

**COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION**

**HELD AT**

**TSHWANE, PRETORIA**

10

**25 JULY 2019**

**DAY 60**

20

**PROCEEDINGS HELD ON 25 JULY 2019**

**CHAIRPERSON:** Morning everyone.

**ADV ALEXANDER ROELOFSE:** Good morning Mr Commissioner.

**CHAIRPERSON:** Can you just give us a moment. Yes Mr Roelofse you're standing up?

**ADV ALEXANDER ROELOFSE:** Thank you Mr Commissioner. We are ready to proceed with the evidence of Dr Matjila today. I propose to lead him on the issue of the subscription form, I believe copies have been provided, of that document have been provided to the  
10 Commissioners I'm just awaiting a copy of my own but perhaps in the meantime I'll get Dr Matjila to carry on with his statement until we receive them.

**CHAIRPERSON:** Dr Matjila you're still under oath.

**DR DANIEL MATJILA:** Yes Commissioner.

**CHAIRPERSON:** Alright.

**DR DANIEL MATJILA:** Thank you.

**ADV ALEXANDER ROELOFSE:** We're at paragraph 449.

**DR DANIEL MATJILA:** 449 as regards to a round robin resolution obviously the signatures by various executive heads, the CFO and the  
20 CEO of the resolution to conclude the investment were indicative of the agreement therewith. The investment done by way of round robin was not used as finally approved until all of the required signatories had signed the agreement with the resolution.

**ADV ALEXANDER ROELOFSE:** Dr Matjila ... (intervention)

**CHAIRPERSON:** Sorry just before you go ahead can I just place on

record that, I nearly said on the bench, today there are only two of us, myself as Chair and Commissioner Marcus, Assistant Commissioner Marcus. Mr Lediga as we mentioned yesterday is not here today. Thank you, you can continue.

**ADV ALEXANDER ROELOFSE:** Thank you Mr Commissioner. Dr Matjila I just want to come to this issue of the round robin and I just want to refer you back to paragraph 440 of your statement that's on page 156 where you said that it was on the 14<sup>th</sup> December when Mr Molebatsi approached you with the Ayo subscription form in hand and  
10 asked you what to do as the deadline was the next day. It was then impossible to organise another meeting of the PMC at such short notice. I tried to alleviate this difficulty by attempting to approval for the transaction via a round robin resolution of the relevant PMC members but this was unsuccessful as some had already left on holiday. That round robin resolution that you talk about there, when was that attempted to be done?

**DR DANIEL MATJILA:** If I recall it was on the 13<sup>th</sup>.

**ADV ALEXANDER ROELOFSE:** The round robin resolution?

**DR DANIEL MATJILA:** Yes if my memory serves me well it would have  
20 been on the 13<sup>th</sup>.

**ADV ALEXANDER ROELOFSE:** I think that the ... (intervention)

**DR DANIEL MATJILA:** Sorry.

**ADV ALEXANDER ROELOFSE:** Sorry?

**DR DANIEL MATJILA:** Yes I was saying either the 13<sup>th</sup> or the 14<sup>th</sup> I need to ...

**ADV ALEXANDER ROELOFSE:** Okay we can have a look at when that was attempted to be done but the point that I want to make to you is that was a PMC the only way that a transaction of this sort could be approved?

**DR DANIEL MATJILA:** Commissioner the delegation of authority I think it's section 8 of the delegation of authority we can get to that, does give the CEO authority to sign off on 3% I think, up to 3% of the value of the equity portfolio in a listed transaction.

**ADV ALEXANDER ROELOFSE:** So can I in that regard then refer you  
10 to page 301 annexure DD14.1 of the delegation of authority for listed investments.

**CHAIRPERSON:** We felt that we're far from the beginning of this statement and the first file we have left behind in the ...

**ADV ALEXANDER ROELOFSE:** I'm sorry Commissioners.

**CHAIRPERSON:** You can carry on in the meantime.

**ADV ALEXANDER ROELOFSE:** So section 8.1.2 deals with purchases or disposals greater than 3% but not exceeding 5% of the value of the equity portfolio. Just on a rough calculation how much would 3% be?

**DR DANIEL MATJILA:** 3% working on roughly say R900 billion it will  
20 be about R27 billion.

**ADV ALEXANDER ROELOFSE:** Okay now in respect of purchases or disposals greater than that amount but less than 5% this document requires an initiation to be either by the general manager listed equity is that correct?

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

**ADV ALEXANDER ROELOFSE:** The general manager, what is FI?

**DR DANIEL MATJILA:** Fixed income.

**ADV ALEXANDER ROELOFSE:** Or the general manager EM.

**DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** Which is?

**DR DANIEL MATJILA:** Which will be equity, externally managed funds  
sorry, externally managed funds.

**ADV ALEXANDER ROELOFSE:** And it's required to be agreed  
beforehand by the external head of legal.

10 **DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** The external head of risk.

**DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** And the CFO.

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

**ADV ALEXANDER ROELOFSE:** And you then have the final approval.

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

**MS GILL MARCUS:** Sorry I'm assuming you mean executive head and  
not external head?

**DR DANIEL MATJILA:** Executive heads that's correct.

20 **ADV ALEXANDER ROELOFSE:** Did I say executive ... (intervention)

**MS GILL MARCUS:** You said external.

**ADV ALEXANDER ROELOFSE:** External head, I apologise I mean  
executive head. Now this particular transaction was recommended by  
legal is that correct?

**DR DANIEL MATJILA:** That's correct it was recommended by legal.

**ADV ALEXANDER ROELOFSE:** It had been recommended by the executive head of risk?

**DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** And it had obviously been initiated by the deal team?

**DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** Is that correct?

**DR DANIEL MATJILA:** Through the general manager of equities.

**MS GILL MARCUS:** Sorry Mr Roelofse just for clarity recommended by  
10 executive head of legal?

**ADV ALEXANDER ROELOFSE:** Yes.

**DR DANIEL MATJILA:** Yes. So this will be the office.

**ADV ALEXANDER ROELOFSE:** Yes.

**MS GILL MARCUS:** Sorry what does that mean when you say it was the office?

**DR DANIEL MATJILA:** Yes because there are instances where they are absent and then they delegate to someone else in writing.

**MS GILL MARCUS:** It could be delegated downwards quite a considerable level when the DA is executive head because these are  
20 serious monies, would that delegation downwards comply with the DOA?

**DR DANIEL MATJILA:** Yes it complies with the DOA because the DOA will say the delegation must be in writing and it clearly says that the acting position then assume full powers and responsibility of that position.

**ADV ALEXANDER ROELOFSE:** Alright so we had the recommendations by those executive heads of legal and of risk. You've dealt with the position of the CFO yesterday and why she was not consulted in respect of this particular investment is that correct?

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

**ADV ALEXANDER ROELOFSE:** Can you just refresh our memories why that was so?

**DR DANIEL MATJILA:** We said that just like the CEO both of us depend on the technical team for advice and recommendation and we  
10 act upon their recommendation or the recommendations of the technical teams.

**ADV ALEXANDER ROELOFSE:** Did the CFO have any separate and independent input regarding an investment or the merits of an investments?

**DR DANIEL MATJILA:** No they don't' have that, they don't perform that function.

**ADV ALEXANDER ROELOFSE:** And then there was yourself.

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

**ADV ALEXANDER ROELOFSE:** So it seems to me that if you had  
20 spoken to the CFO beforehand and got her agreement to the transaction there would be nothing stopping you from finally approving the transaction?

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

**ADV ALEXANDER ROELOFSE:** So why then did you not just act in terms of this power in concluding the Ayo transaction?

**DR DANIEL MATJILA:** I think Commissioner we have done this deliberately and rather use the section 5 of the delegation of authority in order to make sure that the power is not too concentrated in the shoulders of the CEO you know and this has been you know a concern and written about quite a lot that the CEO has got too much power so I've not used this authority deliberately to make sure that I at least you know become more, involve other people in decision-making within the PIC.

**ADV ALEXANDER ROELOFSE:** Thank you Dr Matjila if you would then  
10 proceed with paragraph 450 of your statement?

**DR DANIEL MATJILA:** In all the years I served at the PIC there has never been a moment where I have forced any of my colleagues to take a decision against their will. We discuss and debate matters in meetings or offices in a professional and frank manner. I subscribe fully to the PIC values which I was instrumental in creating and live by these values. This has made the PIC successful in delivery of its mandate. I categorically deny this allegation that I put pressure on my colleagues to do this deal.

My instructions to Ms Gaanewe Adams to create liquidity to fund the  
20 Ayo subscription was neither unusual nor irregular. The PIC must liquidate assets to fund acquisitions. It has no other source of capital from which to fund this acquisitions. Unlike other companies recently under the scrutiny at the State of Capture Commission the PIC does not keep lots of cash in the safe from which to fund its acquisitions. Instead it keeps relatively small amount of cash and lots of near cash

instruments for example negotiated certificates of deposit NCD's very short term bonds and some liquid shares in the top 40 of the JSE which will include Anglo, Anglo American.

There was a standing Anglo sale of process to reduce PIC's exposure following a strategic intervention that started two years ago as previously discussed in this statement. I think there's a portion that we showed outperformance of Anglo and that it added almost 2 billion to the portfolio. Ms Adams performed an analysis of the optimal liquid shares to sell and decided to rather sell a portfolio of most liquid  
10 shares in order to optimise funding of Ayo. I commend her for that.

