commissioner in the case of Sagarmatha I haven't met him alone.

MS GILL MARCUS: You never met him alone?

DR DANIEL MATJILA: No, the first meeting as I explained here happened in Cape Town somewhere in the presence of Mr Madavo and then I passed on information to them. Then from there, there were mainly email correspondence or different scenarios that we could consider.

10 **MS GILL MARCUS:** And all those emails were forwarded to the team?

DR DANIEL MATJILA: Yes, Commissioner.

MS GILL MARCUS: Can I just ask you, if you don't mind, the question that Mr Molebatsi, seeing that we are on his statement. He states very clearly in the testimony before the Commission that;

“the CEO wanted the Sagarmatha deal to go to the PMC and go through irrespective of the facts. It was an instruction that the transaction be presented to the PMC. Furthermore the continued negotiations by DR Matjila with Sekunjalo directly put his team in harm's way.”

20 **DR DANIEL MATJILA:** Commissioner, I don't know where Mr Molebatsi is coming from on this because we've always debated issues, we've discussed matters and we have reached consensus. That I mean the impression that is created there, here that I forced a deal is not true. I don't agree with this.

CHAIRPERSON: What were you passing on to the team? What

actually was it that you were passing on to the team?

DR DANIEL MATJILA: It's mainly the counter proposals that I was receiving from the Sagarmatha team led by Dr Surve.

For example this R 1.00 proposal, R 1.00 call option proposal they sent it to me and then I pass on to the team to see if it's something that we can look at. And it became clear from the team that it can't be done because then the PLS need to be changed because you can create a special dispensation for one investor in a listing and IPO.

All investors must work from the same formation and be
10 entitled to the same privileges in terms of the PLS. Otherwise you have to change the PLS and issue a new one with new conditions and privileges and benefits if I were to put it that way.

MS GILL MARCUS: Would that have been the only reason why you would not agree to it? That it would have been the question of issuing a new PLS? You still haven't issued as far as I'm aware the final listing statement had not been concluded at that point. Was that the only reason?

DR DANIEL MATJILA: Sorry, I don't understand the question Commissioner.

20 **ADV ISAAC MONNAHELA:** The question is, you've said that this could not go- this deal of R1.00 on the side which we agreed was raised, before here it was raised with the JSE as concern of a differentiated approach between the PIC and what it would pay because I think if I remember it would be something that on average you'd end up paying R 8.50 or so ... (intervenes)

DR DANIEL MATJILA: Somewhere.

MS GILL MARCUS: For the shares. That was the only reason why you did not agree to go with this was because you would have to rework the PLS? Or was it actually inherently flawed?

DR DANIEL MATJILA: I think the most important thing here is that the price, if R 1.00 call option is accepted and it's legitimate and it gives us a price that is closer to intrinsic value, there wouldn't be a problem.

MS GILL MARCUS: Mr Molebatsi indicated his reservations saying that he was not convinced that Sagarmatha would have the balance sheet to
10 act under this and that he communicated that to you. Do you recall that?

DR DANIEL MATJILA: I think he did, he did talk about the balance sheet. Ja, we did consider that. It's probably one of the reason that it was difficult to accept this proposal as well because you needed a combination of ability to honour the call option when it's exercised and that requires the right balance sheet to do that.

MS GILL MARCUS: So in essence, if I understand you correctly you're saying that this deal irrespective of the JSE then cancelling the IPO, you were not going ahead with the Sagarmatha deal?

20 **DR DANIEL MATJILA:** Yes, that's the decision of the committee. We had decided that the ... (intervenes)

MS GILL MARCUS: And have you got a record of that decision?

DR DANIEL MATJILA: Sorry?

MS GILL MARCUS: Have you got a record of that decision?

DR DANIEL MATJILA: Yes, I think it would have been in the PMC that

discussed this for the last time.

MS GILL MARCUS: It would be very useful if we could see that.

DR DANIEL MATJILA: Ja.

MS GILL MARCUS: As well as then your communication to Dr Surve about not proceeding and the reasons for that. Because one would assume that you'd have gone back to him to say you are not proceeding.

DR DANIEL MATJILA: Ja.

MS GILL MARCUS: And these are the reasons why not irrespective as
10 you've indicated of the JSE cancelling the IPO.

DR DANIEL MATJILA: Okay.

ADV ALEXANDER ROELOFSE: Can I be of assistance to the Commission and refer the Commission to the extract from the minutes of the PMC Listed Investments Meeting held on 23 May 2018 which is part of Annexure DD58 to our Annexures and in connection with Sagarmatha Technologies Limited, it says;

The committee noted that the investment committee declined to approve the recommended transaction wherein the PIC would participate in the Sagarmatha listing at or below the PICs based case
20 estimate of Sagarmatha intrinsic value of R 7.06.

Furthermore the listing was withdrawn by the JSE, this matter should be closed.

MS GILL MARCUS: What you've got as DD58.2 - 58.3.

ADV ALEXANDER ROELOFSE: It's not numbered but it is
...[intervenes]

MS GILL MARCUS: It's the 8 May.

ADV ALEXANDER ROELOFSE: Yes.

MS GILL MARCUS: That's the Ayo Technology.

ADV ALEXANDER ROELOFSE: No, the 23 May 2018. It's part of part 2 and I think it's the last document in part 2.

MS GILL MARCUS: Ja, DD58 has a lot of subsections.

ADV ALEXANDER ROELOFSE: That's right, so I think it's got three and this is the last document in part 2.

MS GILL MARCUS: Ja, I've got it thank you.

10 **CHAIRPERSON**: Is it the extract of the - the meeting of the 8 May?

ADV ALEXANDER ROELOFSE: 23 May, Mr Commissioner, it's the last document in part 2.

MS GILL MARCUS: 23 May, it's this page here, just before DD58.3. Thanks, I've got it. And we assume that there would be correspondence to Dr Survè confirming that.

DR DANIEL MATJILA: I would assume that there should be.

MS GILL MARCUS: Would that have come after this decision?

DR DANIEL MATJILA: I think it would have been immediately after the decision.

20 **MS GILL MARCUS**: And the IPO was expected to happen when?

DR DANIEL MATJILA: I think it was about the same day or so, a day before, I will have to check that, Commissioner, Sagarmatha.

MS GILL MARCUS: The original – and again going back to Mr Molebatsi, I think he says the transaction was running parallel to that of Ayo with an IPO date at the end of the last week in January 2018 for

the first week of February 2018.

DR DANIEL MATJILA: Ja, the – according to his statement, he says on the 12 April the JSE cancelled the IPO and so the PIC would have ...[intervenes]

MS GILL MARCUS: The JSE cancelled on the 12 April.

DR DANIEL MATJILA: Yes.

MS GILL MARCUS: Ja.

DR DANIEL MATJILA: So the PIC would have taken that decision either on the same day or before that. I think they were very close,
10 those decisions.

MS GILL MARCUS: Okay, thank you.

DR DANIEL MATJILA: We can find it out.

ALEXANDER ROELOFSE: Sorry, Commissioners, just in respect of Commissioner Marcus' last question, the Sagarmatha PLS is annexure DD61, page 6553 and the – just looking for the listing date. It's just an extract from the prelisting statement of Sagarmatha but I can't see a listing date anywhere on it.

MR ISAAC MONNAHELA: Mr Commissioner, my recollection is that the listing date as 13 April 2018.

20 **ALEXANDER ROELOFSE:** Sorry, the second last paragraph on the first page on 553 says:

“The JSE has granted Sagarmatha Technologies approval for listing of up to so many shares in the media sector, subsector broadcasting and entertainment on the main board of the JSE with effect from the commencement of trade on Friday 6 April

2018 under the abbreviated name Sagarmatha.”

MR EMMANUEL LEDIGA: Just a question from me. You mention that, you know, there were options that were looked at to sell the – you know, the INMS Group. What options were they – what options were being looked at in terms of dealing with this group, the Independent Group?

DR DANIEL MATJILA: I think the main one was through the listing of Sagarmatha.

MR EMMANUEL LEDIGA: Sagarmatha.

10 **DR DANIEL MATJILA**: Ja and simply transferring the assets into – converting the assets, all shareholders converting their loans and claims into equity and receiving shares in Sagarmatha in view of that.

MR EMMANUEL LEDIGA: Ja and since Sekunjalo had, you know, made some offer, didn't the PIC say think this deal didn't come through, you know, the Sagarmatha deal, didn't the PIC maybe think of buying out Sekunjalo in the Group or even selling the whole group to another grouping like Tiso Blackstar.

DR DANIEL MATJILA: I think in my statement I do talk about the breach notice as well as the legal contracts now kicking in, in terms of
20 the remedies that the PIC has, as a disposal. So that would have been considered by the PIC as a way forward at that point.

MR EMMANUEL LEDIGA: Because it's dragging on and, you know, the value keeps going down, you know, so I thought, you know, maybe something should be done sooner than later to salvage some value for the PIC.

DR DANIEL MATJILA: I'm sure the Commission can advise them what to ...[intervenes]

MR EMMANUEL LEDIGA: No, no, we are just trying to talk here, ja, because there are people who are – there is staff at that group, I'm sure they are feeling very insecure, you know, this issue has been dragging on for a while. I'm not ...[intervenes]

DR DANIEL MATJILA: I think the PIC is in strong position to then deal with the matter in terms of the legal contracts that are in place.

CHAIRPERSON: So I was going to say I'm not surprised by your
10 answer because you are no longer with the PIC.

MR EMMANUEL LEDIGA: Ja.

DR DANIEL MATJILA: I was trying to say that in a nice way.

MR EMMANUEL LEDIGA: We forget sometimes, ja, we actually forgot, you know, okay, alright. Ja. But you are saying that the PIC has begun to deal with this issue.

DR DANIEL MATJILA: When I left that, I mean, I did sign the default letter and the legal team was beginning to see what remedies they have, you know, in curing this.

MR EMMANUEL LEDIGA: Alright, okay. Okay, thank you, thanks.

20 **MS GILL MARCUS**: I want to refer back to some of the other witness statements and perhaps just to go back to Ms Abrahams' statement that she says that given that the investment was tabled at the PMC listed investment for approval in April, the team recommended investment in the IPO but at a proposed share price much lower than the asking price in the IPO prelisting statement. In so doing this would, she thought,

make the offer unattractive. Some members expressed concern as to whether Sagarmatha would use some of the IPO proceeds for expunging some of the obligations to the PIC in the Independent Media investment. Do you remember that conversation and were you aware or how did you see the pricing that Mr Abrahams refers to?

DR DANIEL MATJILA: The R7.06?

MS GILL MARCUS: R7.06. They said this because the other testimony given was that this had to go forward and their valuation was 7.06 and their understanding was that at that value the PMC would see it that
10 they did not want to support that although the team had been told they must support it. That was basically the evidence that we...

DR DANIEL MATJILA: Ja, Commissioner, I agree that that price was on the table and that was the price that was recommended by the team, that we can only transact at R7.06 or better and if we can't find each other in terms of that price with the Sagarmatha then there's no transaction, that was clear. I don't think that price of R7.06 came from risk, it came from the transaction team.

MS GILL MARCUS: Yes.

DR DANIEL MATJILA: Yes. Risk was just saying the price should be
20 R7.06 and nothing else.

MS GILL MARCUS: If we go to Mr Varghese's statement, again on Sagarmatha, in essence he raises a concern or a question that Sagarmatha and Ayo were co-subsidiaries of an ultimately effective controlling shareholder, the Survè family, and that this was a parallel process between the Ayo listing and the Sagarmatha listing was

happening at the same time or more or less the same time with a draft – the draft prospectus of 12 January being that the PIC received the draft indicating the sale of unlisted investments held by the PIC and Independent Media swapping to Sagarmatha and that was the precondition that should be removed that was to separated out.

DR DANIEL MATJILA: (indistinct – dropping voice)(

MS GILL MARCUS: Correct?

DR DANIEL MATJILA: H'm.

MS GILL MARCUS: He then goes on to say that Mr Seane advised
10 Sagarmatha chief executive Mr Hove that the valuations were too rich and the listing price should be reduced and there the value of 7.06 was done by Seane, reviewed by Mr Varghese, Mr Molebatsi and Madavo but the PIC resolved to subscribe if the price was 7 or 6 below entered into a put option and not pay a dividend.

The IC pushed back the decision to management to deal with the matter which was in their DOA and instructed that no deals more than R1 billion in future could be scheduled be a telecom because there's a round robin. This question of pushing back and bringing it back into management decision, Mr Varghese then states that you then
20 look at the question of the R8.50 and the team met with Mr Matjila to persuade him that the price was too high. He reluctantly agreed and promised to inform Sekunjalo. Did that occur? You informed Sekunjalo that the price was not acceptable to you?

DR DANIEL MATJILA: I think that's what we did.

MS GILL MARCUS: That was from the team's view to you.

DR DANIEL MATJILA: Ja, I think that's what we did, Commissioner.

MS GILL MARCUS: Okay. And then Mr Makuti, as part of your legal team, was that he was provided with a draft PLS of Sagarmatha to formulate a legal response. He raised concerns about relying on a draft PLS to do this.

It would be contrary to the JSE listing requirements which provides that a PLS must be formally approved by the JSE before publication and he raised issues including conflict of interest and did not recommend the transaction, requested more information before
10 being able to provide a proper recommendation as to whether to support the transaction or not.

He was then told by his executive head: I was instructed to amend my legal report for IC consumption and my executive head advised me that legal must not be a hindrance. Rather put conditions precedent and recommend that the transaction proceed. I duly complied.

How would you regard that as effective communication and correspondence to give you sound advice if that is the feeling of your legal team as to how they had to respond?