It was reported that my instructions to her were irregular. I emphasise there is nothing untoward, it is normal. The PIC has funded many acquisitions in this manner for example the PIC's acquisition of 13.9% shares of Vodacom worth 23 billion that was bought from government to assist Telkom a while back. It's acquisition of 50% of V&A Waterfront worth 4.85 billion were both financed through the sale of near cash instruments, Pareto transaction which was about 4.3 billion and many other such transactions.

Practically speaking its cash is in the form of liquid investment and  
20 some shares like Anglo are just as liquid as short term money market instruments.

**ADV ALEXANDER ROELOFSE:** Dr Matjila can I just stop you there, I realise that you're tired and you've been testifying now for weeks before this Commission, you said that the Anglo sale had added 2 billion to the portfolio is that correct? Dr Matjila can I just stop you

there, I realise that you're tired and you've been testifying now for weeks before this Commission, you said that the Anglo sale had added 2 billion to the portfolio is that correct?

**DR DANIEL MATJILA:** It had added 20 billion to the portfolio, 20 billion apologies Commissioner.

The valuation from PIC's perspective was discussed by Mr Sunil Varghese and Mr Lebogang Molebatsi in their statement to this Commission. In the appraisal report the team had come to the valuation range of R45,00 to R47,00 per share. The PIC paid 43 per share as per prelisting statement for a 29% stake thereby valuing Ayo at R14.8 billion even though its assets were estimated at 220 this is nett asset value of an ICT company is no indication of its investment potential. The real investment potential lies in its contract and its deal pipeline.

Therefore the price of 43 per share was based on the future pipeline of deals to be executed by Ayo with BT as its strategic partner. From my experience I was satisfied this valuation was reasonable.

In regard to the value of R1 billion ascribed to the 30% share in BT it is to be noted that the draft and final Ayo PLS contained sufficient information verified by accountants Grant Thornton to calculate EBITDA earnings before interest, tax, depreciation and amortization to value BT from which an accurate estimate of 30% of BT could be calculated. The signed BT financial statement supported the deals team estimate of about 1 billion for AEEI's 30% stake in BT.

This classification of Ayo as a laggard in the ESG report dated

December 2017, a copy of which is attached as an annexure to the appraisal report which is marked DD65 must be explained. The classification is based on a waiting system which takes into account the various scores on environmental, social and governance issues. Ayo's overall score was 44 and only just fell into the laggard classification. The threshold for this classification being 49 and below.

A laggard classification does not necessarily provide a good reason not to invest because the issues identified by the classification can be addressed by intervention thereby unlocking the potential of the investment. The key to the implementation of the investment interventions lie with the board of the investment and therefore it is only once the board has been confirmed after listing that engagement with the board can take place so as to the deal with the issues and propose the way forward.

With the PIC subscribing for 21% of the issued share capital of Ayo it was in a very strong position to influence the improvement of the ESG score within Ayo. It must also be born in mind that interventions for the ESG issues are in general not a quick fix solutions and therefore it takes place over a period of time, this is a basis for a continuous engagement between the PIC ESG team and the company of interest. The ESG issues were considered and dealt with by the subsequent PMC meeting of the 20<sup>th</sup> December as a post transaction condition.

Subsequent to the subscription take up of PMC ally meeting on 20<sup>th</sup> December unanimously approved the investment in Ayo. A copy of the minutes and resolution of this meeting is attached and marked DD68. I

was on leave at that time but returned for some meetings scheduled for that day of which this was one. And Commissioner I can remember very well I was meeting with MMI and department of monitoring and evaluation who MMI had asked to come and intervene in their non-payment by the PIC.

**ADV ALEXANDER ROELOFSE:** If I can just ask you there Dr Matjila there've been some allegations that you came back especially from your holiday to make sure that this Ayo transaction goes through, what do you say about those?

- 10 **DR DANIEL MATJILA:** As I said I was back for some meetings but the key meeting on that day was the meeting with MMI and accompanied by the department monitoring and evaluation who MMI had asked to come and intervene in the dispute between MMI and Magae Makhaya and we explained this in detail that we had stopped paying them because of various breaches of contracts and so that was the main meeting I was there for.

**ADV ALEXANDER ROELOFSE:** Thank you.

- MS GILL MARCUS:** Sorry can we just hang on one second. I just need to check something for one second. Just whether our team could look  
20 at this because we don't have any document in DD68 perhaps between yourselves during a break or later to see if we can get DD68?

**ADV ALEXANDER ROELOFSE:** It should be the minutes of the ... (intervention)

**MS GILL MARCUS:** No our file is empty; our slot is empty we say we haven't got anything that's what I was just checking with the Judge's

file in case it was only mine but we haven't got anything there. If between our team and yours we could get a copy of that?

**ADV ALEXANDER ROELOFSE:** I've got a copy that we can provide to ... (intervention)

**MS GILL MARCUS:** That's excellent thanks, we can get it during the break, we don't need it now but just so that we get it into our file, thank you very much.