20 **DR DANIEL MATJILA**: Commissioner, again, this is a junior person that I don't necessarily interact with. They have a head and various other senior people above them, so I wouldn't know – unless they come to me directly and say I have discomfort with this and that, insofar as the deal is concerned. So I wouldn't know, I only knew about all of those when he was testifying in this Commission.

MS GILL MARCUS: But it seems to be quite a common theme of junior people being pressurised by time, by decisions, don't be a hindrance, and therefore, as a means of assurance or reliance, is it questionable given that a lot of people have come before the Commission to say they acted under duress, they put forward what was expected of them because implicit in this is that the decision-making relies on the team, as you've said, but if the team is not able to give its correct view or valid view, then the reliance is actually not reliable.

DR DANIEL MATJILA: Well, it's hard on me to comment on that,
10 Commissioner, because if some of these matters are not brought to my attention it will be – I can't smell that there is that sort of thing happening in the organisation, I rely on the heads of department to manage their people accordingly and be open with them, you know, to allow them space to be free to disagree and agree with the senior – with their bosses, if I can use that, so in this instance that has never been, you know, brought to my attention that there is this sort of thing that's happening. Only in this Commission that a lot of – and I wouldn't say a lot of people because there are many other people at the PIC, it's only a handful that came here, you know, to raise those things.

20 **MS GILL MARCUS:** Yes, but the handful who have come are senior. They're people who hold decision-making positions in many instances but let's go on, you've made your point on that.

One of the issues Mr Makuti also raises is that he feels or he stated that there was a potential brief of the FMA and listing requirements. For instance – and I'm quoting him – forwarding the

draft PLS to a potential investor before it is approved by the JSE. In doing that Sagarmatha may have breached the JSE listing requirements because a draft PLS had not been approved and cannot be relied upon and yet it was forwarded to the PIC as a potential Investor.

He also states that the draft PLS – Sagarmatha draft PLS was forwarded to the PIC but Sagarmatha was not listed and the PLS states that Sagarmatha was conditionally listed by the JSE and that was not accurate. Did your legal team bring this to your attention in relation to this?

10 **DR DANIEL MATJILA**: No, they haven't, they haven't, Commissioner.

MS GILL MARCUS: He states further in paragraph 31 that when he had finished his draft legal report he was informed of a share purchase agreement between Dr Matjila on behalf of the GEPF and Sagarmatha had already been concluded in December 2017 and that the PIC relied on the TGR Attorneys, he states again that – whose name appears on the agreement, actually acted for Sagarmatha and not the PIC and quote:

20 “We still do not know if the document was reviewed by external legal counsel as is normally the process before an agreement was signed.”

Do you know whether any of those processes were followed by the PIC as per the agreed process within the PIC?

DR DANIEL MATJILA: Commissioner, as far as I know that the document was prepared by TGR, as he says, and giving to all shareholders to approve including the PIC. So in my view it never

required the internal process because it was simple and straightforward that we are making a commitment that is subject to so many conditions, so it was not putting the PIC at risk at all, in my view.

MS GILL MARCUS: So your legal team was not required to go over that?

DR DANIEL MATJILA: No, no, Commissioner.

MS GILL MARCUS: Would that in keeping with PIC processes?

DR DANIEL MATJILA: Well, there are instances where I do override processes when it's necessary.

10 **MS GILL MARCUS:** Okay. And then perhaps just as a final statement, it's Mr Ndadza who said very specifically that one of the reasons for him coming to the Commissioner was to corroborate the evidence presented by Mr Seane and that the question of having advised you that the resolutions and conditions precedent set by special meeting of the 5th on the 6 December, notwithstanding all of that, you signed off on the deal on the 13 December but you are saying that you did not have that information.

DR DANIEL MATJILA: No, I didn't.

MS GILL MARCUS: Okay, so it's different from what he's saying here.

20 Okay, thank you very much. Those were the testimonies from others that I wanted some clarify on.

DR DANIEL MATJILA: Okay.

MR ISAAC MONNAHELA: Mr Commissioner, may I proceed with my questioning?

CHAIRPERSON: I thought you were done.

MR ISAAC MONNAHELA: No.

CHAIRPERSON: In fact my colleague is echoing the same. He thought you were done.

MR ISAAC MONNAHELA: No, I wasn't done and I never said I was done. This time I didn't say...

MR EMMANUEL LEDIGA: Sagarmatha, is that on Sagarmatha?

MR ISAAC MONNAHELA: Yes.

CHAIRPERSON: Our apologies.

MR ISAAC MONNAHELA: Thank you, Mr Commissioner. Dr Matjila,
10 may I refer you to Mr Molebatsi's statement once again and I want to refer you specifically to paragraph 55 and paragraph 59 of that statement.

DR DANIEL MATJILA: 50...?

MR ISAAC MONNAHELA: 55. At paragraph 55 Mr Molebatsi says the following:

20 "On the 11 January 2018 I attended a meeting of Sagarmatha management at the PIC offices. The first thing that struck me was firstly that a Sekunjalo-related company was looking to do and IPO so soon after Ayo and secondly, that the capital raised was to facilitate, among others, the purchase of Independent Media. Although I was not aware of the detail around the funding of Independent Media, I knew that the PIC had extended a loan to that company."

And at paragraph 59 he says:

"The exposure to a print media company that was loss-making

made the Sagarmatha opportunity not as attractive to me.”

Is it correct as Mr Molebatsi says at paragraph 59 that capital raised by Sagarmatha was to be used to, among others, purchase Independent Media?

DR DANIEL MATJILA: I think, Commissioner, we thought we have dealt with that because we own Independent Media and there were processes that said or approvals that said those two must be separated and there are agreements around the cash settlement of Independent News Media and not exchange of shares and most importantly the
10 schedule of payment has been defined. So I’m not sure what the issue is here.

MR ISAAC MONNAHELA: The issue will become clear afterwards.

CHAIRPERSON: You may carry on, let’s get to the issue.

MR ISAAC MONNAHELA: Okay, the evidence before this Commission is that part of the capital raised by Sagarmatha was going to be used to pay for the purchase of Independent Media. Now, Mr Ndadza testified before this Commission that Sagarmatha was insolvent and that if part of the capital raised by Sagarmatha was to be used to purchase Independent Media then it would not have been possible for
20 Sagarmatha to list. Do you have a comment on that?

DR DANIEL MATJILA: Commissioner, I think the IC’s decision was clear, to say that those two must be separated. It even went to an extent of saying that putting conditions around a utilisation of the monies, that it can’t pay dividends and it can’t be used to settle Independent News Media through the PIC for the PIC because then the

PIC will be paying for its own exceed, that was clear, I think.

MR EMMANUEL LEDIGA: And then just a follow up. So when you say separated you mean that PIC wanted its loans and everything to be paid in cash or whatever?

DR DANIEL MATJILA: Yes.

MR EMMANUEL LEDIGA: And then it will then decide whether it wants to subscribe to Sagarmatha's IPOs and all that or using cash but it didn't want to translate its loans and claims into shares in Sagarmatha, is that what you are saying when you say ...[intervenes]

10 **DR DANIEL MATJILA**: That's correct.

MR EMMANUEL LEDIGA: Yes.

DR DANIEL MATJILA: And the utilisation of the proceeds of the listing as well, it was clear that they can't be used to buy Independent Media.

MR EMMANUEL LEDIGA: Exactly.

DR DANIEL MATJILA: Otherwise PIC will be ...[intervenes]

MR EMMANUEL LEDIGA: Sort of its treating ...[intervenes]

DR DANIEL MATJILA: Exactly.

MR EMMANUEL LEDIGA: The PIC is dishing out shares and then there's cash and then that cash is used to ...[intervenes]

20 **MR DANIEL MATJILA**: Absolutely and my understanding, that's why the Independent News Media was not part of the PLS, if my memory serve me well.

MR EMMANUEL LEDIGA: Later or – it wasn't later or – the final one.

DR DANIEL MATJILA: The final PLS for ...[intervenes]

MR EMMANUEL LEDIGA: The final one, ja, ja.

DR DANIEL MATJILA: Yes, it was removed from there because of that.

MR EMMANUEL LEDIGA: Okay, alright.

MR ISAAC MONNAHELA: On the issue of Sagarmatha issuing additional shares to the PIC at R1.00 per share, Mr Ndadza testified that if that had been done the PIC would have had to pay more than R300 million. Do you have a comment on that?

DR DANIEL MATJILA: Commissioner, that was not done. I think we – I would love to stick to the real things that happened. The deal didn't go through, the call option was not possible, as we said, we've explained
10 that the PLS needed to be changed, so it becomes an academic discussion in my view.

MR ISAAC MONNAHELA: Okay. Do you have any comment on the allegation by Mr Ndadza that according to the draft prelisting statement of Sagarmatha, Sagarmatha was technically insolvent.

DR DANIEL MATJILA: I don't have a comment on that, I will have to look at what he meant by insolvent, Commissioner.

MR EMMANUEL LEDIGA: Wait, wait, wait, insolvent or loss-making because you might have these companies that are IT companies, they're not making profits.

20 **MR ISAAC MONNAHELA:** My recollection is ...[intervenes]

MR EMMANUEL LEDIGA: Because insolvent means something completely different, it means the company doesn't have to exist.

DR DANIEL MATJILA: Ja, there's no way that the JSE can allow a company ...[intervenes]

MR EMMANUEL LEDIGA: An insolvent, yes.

DR DANIEL MATJILA: ...company to list and issue a prelisting statement.

MR EMMANUEL LEDIGA: Ja, definitely, ja. I think more like unprofitable because these companies can go on for a long time without making profits, these technology companies.

MR ISAAC MONNAHELA: Mr Commissioner, if I recall properly Mr Ndadza used the work insolvent.

MR EMMANUEL LEDIGA: Insolvent? Is it? Okay, alright. We can double-check that, ja.

10 **MR ISAAC MONNAHELA:** Dr Matjila ...[intervenes]

CHAIRPERSON: He may have used the word insolvent but the question is, was he correct in saying that it was insolvent? That that's the issue and I think Dr Matjila says the JSE would not have allowed it to list if it was insolvent.

MR ISAAC MONNAHELA: Yes. Ms Bongani Mathebula testified before this Commission that a day before the investment committee was to sit to consider the Sagarmatha transaction you forwarded some letters from political formations to her and asked her to give them to the members of the investment committee. Was she correct?

20 **DR DANIEL MATJILA:** Yes, she was correct, Commissioner.

MR ISAAC MONNAHELA: And you testified before this Commission that you protected the PIC through investment processes. Is it part of the investment processes of the PIC that when political formations support a transaction they can forward their letters to the CEO of the PIC and then the CEO of the PIC can then forward those letters to the

company secretary and ask them to forward them to the members of the investment committee?

DR DANIEL MATJILA: Commissioner, people write to the PIC, there's correspondence all the time. If it's addressed to the investment committee we'll pass it on to them, you know, to look at.

MR ISAAC MONNAHELA: But my recollection is that those letters were not addressed to the members of the investment committee.

DR DANIEL MATJILA: I think would have passed it on to them for information. I don't think it's got anything to do with an investment
10 process of the PIC is someone writing to say we expressed support of this transaction and that's it, the PIC will do its own work and analysis and take judgment independent of that.

MR ISAAC MONNAHELA: Mr Commissioner, I'm done on Sagarmatha but there are questions that I forgot to ask on the agreement relating to the exit from Independent Media. With your leave may I pose those questions?

CHAIRPERSON: That's DD60.

MR ISAAC MONNAHELA: Yes, Mr Commissioner.

CHAIRPERSON: Yes, carry on.

20 **ADV ISAAC MONNAHELA**: Dr Matjila, you testified yesterday that you had signed Annexure DD60 to your statement.

DR DANIEL MATJILA: Ja. I said as far as I can recall. That was in agreement. That was supposed to be signed to give effect to the payment. Schedule of payment. As per PIC. I mean, IC decision.

ADV ISAAC MONNAHELA: Do you know if someone signed on behalf

of the Sekunjalo Group?

DR DANIEL MATJILA: I do not know what happened to that agreement, Commissioner. It was there and I left before it was given effect.

ADV ISAAC MONNAHELA: But if no one had signed on behalf of Sekunjalo Group, there could not have been agreement.

DR DANIEL MATJILA: [No audible reply]

CHAIRPERSON: Do you agree with that? That if it was not counter-signed by the other party.

10 **DR DANIEL MATJILA:** Commissioner, I do not know what happened because the ...[intervenes]

CHAIRPERSON: No, no. You know that if it was not signed on behalf of the other side, it would not have been an agreement?

DR DANIEL MATJILA: Ja, that is correct, Commissioner.

DR DANIEL MATJILA: Mr Commissioner, may we just place it on record that we will also check whether the agreement was signed at all on behalf of any of the parties?

CHAIRPERSON: It is fine. That is fine. We will do. Dr Matjila yesterday testified that he did sign it. I think, he did sign the
20 agreement.

ADV ISAAC MONNAHELA: Yes, he did say.

CHAIRPERSON: We have blank copies, but he said yesterday, he did. He remember signing that agreement.

ADV ISAAC MONNAHELA: Yes, Mr Commissioner. Dr Matjila, may I refer you to Dr Survé's statement that I gave to you this morning?

DR DANIEL MATJILA: [No audible reply]

ADV ISAAC MONNAHELA: And may I refer you to paragraphs 44 and 45 of that statement?

DR DANIEL MATJILA: [No audible reply]

ADV ISAAC MONNAHELA: You said the following at paragraph 44:

“In the latter part of 2018, Sekunjalo put in a firm offer to the PIC. This meant that Sekunjalo would take on the exposure of the PIC, over and above, its current support of the operating cash flow needs of the business.

- 10 Sekunjalo, therefore, went from a minimum risk position to assume a significant risk in an endeavour to help the Government Employees Pension Fund and the PIC.

Despite the PIC having agreed to the above, Sekunjalo has received no formal communication from the PIC since the offer, despite repeated requests to the PIC.

This was the position until last week, when it was verbally communicated to Sekunjalo that the PIC had rejected the offer...”

It seems from paragraph 45, that no agreement was entered into. Do you have any comment on that?

- 20 **DR DANIEL MATJILA:** Commissioner, it is possible because I had left by then, I believe and in my statement, I do say that I had left. I do not know what happened to the proposals.

ADV ISAAC MONNAHELA: Now, it takes me back to the statement that I made earlier, that if no one had signed on behalf of the Sekunjalo Group, then there was no agreement.

DR DANIEL MATJILA: I assume so, Commissioner.

CHAIRPERSON: Can you just remind us, Dr Matjila? When did you leave again?

DR DANIEL MATJILA: The 23rd of November 2018.

CHAIRPERSON: [Indistinct]

DR DANIEL MATJILA: Yes, Commissioner.?

ADV ISAAC MONNAHELA: I have no further questions, Mr Commissioner.

CHAIRPERSON: The beginning of that paragraph 44, says:

10 “In the latter part of 2018...”

You would have been gone by then?

DR DANIEL MATJILA: Yes, because it is the latter.

CHAIRPERSON: Must have been, because ...[intervenes]

DR DANIEL MATJILA: Yes, there has been a proposal as...

CHAIRPERSON: [Indistinct]

DR DANIEL MATJILA: Commissioner?

CHAIRPERSON: [Indistinct] Whatever is said here:

“In the latter part of 2018, Sekunjalo put in a firm offer to the PIC...”

Do you know anything about that offer that was put to the PIC?

20 **DR DANIEL MATJILA**: Yes, this is the offer that was now, after approval by the Investment Committee was reduced into that agreement that we discussed.

CHAIRPERSON: So, if you know. You had not left at that stage, when that offer was put to the PIC.

DR DANIEL MATJILA: That is correct.

CHAIRPERSON: Yes.

DR DANIEL MATJILA: That is correct. I think that is more accurate.

CHAIRPERSON: Okay.

DR DANIEL MATJILA: Yes, yes.

ADV ISAAC MONNAHELA: I have no further questions, Mr Commissioner.

CHAIRPERSON: All right, we may carry on.

ADV ALEXANDER ROELOFSE: Dr Matjila has just requested a break of ten minutes, Commissioners.

10 **CHAIRPERSON**: All right. Let us take a break for ten minutes.

ADV ALEXANDER ROELOFSE: We are indebted.

COMMISSION ADJOURNS:

COMMISSION RESUMES:

CHAIRPERSON: Yes?

ADV ALEXANDER ROELOFSE: Commissioners, thank you for the break. We are now going to deal with the AYO Technology Solutions transactions. So we are at page 147, paragraph 415.

DR DANIEL MATJILA: Thank you, Commissioner.

“AYO Technology Solutions, AYO:

20 The opportunity to invest in AYO was introduced to me by the chairman of the Sekunjalo Group, Dr Iqbal Survé.

This would have been around October 2017. I saw the AYO proposal as very strategic for the PIC, as it gave the PIC exposure to the growing ICT, information, communication and technology sectors which is part of the developmental investments.

Furthermore, the fact that it was black owned, would position strongly to pursue opportunities to enhance BEE credentials of its customers.

This asset fitted the GEPF mandate as a long term investor, giving it the exposure to the right technology assets and thus, enhancing the sustainability of the portfolio.

In paragraphs 20 to 22 of his statement to this Commission, Mr Molebatsi gives an elaborate rationale for the investment with which I agree...”

ADV ALEXANDER ROELOFSE: Dr Matjila, if I can stop you there?

10 You say that this asset gave the PIC exposure to the growing ICT sector which was part of the developmental investments. Can I refer you to Annexure DD11, page 268? We have dealt with this annexure before. Some days ago. In your evidence. Page 268, Annexure DD11. Thank you. Doctor, will you just explain to us briefly again, what is going on with this particular annexure?

DR DANIEL MATJILA: Commissioner, this slide simply shows the ...[indistinct] mega trends links to the PIC’s sectorial research. In other words, the focus of sectors that are going to be driving economic growth in the long term of which ICT is. This are developmental
20 investment sectors. I think we spoke about them quite at length earlier in my statement. It involves agri processing, agriculture, mining beneficiation, energy. All those sectors with huge social impact, including ICT and AYO Technology will be falling under ...[indistinct] mega trend in tech empowered individuals and tech empowered organisations and it will be falling under the ICT developmental

investment, in this chart here. That is its relevance.

ADV ALEXANDER ROELOFSE: Thank you. Continue with your statement, please.

MR EMMANUEL LEDIGA: Just some clarification, Dr Matjila. IT Groups. I think there is a black group called Adapt IT. It is a listed BEE group in the tech-sector. Did, you know, did the PIC ever think about maybe begging that kind of a company which is listed? It has been doing well. And maybe it could want some growth. I do not know what their plans were. But when you compare them to AYO. They are a
10 listed company. They have been doing well.

DR DANIEL MATJILA: I would have thought that if there is any capital raised they will be in a stronger position if they approach PIC with a proposal around that. You know. So that would be the nature of PIC's support. But nothing stops PIC again from supporting it through other investments. Other instruments. It can even be growth and all of that. I mean, that, you know, as long as there is a strong value proposition, you know, which is going to drive growth and returns, eventually. So, I would assume that if they are in a strong position, they should approach the PIC for expansion and growth.

20 **MR EMMANUEL LEDIGA:** Agree. Although, risk is another element. You know, it is... And I agree. I generally agree. But it might, in terms of risk, it will be better to back a company which exist than - your company, in general.

DR DANIEL MATJILA: It depends. I mean, a new company would be good as well, because it becomes a power. Especially if they have got

a strong differentiated strategy, you know, that is, you know, can be well-executed by the team. It is a bit better to play there. You know. So, again, if we talk about AYO. You look at what it is. What is AYO about? It is almost like an investment holding company that is supposed to be chasing opportunities in the tech-section.

So, you basically award capital for someone to deploy you, on your behalf, in an effective way. A company that is probably narrowed in its focus and you provide them with cash to expand their activities, you know, in a particular field. So there is a difference between an
10 investment holding company in the IT-sector and an IT company that is actually doing the job. Ja.

MR EMMANUEL LEDIGA: So, you are saying, that kind of company sort of could be smaller than what AYO was trying to do and maybe different business strategies and all of that.

DR DANIEL MATJILA: That is correct.

MR EMMANUEL LEDIGA: AYO versus ...[indistinct] ...[intervenes]

DR DANIEL MATJILA: We will have to understand what space they are playing in and what they are pursuing. So, ja. I think if they approach the PIC with a good value proposition, they can be assisted
20 there, because they are in the right space. Ja.

MR EMMANUEL LEDIGA: Well, not sure whether they approached the PIC or not.

DR DANIEL MATJILA: Ja, not sure.

MR EMMANUEL LEDIGA: Maybe they have the capital they need and all of that. Is that what you are saying?

DR DANIEL MATJILA: That is what I am saying.

MR EMMANUEL LEDIGA: Okay. All right.

DR DANIEL MATJILA: And I assume that once they... I have not checked the market cap, where it is. You may find that they are in the main board and the PIC is already having an exposure, that this defined or dictated to by the mandate. You know.

MR EMMANUEL LEDIGA: Yes, yes.

DR DANIEL MATJILA: Ja.

MR EMMANUEL LEDIGA: All right. Thanks.

10 **DR DANIEL MATJILA:**

“In my position as a CEO, I was not involved with the analyses of the investment potential of the opportunities presented to the PIC in transaction processing.

I, therefore, requested Mr Madavo as the Executive Head of Listed Investment to look into the opportunity and I sensed its investment potential.

He led the AYO investment process from the PIC side. I understand there was an exchange of information between AEEI Corporate Finance Team and the PIC in the build-up towards the listing, including the
20 formal meeting on the 16th of November 2017.

I am aware that the draft prelisting statement, PLS, was sent to the PIC around the 24th of November and this fact is confirmed in paragraph 32 of Mr Victor Seanie’s statement to this Commission.

My understanding was that the draft PLS was shared with the PIC even before it was finalised, to allow the PIC begin its internal processes.

The postponement of PMC meeting scheduled for the 6th and 13th December 2017, added to the pressure of meeting the deadline for the subscription, which was by the 17:00 on the 15th of December 2017.

Relevant persons were either travelling or on leave and no could be formed at those meetings...”

ADV ALEXANDER ROELOFSE: Dr Matjila, if I can just stop you there.

The PMC meeting schedules for 6th and 13th of December 2017. Do you know in relation to the AYO transaction what those meetings would ideally have been looking at?

- 10 **DR DANIEL MATJILA:** They would be looking at the pre-due diligence approval. In other words, testing for appetite at that point.

ADV ALEXANDER ROELOFSE: Thank you.

DR DANIEL MATJILA:

“However, the teams worked hard to ensure that the analyses was done as per PIC investment processes. This is evidence by the submissions and documents prepared and completed by the various teams and committees.

- By the 14th and 16th of December, due diligence exercises had been compiled, reviewed, recommended and approval for submission to PMC
20 and signed by the relevant persons responsible for those functions.

The outcome of the due diligence process was the conclusion that AYO was an appropriate and attractive investment for the PIC.

Mr M Lebogang Molebatsi in his statement to this Commission has inclined the investment process for initial public offerings.

The key information document in the IPO process is prelisting

statement that the company offering the share for subscription issues, as per JSE regulations.

The JSE, also, in their statement to this Commission highlighted the importance of the PLS to potential investors.

A JSE approved PLS contained sufficient and proper, credible and verified information that can be used by any potential investor anywhere in the world to make an investment decision on the company to be listed.

It has to be finally approved by the JSE. That is the prelisting
10 statement and supported by JSE approved corporate sponsor, legal advisor, technical advisor and an accountant. All of whom must be independent and reputable in their respective professions. The draft AYO PLS is attached and marked DD62.

For APO, a considerable portion of the due diligence is on valuation, to ascertain the attractiveness of the listing price as per PLS and the prospect valuation over time.

This process is performed by the Deal Team. In addition, the PIC in terms of its investment processes, will do risk, legal and ESG analyses to identify any risk and propose the way forward.

20 This process is done in-house, as the PLS will typically contain most, if not all, information required to get out this analyses. These various risks were dealt with in the AYO due diligence reports and appraisal reports.

It is therefore no surprise that the PIC investment process for an IPO can be performed in a much shorter period of time, than for another

type of investment because all information necessary for the P1 stage, which is a stage of pre-due diligence and the due diligence reports and recommendations to PMC is already contained in the PLS and verified by external reputable professionals.

This fact was confirmed by the JSE in their presentation to this Commission, as well as a transcript of same. Here is the extract from the JSE presentation. This was Mr Andries Visser.

He said:

10 *“Certainly, Mr Commissioner. The aim of the disclosure is first and foremost to allow the JSE to make an informed assessment, based on the facts presented, as to whether the company in fact meets the basic requirement and secondly and more importantly, to allow investors to make an informed assessment on a couple of fronts. Firstly, that they fully understand the nature of the business of the applicant. Secondly, that they have all and full disclosure of all relevant facts and information. So that they can make an informed decision as to whether they wish to participate in the listing of the company, either prior to listing or post listing in the secondary market. And thirdly, to formulate their views based on the disclosure where they are prepared to pay the*

20 *price at which the securities are being offered, either in the initial offering through a private placement or public offer or in the secondary market when the shares are purchased on the JSE. So, that disclosure is of paramount importance and it is a principle that is applicable to all capital markets throughout the world, that investors are provided with full information to allow them to make informed decisions...”*

So, Commissioner, this is the importance of the PLS. It is supposed to have these qualities to make – to allow investors to make informed decisions.

“It is very important to highlight that PMC1 and PMC2, that have been talked about in this Commission, are neither special meetings, nor separate meetings, to deal with specific transactions, but rather refer to a stage at which a transaction is add in the investment process.

PMC1 referred to a stage in the transaction. That is before due diligence. The PMC1 stage test for mandate feed and therefore
10 investment appetite.

A transaction that passes this stage potentially moved to the DD stage, subject to the consideration of costs to the PIC in appointing external service providers to assist in the due diligence process.

If no external providers need to be appointed to assist with the conduct of due diligence, there is then no costs to the PIC in conducting due diligence. An approval for the transaction to move onto the due diligence stage is ex-somatic.

If, however, the external service providers are necessary to be appointed to conduct due diligence process, the appointment of which
20 would then obviously involved costs to the PIC. A call must be made as to whether such costs are warranted to be incurred, giving the investment potential of the transaction. That is where PMC1 becomes necessary.

Once the DD is completed, the transaction moves to PMC2 stage, which is a stage where a transactions is either approved by PMC or is

recommended to the higher committee, as per delegation of authority.

I must stress that the same PMC meeting looks at and discusses all transactions. That is both those that are in PMC1 and PMC2 stages, are discussed in the same meeting. Not separate meeting.

There is no separate meetings for PMC1 stage, transactions and another separate meeting for PMC2 stage transactions...”

CHAIRPERSON: Does this mean, it is the same people? The same people who will populate the PMC2 as they did PMC1?

DR DANIEL MATJILA: Yes, most of the time they will be the same.

10 Let me use offices because there are instances where people are on leave but they have acting – someone acting on their behalf. So there are certain positions that are supposed to be in those meetings as members of the committee.