**ADV ALEXANDER ROELOFSE:** Just for clarity purposes Dr Matjila would you turn to DD68 please. Page 564.

10 **DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** This meeting of the PMC was at half past one in the afternoon is that correct?

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

**ADV ALEXANDER ROELOFSE:** And your meeting with MMI was when?

**DR DANIEL MATJILA:** I think it would have been earlier, earlier than this one.

**ADV ALEXANDER ROELOFSE:** Okay. Thank you, please carry on with paragraph 457.

20 **DR DANIEL MATJILA:** I think I'm done with that one. I think I stopped at in resolving to approve the investment the PMC had before it all the necessary due diligence reports and the appraisal reports and had regard to this in approving the transaction which was discussed in detail.

The PIC has participated in many IPO's in the last while for example Cipla, QCI of Uganda, RH Bophelo, Hulisani, GAIA Infrastructure Fund

and many more. This was not the first time that members of the Ayo deal team has submitted an IPO for approval and the subsequent disbursement process linked to that approval nor was it any of the other senior members of that PMC's first rodeo on an IPO. In particular Ms More had sat on or had been involved with numerous PMC's PMC2's involving IPO's.

Every single IPO is accompanied by a JSE approved PLS part of which is a private placement application form which always contains an irrevocable subscription offer. It is standard practice in IPO's for the  
10 subscription offer to be irrevocable. The reason for this is that the JSE listing rules require a company in the position of Ayo wishing to be listed on the JSE main board to have a share capital of in excess of 500 million as confirmed by the JSE in its testimony before this Commission.

Plainly it would be difficult to achieve compliance with the rule if the subscribers whose subscription go towards making up the required share capital are able to back out of a subscription by means of a revocable subscription offer before the listing thus potentially reducing the share capital of the listing company below the required minimum.  
20 For that reason every subscription offer of an IPO is always irrevocable subscription offer so that there is certainty about whether the minimum share capital required for the listing has been achieved.

That a subscription offer for an IPO is always irrevocable and that the rationale therefore was known to Ms More, the deal team and other senior members of the PMC is not just because of their integral

involvement in many other IPO's participated in by the PIC but also because of the fact that each of them had attained representative status in terms of FAIS. This status requires them to be fit and proper to trade in certain financial instruments amongst them shares which in turn will necessitate a detailed knowledge of investing on the JSE.

But even if this was not the case and the irrevocable nature of the subscription was something extraordinary and a potential risk this was an issue that should have been picked up and highlighted by legal and/or risk in their respective reports on Ayo transaction. The fact that  
10 they did not do so because the irrevocable nature of an IPO subscription is such a common and standard listing practice that it did not bear mentioning by them.

**ADV ALEXANDER ROELOFSE:** Dr Matjila if I can just stop you there perhaps, this is an appropriate time to deal with the subscription form. I'm going to give you a copy of that and I believe Commissioners you have those before you. So this is the subscription form which is signed by Molebatsi PP is that correct?

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

**ADV ALEXANDER ROELOFSE:** And yourself?

20 **DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** On the 14<sup>th</sup> December 2017 is that correct?

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

**ADV ALEXANDER ROELOFSE:** Then there is a block here which details the relevant details of the investor and the bank accounts and

the number shares that the investor is subscribing for. Whose handwriting is that in that block do you know?

**DR DANIEL MATJILA:** This would have been prepared by the deal team. The only handwriting from the office of the CEO is my title and the name which are completed by my personal executive, PA, personal assistant and of course my signature, the rest is information that is completed by the deal team and either Mr Seanie or Mr Molebatsi.

**ADV ALEXANDER ROELOFSE:** And was this form completed when you got it or were these details blank?

10 **DR DANIEL MATJILA:** No it was completed already all what's left for me is to – for Mr Molebatsi to sign and then I co-signed with him but it was already completed.

**ADV ALEXANDER ROELOFSE:** Now yesterday there was some issue about whether at the time that you signed this subscription form the PIC was in possession of the final PLS you recall that?

**DR DANIEL MATJILA:** I recall that.

**ADV ALEXANDER ROELOFSE:** And now ... (intervention)

**CHAIRPERSON:** Let's get clarity first on the signature of Mr Molebatsi. What's that PP for is that his initials or what?

20 **DR DANIEL MATJILA:** Because he was Acting Executive Head Of Listed Investment ... (intervention)

**CHAIRPERSON:** I'm sorry say that again?

**DR DANIEL MATJILA:** He was the Acting Executive Head Of Listed Investments at that time so ... (intervention)

**CHAIRPERSON:** Who?

**DR DANIEL MATJILA:** Mr Molebatsi so PP in other words representing Mr Madavo who's actually head of department who was travelling at that time. But he had full authority to sign off on that Commissioner.