MR EMMANUEL LEDIGA: Ja, just another quick questions there. In terms of the quorum, what are the quorum rules there? Just briefly. The PMC quorum’s.

DR DANIEL MATJILA: I do not have the terms of reference with me, but they specify the quorum requirements. One of which is that, an executive has to be in that meeting. One executive must be present in
20 that meeting for the committee to proceed. But we can check that. Ja. I think key departments that need to be there will be the Investment Team, represented by equities, of course. Or even fixed income, if there is an instrument in fixed income that has been looked at. Risk and ESG and then Legal. Those four. Ja.

MR EMMANUEL LEDIGA: All right. Thanks.

MS GILL MARCUS: Can we just get clarity on this, because this is a bit confusing to me and I might not have understood properly before. I thought that PMC1 has a distinct role and PMC2 has a distinct role. Does not one look at whether there is appetite? Whether it fits the mandate. Whether there is due diligence, which is required and so on, which is PMC1. And then a decision to say: Let us do that. And then PMC2 looks at whether the investment should assesses the due diligence. PMC1 does get the authorisation for the due diligence and PMC2 assesses the due diligence.

10 **DR DANIEL MATJILA:** Commissioner, there is technical in PMC1 and PMC2. There is only one portfolio management committee. But in that meeting, there will be transactions at different stages. Some needing pre-due diligence which we – it has been termed PMC1. So all those that are needing pre-due diligence and those that are in due diligence stage, either at approval stage or recommendation to the next committee. So, it is one meeting that looks at transactions which will be at different stages of execution. In other words.

MS GILL MARCUS: Then why do you call it PMC1 and PMC2?

DR DANIEL MATJILA: Well ...[intervenes]

20 **MS GILL MARCUS:** If it one meeting that just have different stages of different transactions that is presented before it. And then I do not understand what the issue was around not having gone through PMC1 and that has occurred on a number of transactions, that the due diligence was not approved or the PMC1 did not do that. If you are saying it is just one meeting with different stages of transaction, is

that...? That is all it is.

DR DANIEL MATJILA: That is correct. Ja, that is exactly what I am trying to explain to the Commission here, because I realise that there seems to be a misunderstanding there. You know, there are two committees meeting at different times with different people, assessing transactions in that way. It is the same committee that looks at different... At same... At different transactions at different stages.

MS GILL MARCUS: But is it in the same meeting at the same time?

DR DANIEL MATJILA: Absolutely.

10 **MS GILL MARCUS**: There is not a separate... So we do not have a due diligence looked at here and it is going to come to another meeting, which is the same people, which would then look at the due diligence.

DR DANIEL MATJILA: No.

MS GILL MARCUS: So a decision to do due diligence and then look at the due diligence.

DR DANIEL MATJILA: Absolutely. And it will be ...[intervenes]

MS GILL MARCUS: It is the same meeting. The same people.

DR DANIEL MATJILA: Ja.

20 **MS GILL MARCUS**: So, why would you call it PMC1 that needs to progress to PMC2?

DR DANIEL MATJILA: That is what we are trying to correct. Because this whole standard operating procedures that was adopted here is from unlisted investments. So, it is almost like fitting in unlisted investments standard operating procedures in a listed environment

which has become problematic. But I was happy with that. I mean, we can work around that. Because, my understanding is that procedures within the organisation are my responsibility, to design things that make sure that, you know, transactions are processed in a particular way. You know. So...

MS GILL MARCUS: There is no terms of reference for a PMC1 or a terms of reference for the PMC2?

DR DANIEL MATJILA: No.

MS GILL MARCUS: Is there a terms of reference for PMC at all?

10 **DR DANIEL MATJILA:** Overall PMC will have one terms of reference. And listed will have their own. Unlisted will have their own terms of reference. But they are, more or less, similar.

CHAIRPERSON: So, if we are talking about PMC1 and 2, we are talking of the same... Let us say, the same people sitting on the same day and dealing with whether or not there should be due diligence.

DR DANIEL MATJILA: In a particular transaction.

CHAIRPERSON: In a particular transaction.

DR DANIEL MATJILA: Yes.

CHAIRPERSON: And that same meeting can at that same sitting deal
20 with what is known as PMC2.

DR DANIEL MATJILA: Absolutely.

CHAIRPERSON: On its agenda.

DR DANIEL MATJILA: Absolutely.

CHAIRPERSON: Ja, okay.

MR EMMANUEL LEDIGA: So, I mean, would it be right to say – to talk

about PMC1 and 2. Is a bit of a ...[indistinct], in some sense. Because it is transactions that are at PMC1, PMC2 stages. You could even say, the ones that are approved could be PMC3, even. You know.

DR DANIEL MATJILA: Ja.

MR EMMANUEL LEDIGA: Yes, is it not that it is – the transaction at this stage, that is at.

DR DANIEL MATJILA: Absolutely. That is what it is.

MR EMMANUEL LEDIGA: Yes.

DR DANIEL MATJILA: That is what it is, Commissioner.

10 **MR EMMANUEL LEDIGA:** Yes. You know. When something is at PMC2, it means like it is going to DD stages and something like that.

DR DANIEL MATJILA: Ja.

MR EMMANUEL LEDIGA: Technically, you can have PMC3 for a transaction or 4. PMC4.

DR DANIEL MATJILA: Maybe it is ...[indistinct]. I do not know.
[laughs]

MR EMMANUEL LEDIGA: So we should not then ...[indistinct] and say it is a transaction stage.

DR DANIEL MATJILA: That is critical. It is transaction stage.

20 **MR EMMANUEL LEDIGA:** Yes, yes.

DR DANIEL MATJILA: You know.

MR EMMANUEL LEDIGA: Ja.

DR DANIEL MATJILA: Thank you, Commissioner.

CHAIRPERSON: Ja, if we are confused about PMC1 and 2, I do not know why we should get to 3 and 4.

[laughs]

DR DANIEL MATJILA: We prefer to call them PMC and, you know, let them be stages of transaction. Pre-DD or DD and, you know. It is better. It is better that way.

CHAIRPERSON: Just another question which I have tried to asked but I am not sure I have got the answer. Typically, in a PMC meeting sort of how many transactions would be there? I mean roughly. In a typical PMC?

DR DANIEL MATJILA: Oh ...[intervenes]

10 **CHAIRPERSON:** Or even to ask it differently, how many transactions in unlisted does the PICC broadly and how many are approved percentage wise? I have asked the question and I just want rough figures.

DR DANIEL MATJILA: Okay.

CHAIRPERSON: For now.

DR DANIEL MATJILA: I - I would say on average in a PMC unlisted, which at times would last for almost a day, we could process close to five transactions or so ...[intervenes]

CHAIRPERSON: Okay.

20 **DR DANIEL MATJILA:** At various stages.

CHAIRPERSON: At various stages?

DR DANIEL MATJILA: Transactions at ...[intervenes]

CHAIRPERSON: Ja.

DR DANIEL MATJILA: At various stages.

CHAIRPERSON: Yes.

DR DANIEL MATJILA: Some in pre due diligence some in post due diligence but there will be instances where we do slightly more, you know. A lot of work, a lot of energy spent on those that are in DD stage that are waiting for approval because we have to interrogate more you, you know slightly more, more energy is directed towards that. The pre DD stage is normally very quick because the team would have done a lot of work in terms of mandate fee, potential job creation and where it is located, bigger portfolio, and therefore it is normally a lot faster, but a lot of energy is then on the post DD stage where approval is sought.

10 And in the, in the listed space it – it would really depend, there are times when it is lesser because there are no IPO's or there are no rights issues, you know. It is very unpredictable there you know.

CHAIRPERSON: How many times does the PMC unlisted meet? Is it once a week, is it once in two weeks ...[intervenes]

DR DANIEL MATJILA: It is almost once a week but there will be instances where one meeting then you know is adjourned and it is over several days because of the volume of transactions that are there, and this transactions by the way are brought by different teams. You may have in the Developmental Investment team the team that is dealing
20 with infrastructure, social infrastructure bringing a transaction. Another one in economy, another one in manufacturing, priority sectors. So you have all of that you know. But we had put limits at some stage and say we cannot process more than, you know I cannot remember what the number was, but there was a stage where we said let us not process more than this number because it does not allow us try and

engagement on issues properly you.

CHAIRPERSON: So then it is like five transactions per week roughly times what? 50 weeks? Then we are talking what? 250 transactions per annum?

DR DANIEL MATJILA: Ja ...[intervenes]

CHAIRPERSON: And you does not approve ...[intervenes]

DR DANIEL MATJILA: It does not mean that you have approvals on all of them. You may find that there are lots of things, issues and so on. The thing gets send backwards and forwards and you can – you can
10 see that in the overall approvals at the end of the financial year. In terms of size you will find that in the end we have approved about 20 billion. Or 15 billion, or 5 billion in some instances you know.

CHAIRPERSON: So ...[intervenes]

DR DANIEL MATJILA: So there will be quite a bit of transaction that are looked at, but the sifting process will select what we could consider the best.

CHAIRPERSON: Ja. So are you saying then we are looking at, what 200 transactions that you normally see 250 maybe and then what? And then you approve what? Five, ten percent of those? 25 transactions?
20 30 transactions per annum?

DR DANIEL MATJILA: Ja, I do not, probably 30 transactions make sense you know.

CHAIRPERSON: [vernacular speaking] 250, 200.

DR DANIEL MATJILA: Out of quite a number. I do not have the figure.

CHAIRPERSON: You do not have the number. Okay. Alright. Okay at least ...[intervenes]

DR DANIEL MATJILA: It appears...[indistinct] can provide the numbers, and this again, the issue that the Commissioner raised earlier on to say you know the IT system that allows you to track this sort of things, oh my gosh. Apologies. I keep forgetting this. Apologies Mr Commissioner.

ADV ISAAC MONNAHELA: Commissioner if I may on the same score of PMC sittings and stage 1 and 2 can a transaction progress from one
10 to two in a same sitting as in go transaction?

DR DANIEL MATJILA: That will be a special case, and the, the key step is that the pre due diligence stage would have been approved on the basis that there is no money spent, in other words PIC has all the information that it require and resources internally to be able to process that. All that is spent is PIC time and effort to be able to prepare that. But we would know upfront and I get told and the Executive Head will know that there is a transaction that we agreed that it can be done. The due diligence can start because information is there, and at that meeting we will then, you know agree that we waved,
20 we waive the requirement of pre due diligence because it has been done. Information was there and then he can get into the DD stage.

ADV ISAAC MONNAHELA: So the waiver is an important part ...[intervenes]

DR DANIEL MATJILA: Yes.

ADV ISAAC MONNAHELA: Because there is in the process a stage

one and a stage two.

DR DANIEL MATJILA: Yes if you, yes it is implied in that.

CHAIRPERSON: Thank you. Can I proceed?

ADV ISAAC MONNAHELA: Just a question. We are going to proceed now onto the next paragraph, I do not know whether you wish us to proceed or take the luncheon adjournment two or three minutes early.

Thank you Mr Commissioner.

CHAIRPERSON: Just another question before we just go, just to clarify something here, does it happen that a transaction comes with a
10 due diligence have done and all the transaction documents are done
and it appear as he does not need to do much, he can rate those
documents?

DR DANIEL MATJILA: There, we - we, we avoid that kind of situation because then we rely too much on someone else's work you know. The PIC, I mean that is how we would looked at it and we would rather still subject to internal processes, even appoint somebody you, a Service Provider to review and that becomes a limited scope in other words. To advise whether the quality of information that is in front of the PIC is the one that can be relied on and used.

20 **CHAIRPERSON**: No thanks, ja okay.

DR DANIEL MATJILA: And there are instances where we, we actually you know even telling divisions to go and do the due diligence on our behalf, but then we define a scope as well as potential Service Providers you know for their account most of the time when that happens. Ja.

CHAIRPERSON: Can I suggest we push on until quarter past one?

ADV ISAAC MONNAHELA: Thank you Mr Commissioner. Please carry on with paragraph 424.

DR DANIEL MATJILA: Reads into the record.

‘There are instances where are deviations from PMC one stage investment process. Either on approval by the CEO in terms of item 3.4 of the delegated authority listed investment attached as DD 14.1 I think or by later, ratification by the IC or PMC depending on the type of investment’.

10 **ADV ISAAC MONNAHELA:** Doctor Matjila if I can just stop you there, let us just deal with item 3.4 of the delegation of authority for listed investments. That is at page 296 of the annexures bundle. Do you have it?

DR DANIEL MATJILA: Yes I do, I do.

ADV ISAAC MONNAHELA: Please have a look at that item. It is 3.4. It says *deviation from AUM*. What does AUM mean?

DR DANIEL MATJILA: Assess under Management.

ADV ISAAC MONNAHELA: Procurement policies and guidelines?

DR DANIEL MATJILA: Yes.

20 **ADV ISAAC MONNAHELA:** Okay and it provides for the CEO to give final approval for the deviation. Is that correct?

DR DANIEL MATJILA: That is correct.

ADV ISAAC MONNAHELA: Then there must be an Executive Head or General Managers which are listed are listed there as initiators. Is that correct?

DR DANIEL MATJILA: That is correct.

ADV ISAAC MONNAHELA: And it appears that the CFO must agree beforehand?

DR DANIEL MATJILA: That is correct.

ADV ISAAC MONNAHELA: So that is one potential way?

DR DANIEL MATJILA: Yes.

ADV ISAAC MONNAHELA: Thank you. And the other potential way that you have said is a later ratification.

DR DANIEL MATJILA: Yes by the committee.

10 **ADV ISAAC MONNAHELA:** Would you explain to us about that?

DR DANIEL MATJILA: So, so it is allowed that the committee can ratify the decisions, re in retrospect. Because they have authority.

ADV ISAAC MONNAHELA: And have they done so before?

DR DANIEL MATJILA: Yes there has been cases.

ADV ISAAC MONNAHELA: Please carry on with your statement.

DR DANIEL MATJILA: Thank you.

20 'The latter situation occurred for example in the Edcon transaction. An unlisted investment referred to in paragraph 6.10.3 of Ms More statement to the commission, which was ratified by the IC and also occurred in the African Rainbow Capital Investment Limited, IPO, this is listed investments in which the PMC ratified the deviation from the PMC one stage by granting approval by granting approval to do due diligence process. The resolution of the PMC meeting of 11 August is attached and marked DD.63. This type of deviation will occur

where the information for the initial investment analysis of the transaction and therefor the mandate fits that PMC want. It is already available and additionally there is no cost to the PI's in their appointment of external Service Providers to assist with the conduct of the DD. A transaction of this sort can therefore immediately go into due diligent process. A deviation from PMC one is very common for IPO's. Initial Public Offerings as this are always accompanied by JSE approved PLS. Because the information necessary for PMC one is already included in the PLS and there is no cost to the PI's in their appointment of external Service Providers to the compilation of the due diligence as the information for the due diligence is already contained and verified by reputable external professionals in the JSE approved PLS'.

ADV ISAAC MONNAHELA: Doctor Majila I want to stop you there, and you refer to the *ARC*. The African Rainbow Capital IPO whereas an example where this happened. Can you refer you to page 559 of the annexure DD.63.

DR DANIEL MATJILA: Okay. We are there. Thank you.

20 **ADV ISAAC MONNAHELA:** So Doctor Matjila this a round robin resolution of the PMC for listed investments. Is that correct?

DR DANIEL MATJILA: That is correct.

ADV ISAAC MONNAHELA: It seems to involve a participation and an IPO of up to thirty percent in *ARC*, in African Rainbow Capital Investments. Is that correct?

DR DANIEL MATJILA: That is correct.

ADV ISAAC MONNAHELA: And it is resolved that the committee approves that the transaction team, that is the deal team. Is that correct?

DR DANIEL MATJILA: That is correct.

ADV ISAAC MONNAHELA: Can proceed with the due diligence for African Rainbow Capital Investments ahead of the listing on the JSE.

DR DANIEL MATJILA: That is correct Commissioner.

ADV ISAAC MONNAHELA: Was there a PMC one stage for African
10 Rainbow Capital Investments?

DR DANIEL MATJILA: Not as far as I can remember. This is what was regularising the PMC one process and the ...[intervenes]

ADV ISAAC MONNAHELA: Why would there not have been a PMC one stage for this transaction?

DR DANIEL MATJILA: Because all the information was available on the PLS to conduct the due diligence commission.

MS GILL MARCUS: Sorry. Can I just get a point of clarity there. Doctor Matjila because I do not think anyone is disputing the approach with, as you have put in paragraph 4 to 5. This is deviation from PMC
20 one as these are always accompanied by a JSE approved by the JLS. The critical question there is the JSE approved JLS. As far as I understand what you have said about the IO is that is, and I know it is slightly ahead, this was a draft PLS.

DR DANIEL MATJILA: Yes it was a draft ...[intervenes]

MS GILL MARCUS: And therefore it is not approved by the JSE it has

not gone through that scrutiny when you looked at the due diligence of IO. So the references to African Rainbow *etcetera* is based on an approved JSE PLS.

DR DANIEL MATJILA: But we believe that the information in all cases has - is normally accurate.

MS GILL MARCUS: Okay ...[intervenes]

DR DANIEL MATJILA: So the, in the end ...[intervenes]

MS GILL MARCUS: I just want to clarify that this was an approved PLS and this, but when we are coming now to 426 you refer to the IO as
10 draft PLS which must be different from an approved JSE document by your own consideration of its ...[intervenes]

DR DANIEL MATJILA: That is ...[intervenes]

MS GILL MARCUS: Its standing.

DR DANIEL MATJILA: Ja.

MS GILL MARCUS: We will come to that.

DR DANIEL MATJILA: Sure.

MS GILL MARCUS: I just wanted clarity that we are talking here about an approved PLS.

DR DANIEL MATJILA: Ja.

20 **MS GILL MARCUS:** Thank you.

CHAIRPERSON: Just to clarify something here. Doctor Matjila when you get a PLS what do the analysts do? Do they only do the valuation or do they do any other things?

DR DANIEL MATJILA: I think...[intervenes]

CHAIRPERSON: I know the other asset managers they actually just

look at the valuation and the financial statements, but technically there is not much that you can do. You cannot visit the company to do a DD you know because it is has been done already.

DR DANIEL MATJILA: Ja.

CHAIRPERSON: But what the PIC do? The analyst and the portfolio managers?

DR DANIEL MATJILA: Commissioner I expect to do exactly what you have described because information is there you know and it cuts across the ESG team as well have all the directors and be able to
10 analyse you know the ESG issues in the PLS or in the transaction from this information, so we will risk because all that information has been verified and approved by reputable JS approved organises so, it, we expect it of the right quality to be used by investors, so that is normally what happens. In the case of IO and them, this to and fro discussions was because it was a draft. They needed to confirm certain things that they are in place so that by the time the final comes there is hopefully not much difference so then the transaction can be done in that way.

CHAIRPERSON: Ja we shall come to it, but I just wanted to check what would be the difference between approved PLS *versus* a draft one
20 you know but I am sure we will come to it at some point. Ja. Okay.

CHAIRPERSON: Continue.

DR DANIEL MATJILA: ‘Paragraph 4.26 Commissioner.

‘Thus in the case of IO listing the PIC had received a draft PLS following the signing of a non-disclosure agreement NDA with AEI Corporate Finance on the 24th November 2017.

There was therefore no necessity for PMC 1 process and there was no cost to the PIC in respect of the due diligence as well as the necessary information was already contained in the draft peerless. This allowed the team, the PIC to immediately start with the draft due diligence.

10 The intention being that by the time the JSE approved PLS was received the PIC would have already done the bulk of the work for a due diligence which would facilitate meeting the listing that line was 17 hours on the 15th December 2017. Accordingly once the final, that is JS approved PLS for the IO listing was received which was, which occurred [I think the date is wrong there, I think it is the 15th, the 14th actually] and part of which was a private placement application form all that would have remained to be done was to reconcile the information contained therein with that of the various reports and appraisal reports to the extent necessary, amend those to accommodate the contents of the final PLS.

20 In the IO transaction the final PLS did not contain any differences from the draft PLS except for date changes off course, [because the date would have changed, the time table for listing would have changed] and therefor the information upon the strength of which the investment was made was the information contained in the final PLS. A copy of the final PLS is attached and marked DD.64.

The PMC meeting scheduled for the 6th December was cancelled due to *quorum* challenges. This was a meeting intended to give approval for the immediate undertaking of due diligence for the IO transaction. However, for the reasons set above, set out above the approval for the transaction to enter into due diligence would have been foregone conclusion, giving the looming subscription deadline would have been unnecessarily dilatory to insist upon this administrative decision being made before the meet of the transaction being the due diligence process could start.

10

There was there for no reason that the processing of their transaction could not immediately start with the due diligent process and there could be no difficulty with a request to the department involved in this function to begin their respective task in this regard, even before a formal PMC approval had been given.

In fact it is to commented that due diligence, the conduct of the due diligence began without disapproval as there is no doubt that the reports and the appraisal necessary for the subscription would not have been completed in time if it had first been obtained. Similarly, the meeting of the 13th of December 2017 which was to formalise approval for the due diligence process also did not materialise due to *quorum* challenges. Mr Molebatsi the IO team leader Mr Madavo was overseas. Then approached me to discuss the subscription

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considering the difficulties we had in convening meetings at that time.

10 As a result of our conversation on the 13th December I telephoned Matseko Takebong the ESG team Candice Abrahams, Risk team and Winnie First legal team to ascertain from them if their reports have been concluded and if so whether their reports recommended the conclusion of the transaction. I was assured by each that although the appraisal report and the reports from the individual department had not been prepared and printed all the reports and the appraisals had been concluded that they recommended the conclusion of the deal. Their respective confirmation were subsequently borne out by the contents of the appraisal report and annexures. A copy of which is attached and marked DD.65 which among others concluded that, I quote;

20 At the forward PE of 16 times on Management earnings estimates the IO transaction appears to be reasonably attractive catalytic investment to stimulate significant transformation in the IECT sector and needs recommendation that, it is recommended that the Portfolio Management Committee PMC listed approves approximately 4.3 billion share per shares of 29 percent of IO at R43 per share in IO's private placement. This conclusion and recommendation was that factley repeated and confirmed by

the time the PIC appeared before SCOPA in November 2018 in respect of the IO transaction. I must address the allegations that I put pressure on my colleagues to do the transaction. Although there was pressure to meet the listing deadline, I have not put any pressure on anyone to make specific recommendations including the valuation to ensure that the deal worked.

CHAIRPERSON: Can we stop there and take the adjournment?

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Dr Matjila you're still under oath.

DR DANIEL MATJILA: Yes Commissioner.

ADV ALEXANDER ROELOFSE: Commissioners we're at paragraph 434 but I'm not going to get Dr Matjila to continue at this point in time because I'm going to ask him some questions about certain evidence that he's given up to this point in time. So Dr Matjila if I can take you back to paragraph 431 you said that you phoned Matseko Taukobong of the SG team, what position did he occupy?

20 **DR DANIEL MATJILA:** I think Matseko heads up the ESG team for listed investments.

ADV ALEXANDER ROELOFSE: And Candace Abrahams she was as we've heard the?

DR DANIEL MATJILA: At that time I think it was acting, her position is enterprise, senior manager enterprise-wide risk management.

ADV ALEXANDER ROELOFSE: Okay and Winnie Setshedi was the

acting executive head for legal is that correct?

DR DANIEL MATJILA: For legal that's right, ja.

ADV ALEXANDER ROELOFSE: Right, now you've been provided, sorry before we get to that you say that you were assured by each of those individuals that although the reports from the individual departments hadn't yet been prepared and printed they had all been concluded and they recommended the conclusion of the deal is that correct?

DR DANIEL MATJILA: That's correct Commissioner.

ADV ALEXANDER ROELOFSE: Now you've been provided with a copy
10 of a report by the internal audit department on this transaction which report is dated December 2018 is that correct?

DR DANIEL MATJILA: That's correct.

ADV ALEXANDER ROELOFSE: If I can refer you to paragraph, page 46 of that report ... (intervention)

CHAIRPERSON: Is that document part of the two files that we have or not?

ADV ALEXANDER ROELOFSE: I'm not sure what's in your files Commissioner because we haven't received any files but this was given to us yesterday so ... (intervention)

20 **CHAIRPERSON:** No I'm talking about the files the DD annexures that ... (intervention)

ADV ALEXANDER ROELOFSE: No, no, no it's not part of those files, this is a document which was given to us by the evidence leaders yesterday.

CHAIRPERSON: Do we have it?

ADV SECHABA MOHAPI: Mr Commissioner it has been provided to the Commission and Mr Nemagovhani was here to present it, it was given to the Commission but on a different date.

MR EMMANUEL LEDIGA: Is that the 90 page one, the one about ... (intervention)

ADV SECHABA MOHAPI: Ja about 96.

MR EMMANUEL LEDIGA: Ja we've seen it before, ja.

ADV SECHABA MOHAPI: That's correct.

MR EMMANUEL LEDIGA: Whether we can remember it that is another
10 story but we have seen it, the audit report ja.

ADV SECHABA MOHAPI: That is correct yes.

MR EMMANUEL LEDIGA: The large thick report.

CHAIRPERSON: That's written confidential across it?

ADV SECHABA MOHAPI: That is correct Mr Commissioner.

ADV ALEXANDER ROELOFSE: Not just confidential, strictly private and confidential. If I can refer you to page 46 of that paragraph 10.2.14 this is Mr Victor Seanie ... (intervention)

MS GILL MARCUS: Sorry can you just give us the reference again?

ADV ALEXANDER ROELOFSE: Page 46 paragraph 10.2.14 this is Mr
20 Victor Seanie who's being interviewed here and what is recorded at this particular paragraph is upon discussions with Victor on 12th December 2018 he indicated that although risk ESG and legal reports were only completed after the subscription was signed he had held discussions with the team so as to satisfy himself that there were no major concerns and issues when the subscription was signed. And you say in

this paragraph that we're dealing with 431, you say that you also phoned these people to find out whether there was anything adverse in the reports that were being prepared by them which would have prevented the conclusion of the Ayo transaction?

DR DANIEL MATJILA: That's correct if my memory serves me well there was that confirmation from them.

ADV ALEXANDER ROELOFSE: Now what's interesting in this internal audit report at page 52 paragraph 10.2.46 is that, sorry 10.2.45 is that it says internal held discussions with Tshifhango on 13 December 2017
10 and Candace, that must be Candace Abrahams, on 12th December 2017 and they also noted that they were not called by anyone on or before December 2017 about the contents of the risk DD report. Now you say that you in fact contacted Candace on the 13th December 2017, she denies it. What do you say about that?