**CHAIRPERSON:** Thank you, I understand.

**ADV ALEXANDER ROELOFSE:** Thank you Mr Commissioner. Now as regards to the final PLS was the PIC in possession of the final PLS at the time that this subscription form was signed by you?

**DR DANIEL MATJILA:** My understanding we did have that because this would be from the final PLS, it's a standard form that comes with the  
10 PLS. We were in possession, I had seen the draft PLS already which was draft and completely different from this one, in fact it runs into three pages if I recall because it's a draft and then this was then eventually finalised into three pages into one in the final draft.

**ADV ALEXANDER ROELOFSE:** Okay so let's just have a look at what you're saying there. If I can ask you to turn to the draft PLS.

**MS GILL MARCUS:** What's the DD reference for the draft?

**ADV ALEXANDER ROELOFSE:** DD62, page 555. So if we have a look at this document it is spread over – the subscription form which begins on page 556, is that correct?

20 **DR DANIEL MATJILA:** That's correct, that's correct/

**ADV ALEXANDER ROELOFSE:** And it's spread over three pages.

**DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** Which are printed with numbering underneath those pages – numbering underneath in the bottom right hand corner is page 213, 214 and 215, is that correct?

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

**ADV ALEXANDER ROELOFSE:** Then if I can refer you to the final subscription form which is at page 563, DD64. This is the document that you say condenses the subscription form into one.

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

**ADV ALEXANDER ROELOFSE:** And that looks like the subscription form that you signed.

**DR DANIEL MATJILA:** That was signed, yes.

**ADV ALEXANDER ROELOFSE:** But let me ask you this, Dr Matjila, if  
10 one has regard to the draft PLS at page 555. The shares in numbered paragraph 1 thereof are stated to be at an issue price of between R28 and R43 per share. Do you see that?

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

**ADV ALEXANDER ROELOFSE:** Now how would one have been able to subscribe for the shares without knowing what price the shares would be fixed at between R28 and R43 per share?

**DR DANIEL MATJILA:** The price will only be fixed once the final PLS is produced so we can only – the price is finalised in the final PLS.

**ADV ALEXANDER ROELOFSE:** And if we have a look at the final PLS  
20 on page 562 annexure DD64, that paragraph, paragraph 1, has now been determined to be an issue price of R43 per share, is that correct?

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

**ADV ALEXANDER ROELOFSE:** And the amount that has been filled in by someone else you said other than yourself as to the total value of the private placement on the subscription form that you and Molebatsi

signed, is determined at what price per share?

**DR DANIEL MATJILA:** This will be at R43, at R43 per share.

**ADV ALEXANDER ROELOFSE:** And that was like that by the time it was presented to you for signature.

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

**ADV ALEXANDER ROELOFSE:** Commissioners, I don't know whether – I think that we should probably mark the subscription form as an annexure if it hasn't already been marked as an annexure.

**CHAIRPERSON:** Could I suggest that we mark it 64.1?

10 **SUBSCRIPTION FORM HANDED IN AS ANNEXURE 64.1**

**ADV ALEXANDER ROELOFSE:** That's correct, Mr Commissioner. Thank you, Dr Matjila, let's move on and deal with paragraph 462 please.

**MS GILL MARCUS:** Sorry, before we move on and I'm sorry to interrupt the flow but given that you have drawn attention to this particular matter, I would like just some clarity then, if I could. If we go back to the annexures and we talk about this subscription form as you have outlined, signed off on the 14<sup>th</sup>, this was sent by Dr Matjila - , as I understand it, this was sent by your PA to Mr Seane on the 14  
20 December at 11.44 a.m.

**DR DANIEL MATJILA:** Yes.

**MS GILL MARCUS:** So that was in the morning.

**DR DANIEL MATJILA:** It was in the morning, yes.

**MS GILL MARCUS:** Okay and then in terms of the receipt of the final listing, the final PLS. Sorry, not the final listing, the final PLS, that

obviously was sent by the JSE to your – to AEEI, who were your advisers and it was only received by Mr Seane at the PIC at 14h42. So you would not have had the final PLS as approved by the JSE when you signed this according to those timings.

**DR DANIEL MATJILA:** I don't understand the timings.

**MS GILL MARCUS:** Well, the timing, as I have it, and that's why I'm asking you for clarity so that we are clear about it, the timing that I have in front of me attached to this in terms of looking at the records of when these were received, the subscriptions signed – the signed  
10 subscription on the 14 December was sent to Mr Seane from your office, your PA, Ms Hartney, at 11.44 a.m., which you confirmed.

**DR DANIEL MATJILA:** Yes.

**MS GILL MARCUS:** But the AEEI only sent the final JSE approved PLS to Mr Seane at 2.42, quarter to three that afternoon after he had received the signed document. So the PLS at that point in time, the final PLS, was not in the hands of Mr Seane or the PIC at the time of signing, according to these time things, that the PLS, the JSE approved PLS was sent by AEEI to Mr Seane at quarter to three in the afternoon of 14 December.