DR DANIEL MATJILA: I think this in my view Commissioner points towards a very difficult environment at the PIC you know from what I heard is that you know people were scared and they had to comply or else they would be suspended as well you know. So I remember sending Mr Lebogang Molebatsi an SMS at some stage or WhatsApp
20 just to chat to him to find out how he's doing and he said to me look I mean he's under huge pressure you know and he may be suspended, suspended for having signed the subscription agreement for Ayo and I said to him but why is it so, I mean I thought you know you had authority and most importantly I also had the authority that's why I co-signed with you to ensure that we share the responsibility on the basis

of you know all work being done as far as we are concerned you know so why is that so and he said to me look I'm just being put under pressure to comply. So I'm not surprised at a certain turnaround in some of the witnesses saying that they were never called or they didn't discuss with me you know and that's you know something that I've observed once I was out of that place that most of the people simply turn around and even statements that were made here about the fact that I don't rule, I don't lead I rule and so on you know points towards that change in attitude because of fear and people trying to protect
10 their position at all expenses. So I would have been the easiest you know to point fingers at you know for all of this.

ADV ALEXANDER ROELOFSE: Well let me ask you this, if you hadn't spoken to these people from ESG, risk and legal that you say you spoke to, how would you have known whether it was okay to go ahead with the Ayo deal or not?

DR DANIEL MATJILA: It would have been difficult to do so and the reports that are in this, before, that were presented to us you know bears to testimony to that, there was no material findings as per what I was told you know so I wouldn't have guessed that that is the case
20 without being told that there are no material issues raised in this reports.

ADV ALEXANDER ROELOFSE: And if you had received any adverse reports from these people that you contacted would you have gone ahead and done the deal?

DR DANIEL MATJILA: No we wouldn't have done the deal unless there

was a case of a strong mitigating strategy around such a risk because we do take risk if it can be mitigated but in this instance if there's no mitigating strategy around it we don't accept it and therefore I wouldn't have done the risk, I mean I would've done the deal.

ADV ALEXANDER ROELOFSE: Now one of the people that you don't seem to have contacted according to your statement as the CFO Ms More before the decision was made to sign the subscription form is that correct?

DR DANIEL MATJILA: That's correct.

10 **ADV ALEXANDER ROELOFSE:** And can you explain to the Commission as why that is so?

DR DANIEL MATJILA: Ms More is almost in the similar situation as I am because we rely on advice from the technical people they are the ones who do the work and make recommendations to us you know so it wasn't necessary to ask her because she's not doing the technical work anyway, the technical work is done by the team.

ADV ALEXANDER ROELOFSE: But Dr Matjila doesn't the delegation of authority require her approval beforehand, before a transaction is entered into?

20 **DR DANIEL MATJILA:** That delegation it's applied in the form of a PMC meeting that's where every one of us then has a voice to you know, has a voice in the meeting.

ADV ALEXANDER ROELOFSE: Ms More testified that the delegation of authority had subsequently been amended to provide for her exclusion as the CFO in respect of her approval beforehand for the

conclusion of a transaction.

DR DANIEL MATJILA: I think that's appropriate because then it will really defined the role that she plays in an investment cycle better because as it stands she only is in a position to express her views in a PMC environment.

ADV ALEXANDER ROELOFSE: And those views would be based on what the substance, on the merits of the transaction is that correct?

DR DANIEL MATJILA: That's correct which are then given by the technical teams, the different technical teams.

10 **ADV ALEXANDER ROELOFSE:** So if the technical teams were in favour of a transaction has it ever been the situation that the CFO would then not be in favour of a transaction for some reason?

DR DANIEL MATJILA: I can't recall that situation, once they have a positive recommendation of a transaction it's approved, almost approved.

ADV ALEXANDER ROELOFSE: But you say that subsequently that DOA has been amended to cater for that fact and that the CFO's prior approval is no longer required?

DR DANIEL MATJILA: That's correct Commissioner.

20 **ADV ALEXANDER ROELOFSE:** Now at paragraph 432 you quote the findings and recommendation regarding the Ayo transaction at forward PE of 16 times on management's earnings estimates the Ayo transaction appears to be a reasonably attractive catalytic investment to stimulate significant transformation in the IC sector. Now who performed the work to come to that conclusion?

DR DANIEL MATJILA: This will be the investment team responsible for the investment, the technical team responsible for the investment.

ADV ALEXANDER ROELOFSE: And this multiple of 16 times and the financial information that has been reviewed in order to come to this particular conclusion were you involved with that?

DR DANIEL MATJILA: No, not at all I was not involved in this Commissioner.

ADV ALEXANDER ROELOFSE: And then it's recommended that the PMC listed approves the Ayo purchase at R43.00 per share?

10 **DR DANIEL MATJILA:** That's correct.

ADV ALEXANDER ROELOFSE: That was the information that was placed before you certainly at the PMC meeting of the 20th December but that was the information to hand when you telephoned these various people?

DR DANIEL MATJILA: Yes and the subsequent subscription, signing of the subscription agreement.

ADV ALEXANDER ROELOFSE: Was there ... (intervention)

DR DANIEL MATJILA: I mean the irrevocable undertaking.

20 **ADV ALEXANDER ROELOFSE:** Where would this financial information have been derived from to come to these figures?

DR DANIEL MATJILA: This is all derived from the prelisting statement of Ayo.

ADV ALEXANDER ROELOFSE: And was there anything which made you doubt the veracity of that information?

DR DANIEL MATJILA: No because these PLS's are signed off by JSE

approved entities signing off on both legal, technical and other legal issues yes.

ADV ALEXANDER ROELOFSE: But let's just examine that for a moment because ... (intervention)

MS GILL MARCUS: Sorry I just want clarity there, are you saying that all of these numbers were derived from the final PLS and not the draft PLS?

DR DANIEL MATJILA: The draft PLS but ... (intervention)

MS GILL MARCUS: The draft PLS?

10 **DR DANIEL MATJILA:** Yes but the final PLS and the draft PLS had very little differences so ... (intervention)

MS GILL MARCUS: But you didn't have the final PLS when you did the numbers?

DR DANIEL MATJILA: Yes.

MS GILL MARCUS: So this is based on the draft PLS?

DR DANIEL MATJILA: That's correct.

MR EMMANUEL LEDIGA: Just another one here, you know people from the PIC have come to the Commission and some have said the PIC doesn't pay for the value that it creates, the PIC doesn't pay for the
20 value it creates. Can you explain to us what actually that means?

DR DANIEL MATJILA: I thought they would have explained better than I do.

MR EMMANUEL LEDIGA: Ja you know these things, you know these things and let's hear it from the expert.

DR DANIEL MATJILA: No I don't want to venture into that

Commissioner and I think it's about paying the fair price, that's what it is and the fair price will be determined by the team to say this is more/less the fair price that we are prepared to pay.

MR EMMANUEL LEDIGA: Doesn't it mean that the PIC will pay for fair value but it won't pay for the next value creation in a sense that it will pay for the company as is but it won't necessarily pay when it acquires other companies and grows and all that. Fair value versus blue sky and all that, I'm just trying to understand what they meant.

DR DANIEL MATJILA: I think it depends on the sector that you are
10 dealing with here, you know there are certain sectors where you know assets or value is derived it's easy to calculate, I mean there are so-called widgets I think that's the typical example that's used there about you know widgets you know these are things that are tangible that you can count, quantify and so the PIC says they will have to pay a fair price for that. But there are businesses where some of these things are not tangible because they are in contracts that are going to be realised into the future so it becomes a guessing game you know and you just have to rely on certain metrics you know unfortunately you know like in IT or ICT that's typical because some of these things are
20 software, they are contracts, service contracts and so on which are quite difficult to quantify if you would say what are is the assets in the company there's almost nothing but there are contracts that bring value to the company that can be sort of estimated. And unfortunately under those circumstances if you take the asset base versus the value that you expect to be created you know that may be, if you want to pay for

the assets only there's no chance that you'll be able to pay, nobody will sell you that you know if you take, I'm sure if Naspers was approaching the valuation of Tencent along the long the lines of assets and so on they wouldn't have put money in there because I think it was loss making any view was negative and so there's something drive this value ... (intervention)

MR EMMANUEL LEDIGA: Ja just to come in there, my take is a bit different, what I'm asking is this Ayo is a new company and you are basing that 16 PE on companies that exist and it's an average of those
10 companies PE's and all that. It would appear and I don't want to argue the valuation here really because I'm just asking for clarifications, but it would appear that a 16 PE on a new company that still has to prove that it can buy other companies, acquire companies and things can go wrong as you saw that when the Ecobank tried to acquire the other bank I mean things went wrong and I don't want to talk much about it but to put a 16 PE on a new company and to equate it with the existing companies that have been growing for 16, 20% per annum do you think it's correct?

DR DANIEL MATJILA: Unfortunately global standard tells me that that
20 is the case, I mean we may be paying cheap you know I think it was .. not long ago owned by MTN that listed in New York making losses it was up 60% in no time you know so probably we are still using the you know valuation methodologies that are applicable to certain sectors whilst we are in a different environment altogether you know the so-called fourth industrial revolution things are measure differently so ...

(intervention)

MR EMMANUEL LEDIGA: Ja let's leave it there and then we can come again to it. The next one is on the 4.3 billion you know that is the paragraph 432 just to clarify something there, whenever you see a valuation or a document say there's a valuation of we're going to pay R4.3 billion do you think about it, do you ever say can I get the supporting documentation or do you as a CEO you wouldn't want to look at that when that valuation came did you think about it, did you ... (intervention)

10 **DR DANIEL MATJILA:** Ja we definitely get supporting documentation in all of this from the meetings that were cancelled we do get information that explains how this valuation was arrived at and what are the assumptions and many other things and in between there will be meetings sometimes with the team for updates where they are and so on if they pick up any problems. So there's a fair amount of engagement, we don't just say well this is a value therefore we sign off, no, no otherwise it would have not been necessary, it would have not been necessary for them to provide me with transaction documentation upfront, valuations and workings and so on.

20 **MR EMMANUEL LEDIGA:** So you did look at it and say okay I'm pretty comfortable and I can sign is that correct?

DR DANIEL MATJILA: That's correct but it's mainly on the advice they would say we've tested this, this is an extreme, this is cheap, we think we are okay ... (intervention)

MR EMMANUEL LEDIGA: Yes base case is this.

DR DANIEL MATJILA: Worse case and then more or less where we should be you know so that information I do get.

MR EMMANUEL LEDIGA: Alright thanks, thanks for now.

ADV ALEXANDER ROELOFSE: Thank you. Doctor just to follow on from Commissioner Lediga there I think the point is though that at the time that the subscription form was signed in this for the Ayo transaction that documentation, that supporting documentation was not before you is that correct?

DR DANIEL MATJILA: The valuations was already before me and so I
10 had all the information around valuation which is a critical component of this including the draft PLS.

ADV ALEXANDER ROELOFSE: Okay and we know that there were no material changes in the draft PLS from the final PLS regarding that financial information. Did the conclusion that the teams had come to that they were comfortable in doing the Ayo transaction and the multiple that they used in order to value that particular transaction did that look odd to you or out of kilter?

DR DANIEL MATJILA: Not at all Commissioner you know these are seasoned experts if I were to put it that way, well qualified well
20 experienced and have proved that they definitely know what they are doing. The outperformance speaks for itself in the equities I think they presented here, you know they've done exceptionally well.

ADV ALEXANDER ROELOFSE: Thank you Doctor. Then if I can ask ... (intervention)

MR EMMANUEL LEDIGA: Ja just suffice to say that you can have

multiple Dr Dan, Dr Matjila, you can have a multiple based on a 16 PE but there's the other element because it's priced on the earnings. The earnings say it's a billion Rand 16 multiple so the earnings would be a billion the multiple is 16 so it means that the earnings are R1 billion priced to earnings. So there could be also issues in calculating the earnings of that isn't it?

DR DANIEL MATJILA: That's correct ja.

MR EMMANUEL LEDIGA: That the earnings could be stretched from a certain amount to R900 million to a billion Rand.

10 **DR DANIEL MATJILA:** That's right.

MR EMMANUEL LEDIGA: And that's hence you get a billion price of say 16 billion divided by a billion Rand of earnings that gives you a 16 PE isn't it?

DR DANIEL MATJILA: Hmm yes.

MR EMMANUEL LEDIGA: 16 billion of price in the market cap divided by the billion Rand of earnings that's 16 PE but within that billion Rand of earnings there could be many issues that go in there.

DR DANIEL MATJILA: That's correct.

20 **MR EMMANUEL LEDIGA:** Both on the revenue side, the margins and the after tax profits.

DR DANIEL MATJILA: Yes.

MR EMMANUEL LEDIGA: Alright okay ja.

DR DANIEL MATJILA: There's a loss of assumption that has to ... (intervention)

MR EMMANUEL LEDIGA: Assumptions and focus and all that.

DR DANIEL MATJILA: Exactly but you may have historical numbers to base ... (intervention)

MR EMMANUEL LEDIGA: Sorry?

DR DANIEL MATJILA: Historical numbers to give you a sense of what is doable and focus and work out you know how reasonable that number is going forward you know.

MR EMMANUEL LEDIGA: Ja, we shall come to that but just to clarify that too ja.

MS GILL MARCUS: Sorry before you continue I just want for clarity for
10 myself so I didn't mishear. If I understand you correctly Dr Matjila you're saying before you signed the irrevocable on the 13th December you had all the financial information that you required to make that decision?

DR DANIEL MATJILA: This will be the valuation from the team. The only thing that was still being worked on was the ESG report, legal and risk which ... (intervention)

MS GILL MARCUS: And you had that before the 13th?

DR DANIEL MATJILA: Those were being finalised and I was told that there's no, there are no material issues because in an IPO the biggest
20 component of work is around valuation.

MS GILL MARCUS: Sure.

DR DANIEL MATJILA: Which the team had concluded and happy with.

MS GILL MARCUS: So you had the information sufficient for you to feel comfortable signing the irrevocable on 13th December before it goes to any process?

DR DANIEL MATJILA: 14th December yes.

MS GILL MARCUS: Right?

DR DANIEL MATJILA: Yes.

MS GILL MARCUS: So that was the first question ... (intervention)

DR DANIEL MATJILA: I think we also cleared that you know we're signing this because the team is happy then we can go ahead and transact. The fact that we couldn't get meetings and the deadline was just around the corner you know that's when I step in to sign off with Mr Molebatsi on the basis that this will be rectified at the next meeting of
10 PMC.

MS GILL MARCUS: Okay no I'm, that will come and then just to indicate that obviously your counsel is taking you through these matters but we're going to be coming back to all of them.

DR DANIEL MATJILA: Okay.

MS GILL MARCUS: Okay thank you.

ADV ALEXANDER ROELOFSE: Thank you. Now Doctor if I can then ask you to carry on from paragraph 434 please.

DR DANIEL MATJILA: I must address the allegation that I put pressure on my colleagues to do the transaction. Although there was pressure to
20 meet the listing deadline I have not put any pressure on anyone to make specific recommendation including the valuation to ensure that the deal worked. They all did that work independently and recommended the transaction as per all members that served at all committees including Standing Committee of Finance in Parliament.
A meeting of PMC will be consisted among others of the following

positions; the CEO, the CFO, the Executive Head Listed Investments, the Executive Head Legal Compliance, the Executive Head Risk, Executive Heads Research Project Development, Executive Head Portfolio Management and Valuation representing ESG Department and various general managers. Of this position in the PMC the recommendations of Risk PMV which is ESG, Legal and Deal Team were basically determinative as to whether the transaction should be concluded or not.

10 This fact was corroborated by Ms Matshepo More in her statement to this Commission. By the 14th and 15th December 2017, all due diligence processes and reports has been prepared and submitted as pre-appraisal in Annexure.

It should be obvious now that allegations that the due diligence processing the AYO transaction was either not performed or was defective totally unfounded to the extent that the minute of the PMC meeting of 20 December reflects the legal and ESG teams performing a complete due diligence and providing feedback to the PMC on LI. I agree with the explanation provided by Ms More in paragraph 6.10.5 of her statement to the Commission.

20 On 14 December 2017, Mr Molebatsi approached me with the AYO subscription form in hand and asked me what we should do as the deadline was the next day.

It was then imposable to organise another meeting of the PMC at such short notice. I tried to alleviate this difficulty by attempting to obtain approval for transaction via round robin resolution of the

relevant PMC members but this was unsuccessful as they had already left on holiday.

I had to make a judgement call on whether the PIC should include the AYO transaction or not. Since the due diligence had been performed and did not indicate anything untoward with the transaction and since the conclusion of the transaction was supported by those positions on the PMC which were critical to the approval of transactions, I suggested to Mr Molebatsi that he sign and I co-signed the subscription form but subject to the understanding which I also expressed to him that I will request the PMC to regularise the transaction at the first available opportunity.

ADV ALEXANDER ROELOFSE: Dr Matjila, can I just stop you there?

In this internal audit report dated December 2018 at page 12, paragraph 6.2.5 the internal auditor comes to the conclusion that in essence the transaction, referring to the AYO transaction, was executed before PMC 1 and PMC 2 could have sight of it. Do you see that?

DR DANIEL MATJILA: Yes.

ADV ALEXANDER ROELOFSE: What is your comment on PMC 1 and PMC 2 having sight of this transaction and what do you say about that conclusion?

DR DANIEL MATJILA: I think Commissioner we explained PMC 1 and PMC 2 that this are just stages in the transaction and not different meetings so to put it.

And peak key people in the PMC in terms of decision making as I said or who's important in making sure that a decision is taken

would be the transaction team who'd have worked on the transaction, they know. ESG team who we know was aware and worked on the document, ESG I mean Legal as well as Risk.

I think Mr Seanie does attest to that in his statement that he passed on information to this team to do work and indeed they work around this. So those are the key in terms of PMC and membership that are supposed to be aware of the transaction at any point in time.

ADV ALEXANDER ROELOFSE: So it appears that the when the internal auditor finds that in essence the transaction was executed
10 before PMC 1 and PMC 2 could have had sight of it, he seems to miss understand what the PMC is all about and what PMC 1 and PMC 2 are?

DR DANIEL MATJILA: That's what I pick up here in this document.

ADV ALEXANDER ROELOFSE: Then what I want to refer you to Dr Matjila, in the same internal audit report there is a issue raised in respect of the due diligence- two issues that are raised in respect of the due diligence at page 17.

The first is that Risk- there was still questions as at the 15th of December 2017, there was still questions the Risk had raised with AYO which were not answered yet including a request to get the 2017
20 audited financial statements of AYO and Risk did put it in their Risk report that they had not received the audited financial statements of AYO.

CHAIRPERSON: Mr Roelofse, you know we are at some disadvantaged because we don't have the document.

ADV ALEXANDER ROELOFSE: I apologise Mr Commissioner, I thought

that if my learned friends were going to use it, they would have placed it before you.

CHAIRPERSON: No, we do have copies but they're not before us because we didn't know that they are going to be referred to. We didn't bring them into the room. I think I've got one.

ADV ALEXANDER ROELOFSE: Can we organise to-

MR EMMANUEL LEDIGA: It's quite a large document so we just want to check whether Judge would take one copy. One copy, okay.

CHAIRPERSON: What page were you referring to now so that we can
10 let you go ahead and just look at it later?

ADV ALEXANDER ROELOFSE: It's page 17, Mr Commissioner, paragraphs 6.8.1 and 6.8.2. I'm happy to wait Commissioners, if you want to get the relevant document before yourselves, it can't take too long.

CHAIRPERSON: We're making notes for you, you can go ahead.

ADV ALEXANDER ROELOFSE: I'm indebted.

Dr Matjila, I was pointing you to page 17 paragraphs 6.8.1 and 6.8.2 of this internal audit report. And there were some issues that were raised, the first pertaining to outstanding information which
20 included audited financial statement of AYO.

What is your comment on whether audited financial statements of AYO were necessary in order for Risk to come to a conclusion and recommendation about the AYO transaction?

DR DANIEL MATJILA: I think we spoke about the importance of the PLS and that the PLS it's signed off by the JSE and it's got very

stringent requirements including the right financials being approved by a technical firm or a financial accounting firm to ensure that information is reliable and legal and other aspects of the PLS are signed by JSE approved firms to give comfort to an investor that they can use the information in the PLS.

So there was no need for this requirements for this requests ...
(intervenes)

MS GILL MARCUS: Sorry, I'm getting confused. You interchangeably use the draft and the PLS? At this point, were you working on the final
10 PLS that the JSE approved? Whether there's differences or not, it's a separate question. The reliance being placed on draft PLS is different from reliance being placed on a PLS. Are you referring to a draft or to the PLS?

DR DANIEL MATJILA: At this stage we're referring to the draft PLS.

MS GILL MARCUS: The please can we use that terminology because it is materially different in terms of the reliance issue whether or not there changes within it. Okay.

DR DANIEL MATJILA: Okay.

MS GILL MARCUS: Thank you.

20 **MR EMMANUEL LEDIGA:** Just another quick one. In terms of the final PLS, was it dropped at the PIC before disbursement and all that? I'm sure it should have been. Do you know?

DR DANIEL MATJILA: As far as I know, it was delivered to the PIC.

MR EMMANUEL LEDIGA: And did people then check it that is it too different to the draft?

DR DANIEL MATJILA: Yes, it's my understanding.

MR EMMANUEL LEDIGA: Okay.

CHAIRPERSON: But you made your decision to sign having the draft before you or in your possession?

DR DANIEL MATJILA: No, Commissioner. I was told that the final is no different from the draft and therefore on that basis we could sign off because the numbers have not changed. The team was comfortable, in other words, I signed on the basis of the final PLS as advised.

CHAIRPERSON: When you say you were told, it means you didn't see
10 it yourself.

DR DANIEL MATJILA: Mr Molebatsi told me, he was the executive that actually brought the form to me. In fact I remember we signed at reception because he was looking for me and he said to me, look this is final now we can sign off. Ja.

MR EMMANUEL LEDIGA: Is it right to say final PLS typically come out a week or two or three even before the actual listing, isn't it, the final one?

DR DANIEL MATJILA: I'm not sure about the timing really, I can't.

MR EMMANUEL LEDIGA: Ja.

20 **DR DANIEL MATJILA:** Ja, I'm not sure about the time.

MR EMMANUEL LEDIGA: But at least a week maybe even.

DR DANIEL MATJILA: But it's normally in you know, ja.

MR EMMANUEL LEDIGA: Ja, because I mean you cannot sign that form generally before you get the final PLS.

DR DANIEL MATJILA: That's right.

MR EMMANUEL LEDIGA: Isn't it?

DR DANIEL MATJILA: Ja, because the form is attached to the final PLS.

MR EMMANUEL LEDIGA: To the final PLS, yes. Ja okay, so typically the form would come from inside the PLS.

DR DANIEL MATJILA: Ja, you actually tear it off.

MR EMMANUEL LEDIGA: You tear it off and it's a final PLS.

DR DANIEL MATJILA: That's correct.

MR EMMANUEL LEDIGA: Yes. Okay, thank you.

10 **MS GILL MARCUS:** Sorry, on this- I just really am a bit concerned about this assumption that you've now got the final in front of you at the time that you sign and you have the discussion on the 13th of December.

Mr Molebatsi says in his testimony that;

They only had the draft listing statement due to time pressures on the team. The tight timelines to meet the deadline of 15 of December was a concern as the investment proposal had not yet been to the PMC.

In his discussion with you on the 13th of December where he was told that the IPO date cannot be moved and instructed that the team keep
20 the original transaction timelines. And there you indicate that you have had discussions with the heads of the different entities as you've outlined.

At what point did you get Mr Molebatsi, at what point in those dates between the 13th and the 20th did the PLS final statement come before you or whoever or Mr Molebatsi that you can say, we saw the

final PLS?

DR DANIEL MATJILA: My understanding is that Mr Molebatsi brought the final form with him on the 14th for signature. That's when I said to him that's fine because the work has been done, we can sign off.

MS GILL MARCUS: Can we please get clarity on that Advocate Mohapi because if it need be check with Mr Molebatsi because this is quite critical to the decision making and that isn't what I have as Mr Molebatsi statement.

ADV SECHABA MOHAPI: Will so certainly do Commissioner.

10 **MS GILL MARCUS:** Thank you.

CHAIRPERSON: I just want to see if I understand. Who took the decision to sign the subscription, was it Molebatsi or was it you?

DR DANIEL MATJILA: Commissioner, the decision to sign was that of Mr Molebatsi as executive head of the department at that time. He came to me and said, there's pressure what do we do about this? I said to him, we've done all the work so what is the problem? We can sign. Because he has signing authorities, then he signed. I said to him, I will co-sign with you to demonstrate that I support you as the head as the chairperson of PMC, we will ratify this action at the next
20 committee. That's what happened.

He's the one who signed and I co-signed with him because he was the acting executive head at that point.

MR EMMANUEL LEDIGA: Then you can assume that he saw that he actually had seen or the final PLS because the form comes from the PLS?

DR DANIEL MATJILA: That's exactly what I assumed has happened because my understanding is that you can't sign on a draft PLS.

MR EMMANUEL LEDIGA: Yes.

DR DANIEL MATJILA: The form has to come with the final PLS.

MR EMMANUEL LEDIGA: Yes, exactly because I was telling Judge that the form you actually rip it off from the PLS and that comes from there.

DR DANIEL MATJILA: That's correct.

MR EMMANUEL LEDIGA: Okay.

ADV ALEXANDER ROELOFSE: Just for clarity purposes
10 Commissioner, is the internal audit report confirms that the final PLS was received by the PIC on the 14th.

MS GILL MARCUS: And then the question is, was that conveyed to Dr Matjila that you were basing the decision of signing on the final PLS because you signed of the 13th?

DR DANIEL MATJILA: No, we signed on the 14th Commissioner.

MS GILL MARCUS: You signed on the 14th.

DR DANIEL MATJILA: Yes, the PLS was signed on the 14th I remember.

MS GILL MARCUS: If I go back to Mr Molebatsi statement which is
20 page 12 paragraph 35, he covers his interactions with you and in 35.3 he says;

That due to the closing date of the private placement being the 15th of December he is instructing that subscription form be signed. In other words, he asked me to sign as executive head Listed (pp for Fidelis) as he will sign as the approver of the transaction. This would have been

said on the afternoon of the 13th of December.

Stated that PMC will be asked to ratify the transaction at the next sitting of the committee and that CEO and Chairman he confirms that ratification can be done.

So this discussion took place on the 13th ... (intervenes)

DR DANIEL MATJILA: On the 13th.

MS GILL MARCUS: On the 13th.

DR DANIEL MATJILA: Ja, but if I remember well the signing was the next day once the PLS was received.

10 **MS GILL MARCUS:** These reports what he says in 36.2;

The reasons I pp signed the AYO Irrevocable Subscription Form is that; He had reviewed the reports by Victor.

That the due diligence from report from Risk, Legal and ESG had already been initiated and were close to completion and that were subsequently shortly thereafter, on the 14th and 15th of December without recommendations that would have precluded the transaction from going ahead. It confirms what they had said to you. However these reports were submitted after the irrevocable subscription form was signed.

20 So you had the verbal agreement, not the written.

And in discussion with the CEO, you provided reassurance firstly that as Chairman of the PMC and CEO of the firm, you can provide guidance on what needed to be done to meet IPO deadline. He said you seemed very confident there's nothing untoward in the signing of the subscription form if we were to take it to the PMC for ratification.