20 **DR DANIEL MATJILA:** I wouldn't know who else would have gotten the PLS, Commissioner, because all I can say is that Mr Molebatsi approached me with the (inaudible – speaking simultaneously) form so ...[intervenes]

**MS GILL MARCUS:** No, I understand that I'm not questioning that.

**DR DANIEL MATJILA:** So maybe something that they need to

explain perhaps.

**MS GILL MARCUS:** I understand that.

**DR DANIEL MATJILA:** Ja.

**MS GILL MARCUS:** The question I have here is you said that you based your decisions on the final PLS but the PLS was not there when you signed according to these emails and sending and therefore I'm just trying to get clarity on whether you, when you signed this, and as you said yesterday, you based your decision on the final PLS that' approved by the JSE which was important for the due diligence issues  
10 but this indicates that the signing of this subscription, the irrevocable subscription form was done prior to the PIC receiving that. Now it may need clarity from somebody else.

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

**MS GILL MARCUS:** But you yourself said that you had seen and dealt with this on the final PLS.

**DR DANIEL MATJILA:** Commissioner, we're saying this should be from the final PLS and we have demonstrated that, so when Mr Molebatsi approached me to say what do we do because the subscription is closing the next day and he told me that all the work  
20 was done and indeed we can we can prove that all the work was done at that point. And the PLS, final PLS has been received because we wouldn't have this form to conclude. We signed this form around 11, made copies and sent it to Mr Seane, I think it must have reached him at 11.20, as you rightly say.

**MS GILL MARCUS:** It's really just a point of clarity that I was looking

at. And then, again, if one goes back to Mr Molebatsi, he'd say that they were instructed to finalise the transaction. But let's go back, this is not – I didn't want to interrupt you, just the clarity of the timing around that that we needed to try to understand better. Thank you.

**DR DANIEL MATJILA:** Ja.

**ADV ALEXANDER ROELOFSE:** Perhaps Dr Matjila you can assist, is would the email be the only way of getting the final PLS?

**DR DANIEL MATJILA:** No, it could be hand delivered as well. We could have an electronic copy, could be hand delivered. There are  
10 many ways of – it could be couriered In other words.

**ADV ALEXANDER ROELOFSE:** Yes.

**DR DANIEL MATJILA:** You know, so I'm not sure what the mechanics because this is the final as far as I'm...

**ADV ALEXANDER ROELOFSE:** And Mr Molebatsi confirmed to you that he was in possession of the final PLS.

**DR DANIEL MATJILA:** He has the final and that there were no material changes except now the price has been fixed, therefore we can transact on that basis.

**ADV ALEXANDER ROELOFSE:** Okay.

20 **DR DANIEL MATJILA:** Ja.

**CHAIRPERSON:** I'm not sure I got that. Did Mr Molebatsi confirm to you that he does have or has seen the final PLS?

**DR DANIEL MATJILA:** Yes, the final, yes. The final has been received. In fact he had signed one form already for 20% without me and then I said to him let's increase to 29 so we have, you know,

potential of full allocation of a reasonable size so we can have influence and then he said to me it's slightly big. I said, well, if you are uncomfortable I will sign with you. That's why I signed, co-signed with him, with the understanding that the PMC will ratify our actions at the next PMC where I'm the Chairperson, you know, so that's what happened.

**ADV ALEXANDER ROELOFSE:** When you say that Mr Molebatsi had already signed before, the document that he had already signed before, is that the one that I'm handing to you?

10 **DR DANIEL MATJILA:** That's correct, this one.

**ADV ALEXANDER ROELOFSE:** Commissioners, I only have one copy of that document. So this document, Dr Matjila, that I've given you is only signed pp by Mr Molebatsi, is that correct?

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

**ADV ALEXANDER ROELOFSE:** And you say it differs from the one that was signed by you because it only subscribes what percentage?

**DR DANIEL MATJILA:** I think it's about 20%, if my memory serves me well.

**ADV ALEXANDER ROELOFSE:** 20%. So that was the initial document  
20 which had been signed.

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

**ADV ALEXANDER ROELOFSE:** And that looks the same as the document which was signed then both by you and him.

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

**ADV ALEXANDER ROELOFSE:** And what led to the change then of the

subscription amount?

**DR DANIEL MATJILA:** We were – I was motivating him that we should do 29% of the company instead of 19%, ja, so that we can have better influence in the company.

**ADV ALEXANDER ROELOFSE:** Thank you. Commissioners, should we mark this DD64.2? Okay, Dr Matjila we are at paragraph 462 on page 165 of your statement.

**DR DANIEL MATJILA:** Thank you, Commissioner.

10                   “The PMC resolution of the 20 December 2017 which approved the Ayo transaction does not expressly refer to conditions much less to conditions precedent.”

**MS GILL MARCUS:** Sorry, can I just have a point of clarity on that? If we went back to – sorry, I’m just trying to see my own notes on this. Para 456, if I’m correct, there you talk about post-transaction conditions. What’s the question of your 462 in relation to 456? 456 – and dealt with by the subsequent PMC meeting of 20 December as post-transaction conditions.

**DR DANIEL MATJILA:** That’s correct, yes.

20                   **MS GILL MARCUS:** But then the PMC resolutions do not expressly refer to conditions much less conditions precedent. I agree, not conditions precedent because it had already happened but post-conditions are there.

**DR DANIEL MATJILA:** Yes, yes, Commissioner.

**MS GILL MARCUS:** So which is correct? There were conditions or – because 456 says there are no conditions and 462 – I mean 462 says

there are no conditions but 456 says there are.

**DR DANIEL MATJILA:** Commissioner, this will be post conditions – post-transaction conditions.

**MS GILL MARCUS:** Certainly.

**DR DANIEL MATJILA:** Yes.

**MS GILL MARCUS:** Thank you.

**DR DANIEL MATJILA:** Because it's after the transaction.

**MS GILL MARCUS:** Sure.

**DR DANIEL MATJILA:** Ja.

10           “Although that impression might be reached on a reading of the resolution in isolation it is important to contextualise the resolution against the background circumstances. The purpose of the resolution and the facts known to the members of the PMC when passing the resolution.”

By way of background it is crucial to highlight that the PLS, once approved by the JSE, cannot thereafter be amended.

All potential investors must work from the same document and have the same rights and privileges and are bound by the same terms and conditions as stipulated in the PLS.

20           It is therefore not possible for a particular investor to impose conditions precedent in the legal sense of that phrase or an IPO solely for the benefit of that investor.

All investors are bound by the same terms and conditions of the PLS and the effect of the JSE rules regarding an investment into a listing company is that there must be a level

investment playing field for all investors.”

**MS GILL MARCUS:** Sorry again, just for clarity for my own understanding, I think that that’s perfectly sensible but that does not preclude the question of post-conditions.

**DR DANIEL MATJILA:** That’s absolutely correct, ja.

**MS GILL MARCUS:** Right. So post conditions could be imposed.

**DR DANIEL MATJILA:** Could be imposed.

**MS GILL MARCUS:** As reflected in the resolution of the 20...

**DR DANIEL MATJILA:** That’s absolutely correct.

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

**DR DANIEL MATJILA:** I think this is covered in 465, says:

“Special rights can be negotiated with the sponsors to enhance the risk profile of the IPO for a special investor as long as it does not prejudice other investors but at best for the particular investor seeking the special right, the listing company could only give an undertaking which will then have to be legal formalised post the IPO but any such undertakings would have to be for the benefit of the company and thus all shareholders. Put differently, the nature of any undertakings given by the listing company prior to its listing can only be for the benefit of the company itself and its shareholder.

20

A put option is a clear liability to the listing company that is trying to raise equity in the form of an IPO.

The liability created by a put option negatively affects the capital and may cause the listing company to not meet the

minimum share capital listing requirement.

It follows therefore that the put option in particular cannot be provided by the listing company to a special investor else the listing company has to oversight(?)to all other investors and the PLS will have to be amended to reflect such.

This would be a material amendment to the PLS and will certainly require fresh JSE approval.

10 This principle were known to members of the PMC of the 20 December which explains why PIC subsequently negotiated a put option with corporate finance and not Ayo.

These are basic explanations that my former colleagues should have offered to this Commission.

However, even if a put option in favour of particular investor could be legally agreed prior to the Ayo listing, it was well-known to all the PMC that the listing was to take place the very next day and it was obvious that the condition of a put option indeed all the other conditions could never practically be and were therefore not intended to be fulfilled in the next 24 hours before its listing.

20 The commitment that Ayo will spend money raised on acquisitions for growth within 24 months. This is to ensure money spent wisely. It is a post-listing condition.

Ayo implementing a conflict of interest policy. The company can only implement these conditions post the listing.

This policy must be to deal with related party transaction.

The appointment of independent directors can only be done post listing else the PLS would have to be revised and a new approval from the JSE sought.

This condition is also designed to improve ESG score of Ayo and thus pull it out from the lager status.

This will benefit the company and thus all shareholders when the ESG premium is monetised in this way.

The shareholder approval for all acquisitions other than BT that are greater than 10% of Ayo market cap.

10 This requirement ensures that Ayo will build a robust portfolio that all shareholders will have a say in. This is also a post listing condition.

I place the word condition, conditions and conditions precedent in inverted commas because the plain truth of the matter is that these were never intended by the PMC to be conditions in the legal understanding of that word. Rather, there were requirements that the PIC imposed on the deal which were to be achieved post AYO listing.