I was clear in my mind that I could not sign the form in my capacity as the general manager given the level of responsibility of that role.

So there is some question about the signing and his comfort with that according to Mr Molebatsi. Reassured by you that you'd see you had the conversations with Risk, with Legal, there were no material matters and that it would be a due process to go to the next PMC and have the decision ratified. Is that correct?

DR DANIEL MATJILA: Yes, and as acting as the executive head of Listed Investment.

10 **MS GILL MARCUS:** Ja.

DR DANIEL MATJILA: Ja, so he derives his powers there.

MS GILL MARCUS: Okay. Thank you.

ADV ALEXANDER ROELOFSE: Just so that you are aware Madam Commissioner, the internal audit report also says that the subscription form was signed on the 14th. So the PLS and the subscription- the PLS was received on the 14th and the subscription form is also signed on the 14th December 2017.

CHAIRPERSON: Can you give us a page and paragraph?

20 **ADV ALEXANDER ROELOFSE:** It is at page 67 paragraph 10.4.18 but in fact there is even in the imaging of an email Mr Commissioner which I've been struggling to find which in fact images the email which was sent to the PIC containing the final PLS and I just- I haven't been able to find that email that particular paragraph. But it does say that it was received on the 14th.

CHAIRPERSON: Mm.

ADV ALEXANDER ROELOFSE: So I think Dr Matjila, let's just run through what happened again the 14th so that we are clear. You signed on the 14th and the PLS arrived on the 14th but how did the subscription form then come to be signed on the 14th of December?

DR DANIEL MATJILA: Commissioner, you mean approached by Mr Molebatsi?

ADV ALEXANDER ROELOFSE: Yes, detail for us the event so that we can all understand nicely what happened on the 14th of December that ended up in the subscription form being co-signed by yourself and Mr
10 Molebatsi.

DR DANIEL MATJILA: Commissioner, as I said on the 14th Mr Molebatsi was looking for me. We eventually met at reception, he had the subscription form with him and completed subscription form for that matter it only require signatures.

And he said to me, well the subscription form is here. Tomorrow is the closing date, we can't find meetings, what do we do? Then I said to him, well I think you can sign because all the work has been done. Valuation, ESG, there's nothing negative from what our colleagues have told us therefore we can sign.

20 And he said, well he was uncomfortable as he said and I said, well as executive head you can sign, you have that authority and I'll co-sign with you. And I will make sure that we call in a PMC meeting as soon as it's possible to get ratification of this transaction. Ja.

ADV ALEXANDER ROELOFSE: Was there any discussion about whether the information from the draft PLS had differed in the final

PLS?

DR DANIEL MATJILA: No, there was nothing material. The only thing that would have changed would have been dates of course and the pricing was now fixed at R 43.00 I think.

ADV ALEXANDER ROELOFSE: And I want to ask you this Dr Matjila because this is important. He definitely had the subscription form in his hand and he had already filled it out?

DR DANIEL MATJILA: Ja, it was already filled out. I think it must have been by Mr Seanie that reports because he was working intensely
10 on this. So he approached me with a completed- all it needed was a signature.

ADV ALEXANDER ROELOFSE: Because the internal audit report suggest that the PLS was received after the final subscription form was signed by yourself and Mr Molebatsi. What do you say about that?

DR DANIEL MATJILA: That can't be possible because we would be signing a wrong document then.

ADV ALEXANDER ROELOFSE: I see.

MS GILL MARCUS: Just for clarity in terms of process, again you consulted with the different ESG, Risk and Legal on the 13th?

20 **DR DANIEL MATJILA**: That would have been correct.

MS GILL MARCUS: And then therefore their work will have been based on the draft PLS.

DR DANIEL MATJILA: That's correct.

MS GILL MARCUS: Okay, thank you.

ADV ALEXANDER ROELOFSE: We got a little sidetracked Dr Matjila, I

was just asking you about the two outstanding Risk considerations which were raised by this internal audit report. You've already commented on the one being the audited financial statements of AYO.

The other factor which is raised is the fact that a the Risk classified the transaction that the PIC was entering into as an underwriting of the private placement of AYO but in fact it was a subscription agreement. And that the Risk report goes further to recommend a condition precedent that the PIC should receive a market related fee for underwriting the private placement. This is page 17,
10 paragraph 6.8.2 Commissioners of the internal audit report.

DR DANIEL MATJILA: This is an IPO and we've been asked to subscribe for 29%. We are not underwriting the full IPO in so far as we understood it Commissioner. So there was no need for underwriting fees under those circumstances, the due diligence would have been the same for both.

MR EMMANUEL LEDIGA: Ja. And can just explain what we mean to underwrite because I understand when you underwrite, you actually also get paid a fee to underwrite, isn't it?

DR DANIEL MATJILA: That's correct.

20 **MR EMMANUEL LEDIGA:** Can you explain what it means by underwriting and what happens?

DR DANIEL MATJILA: Ja, normally when you underwrite you'd be underwriting a big amount and then basically taking the risk that some investors will not honour and therefore you are able to cover and ensure that the listing meet the requirements of the JSE, in other words, the

minimum amount that is required. For that you get paid a fee which is the underwriting fee so in this instance, this was not an underwriting fee but was just a normal subscription.

MR EMMANUEL LEDIGA: Just a subscription.

DR DANIEL MATJILA: Exactly.

MR EMMANUEL LEDIGA: Okay. So it means 6.8.2 is not right.

DR DANIEL MATJILA: It's not right and the nature of the due diligence is not dependent on whether you are underwriting or you are subscribing for shares in a private placement.

10 **MR EMMANUEL LEDIGA:** Okay.

ADV ALEXANDER ROELOFSE: So it's the same due diligence for both?

DR DANIEL MATJILA: It would be the same due diligence.

CHAIRPERSON: Whilst you're looking at that Mr Roelofse, I don't remember whether or not I told you this morning that we will break at 15h30.

ADV ALEXANDER ROELOFSE: You didn't Mr Commissioner but my learned friends informed me of that.

20 **CHAIRPERSON:** My apologies. I was supposed to have conveyed that to you.

ADV ALEXANDER ROELOFSE: We don't have a difficulty Mr Commissioner, thank you.

Then Doctor, can I ask you to continue then from paragraph 442.

DR DANIEL MATJILA: My understanding of my role as a Chief

Executive Officer is to manage the day to day operations of the PIC in terms of the powers delegated to me by the board in terms of section 5 of the PIC delegation of authority dated April 2015, it's Annexure DD14.

In terms of this delegation I'm assisted by the executive committee, a committee that also has investment subcommittees, PMC Listed and PMC Unlisted and other committees.

Section 5 17 of the delegation of authority Annexure DD14 stipulates that I quote "the CEO has the day to day responsibility of managing the business activities pertaining to third-party funds. The day to day business of the PIC is to perform in terms of its various client mandates an integral part of which is making investments on behalf of clients".

My understanding was that I could invoke my Executive powers in instances where the formal PIC investment processes for approval of the transactions could not take place timeously as was the case in AYO where PMC could not be convened to approve the transaction in time to meet the subscription deadline.

The PMC could then ratify my actions providing of course that they were consistent with the recommendations of the investment team as to the conclusion of the transactions.

MR EMMANUEL LEDIGA: Just to clarify something here quickly. In terms of the EXCO, do you decide by consensus or do you debate and all that? And if as a CEO you are not happy, can you take the final decision in the sense that I've listened to you guys but this is my decision?

DR DANIEL MATJILA: No, that never happens. As we've explained, there's very little instances, I can't even remember situations where the recommendations from the technical teams are turned around, are not accepted, you know.

So when there is an agreement between the technical team, the technical team being happy with the pricing and the technical aspects of the deal, potential returns and the legal team also being happy with legal risk around the transaction, the risk also being comfortable with the risk associated with the transaction and most
10 importantly, ESG being happy that even when certain ESG aspects are not met but they raised them and they are happy to engage going forward or make use of that as an engagement plan with the company to fix ESG going forward, then the transaction has 99% of passing and most of the time there's – I can remember once where we vote for a transaction. It's always about discussion and then we reach consensus.

MR EMMANUEL LEDIGA: Yes, I was more saying like broadly, besides transactions, I mean, have you been to a point where in terms of the terms of reference of Exco that you cannot reach consensus or you still
20 feel as a – sort of as a CE that the right decision is yours. Have you said look, I think, I still think I'm right, Exco is wrong?

DR DANIEL MATJILA: No, that has never happened, you know? I think throughout my stay at PIC I've never - I don't remember once making use of that power, veto power to get the transaction through or a decision through.

MR EMMANUEL LEDIGA: Thanks. So it's consensus?

DR DANIEL MATJILA: Yes.

MR EMMANUEL LEDIGA: Okay, alright.

DR DANIEL MATJILA: Commissioner I'm on 444.

"The deviations are common in any business environment where circumstances necessitate such. Ms More in her statement to this Commissioner corroborates this fact.

She further makes an example of Edcon deal that was concluded after I've left the PIC.

10 My understanding of her statement is that the IC delegated to management the authority to conclude a transaction subject to satisfactory due diligence.

Although this situation where a higher approving committee approved PMC1 in a way and delegates its powers to PMC2 or the same PMC to perform approval, full approval, to conclude an investment in an unlisted asset is unusual, it is my no means beyond the powers of the approving committee to authorise.

20 The PMC can approve transaction of up to 500 million in the unlisted investments. I believe that part of the reason I was removed was to allow for this process to unfold in the Edcon deal.

Another example was African Rainbow Capital Investment where the private placement subscription form was nonetheless signed by the deal team and that transaction

concluded in circumstances where a condition precedent set by the PMC to conclusion of the investment had not been met.

The investment memo is attached and marked DD66.

The issue of PMC approval was not raised by finance in that memo. The PMC nevertheless ratified the conclusion of the investment transaction notwithstanding that the deal team had no authority to sign the private placement subscription form and conclude the deal because the conditions precedent had not been met. A copy of the relevant resolution dated 30 September is attached and marked DD67.

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These are not the only examples, the PMC has often ratified investment transaction after their conclusion by employees with even less authority than me. This pertained to, among others, rights issues and portfolio rebalancing. Some of these deals are Sanlam, Clicks, Vukile, Sibanye, Bollinger IPO that listed in July 2016.

Section 6.2 of the delegation of authority listed investment a copy of which is attached and marked DD14.1 gives the PMC authority to approve transactions of 3 billion but less than 10 billion in the listed space. This authority is exercised through the PMC either by way of meeting or by way of round robin if we are unable to meet. Remember that by the time the meeting or round robin, the deal will already have been initiated by the deal team and as a result of the due diligence process reports by among others executive head of risk, legal,

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indicating their own agreement with the proposed transaction by either recommending or not recommending it, it would have been tabled or available.”

ADV ALEXANDER ROELOFSE: Dr Matjila, if I can just stop you here, there’s something that I want to put to you which is what the GEPF said when they gave evidence before the Commission is that the Ayo transaction or the conclusion, the proposed conclusion of the Ayo transaction was not disclosed to them and they felt that it should have been. What is your comment on that?

10 **DR DANIEL MATJILA**: The Ayo transaction is an IPO and it’s in line with the listed investments of – listed mandate investments for GEPF which is a discretionary mandate and there is no limit insofar as the listed investments are concerned from the GEPF. There’s no mandate restriction from the GEPF insofar as listed investments are concerned including IPOs. Can I proceed?

ADV ALEXANDER ROELOFSE: So in your view is there any validity to the complaint that the GEPF ought to have first of been informed of this transaction and have given its approval for it to proceed?

20 **DR DANIEL MATJILA**: I think from what I understood they classify this transaction as a structured investment product which is not true, it’s not a structured investment product, it’s an initial public offering, it’s a transaction where a company is going to list on the JSE immediately after subscription so it cannot be a structured investment product. So it did not need to be approved by the GEPF.

ADV ALEXANDER ROELOFSE: Please proceed?

MS GILL MARCUS: Sorry, just on that question. I think there's a distinction, I think that was what the comment of Mr Sithole when he was here to the effect that it may – you may have the mandate, that's not what was questioned, it was a question of disclosure especially if I recall correctly their concerns about the investment in the Independent Media as Sekunjalo to say it would have been good for there to be a disclosure of that to them that this is what has happened. You know, so it wasn't that they needed a prior approval it's just that in the communication, as I recall Mr Sithole's evidence, was that he was
10 concerned that there had then no disclosure prior or subsequent. I didn't think he was questioning that you had violated the mandate.

DR DANIEL MATJILA: Okay. I'm now on 448.

“In a PMC meeting in addition to this executive head or representative the CFO or her representative will also be present and after discussions of the transaction those present including the CFO will be asked whether they agreed that the transaction be concluded. The agreement by the executive head at the meeting was simply confirmation of the agreement in their reports.

20 In general, I have strived to obtain unanimous consensus for the conclusion of a proposed transaction from those present even if the agreement was not strictly required for that purpose by the DOA listed investments.

As part of that process the CFO or her representative and I, as a CEO, will also indicate our agreement for the conclusion of

the transaction and it was after that process that the PMC would finally approve the conclusion of the transaction. That is the process.”

CHAIRPERSON: Would that be a convenient place to call it a day?

ADV ALEXANDER ROELOFSE: I think so, Mr Commissioner.

CHAIRPERSON: Can I just confirm that tomorrow morning it will be Ms Marcus and myself and Mr Lediga won't be here.

ADV JANNIE LUBBE SC: It is noted, Mr Commissioner.

CHAIRPERSON: Alright, we shall then adjourn until tomorrow morning

10 at 9.30.

INQUIRY ADJOURNS TO 25 JULY 2019