20 The purpose of the PMC meeting and the resolution was in truth to ratify the Ayo transaction which it was known had already been concluded by means of my and Mr Molebatsi's signatures of the private placement subscription form on the 14 December 2017.

The disbursement memo dated 19 December 2017 authorised by Mr Seane is headed request for payment of 4.290 541 65

million or 4.2 billion in respect of the purchase of shares in Ayo Technology Solutions and clearly states the portfolio management committee listed investment will ratify the PIC's acquisition of 99.753.655 ordinary shares of Ayo on behalf of Government Employee Pension Fund at the next PMS listed meeting.

The disbursement memo therefore makes it unequivocally plain that the PIC had already purchased shares in AYO.”

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

10 The internal audit report refers to an email by Mr Seane to ESG risk and legal on 14 December 2017 at six minutes to ten in the morning where he indicates that the ...[intervenes]

**MS GILL MARCUS:** Sorry, can you give us the reference page on the...?

**ADV ALEXANDER ROELOFSE:** Surely, it is page 11, paragraph 6.2.3. That paragraph refers to an email from Mr Seane to ESG risk and legal on 14 December 2017 at six minutes to ten where he indicates a decision has been made and an email communication then from Desiree to you copying Victor attaches the subscription form which

20 Commissioner Marcus has already referred to.

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

**ADV ALEXANDER ROELOFSE:** this prior email communication from Victor to ESG risk and legal, did you know about that email?

**DR DANIEL MATJILA:** Yes, I've seen the email.

**ADV ALEXANDER ROELOFSE:** Okay. So they were alerted on it.

**DR DANIEL MATJILA:** Alerted, h'm.

**ADV ALEXANDER ROELOFSE:** 14 December 2017 that this decision had already been made.

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

**ADV ALEXANDER ROELOFSE:** Please carry on?

**MS GILL MARCUS:** Sorry just on clarify for that, they were alerted there but if you look at the block below it indicates the times at which they submitted their reports from legal, risk and ESG being – risk and legal being on the 15 December, legal 8.25, risk 11 a.m. and ESG on  
10 the 14<sup>th</sup> at 521. So these were post the signing.

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

**MS GILL MARCUS:** Thank you.

**DR DANIEL MATJILA:** That's correct, Commissioner.

**ADV ALEXANDER ROELOFSE:** Please carry on.

**DR DANIEL MATJILA:** Okay. Am I on 478? Thank you, Commissioner  
476.

“The disbursement memo therefore makes it unequivocally plain that the PMC had already purchased shares in Ayo.

As a fact there could be no disbursement memo before the  
20 conclusion of a purchase transaction.

The following members and/or attendees of the PMC of the 20 December '17 received the disbursement memo, namely Mr Seane, Victor Seane, Ms Gaaeniwe Adams, Mr Leon Smit, Ms Winnifred Setsedi, Mr Brian Mavuka and Ms M More.

These members could reasonably have been expected to know

the transaction had already been concluded prior to the PMC meeting of the 20 December.

The meeting of the PMC took place against the background of an attempted round robin resolution by the PMC on the 15 December to approve the conclusion of the Ayo transaction which it was known had been unable to garner the requested maturity. A copy of the attempted round robin resolution is attached and marked DD69.”

**ADV ALEXANDER ROELOFSE:** Dr Matjila, if we can just go to that  
10 resolution. It’s annexure DD69 page 571.

**DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** And on page 572 it says in paragraphs  
5 and 6 that:

“The committee ratifies the due diligence process undertaken in terms of Ayo Technology Solutions.”

6:

“That the committee approves the 4.3 billion share purchase of 29% stake in Ayo Technology Solutions ahead of its listing on the JSE.”

20 Is that correct?

**DR DANIEL MATJILA:** That’s correct.

**ADV ALEXANDER ROELOFSE:** Who drafted this round robin resolution?

**DR DANIEL MATJILA:** This would be from the company secretariat.

**ADV ALEXANDER ROELOFSE:** Thank you.

**MS GILL MARCUS:** And again just for clarity. I'm assuming that there are signed copies because this is not signed. The ones we have are not signed.

**DR DANIEL MATJILA:** This is an attempted round robin resolution.

**MS GILL MARCUS:** Oh, this is the one that did not materialise?

**DR DANIEL MATJILA:** That did not materialise.

**MS GILL MARCUS:** Okay, sorry about that.

**DR DANIEL MATJILA:** Yes, Commissioner.

**MS GILL MARCUS:** Yes, you're quite right, thank you.

10 **DR DANIEL MATJILA:** Thanks, Commissioner.

**MS GILL MARCUS:** But it had not been signed by anybody at all.

**DR DANIEL MATJILA:** Absolutely.

**CHAIRPERSON:** Is the suggestion that everybody saw it?

**DR DANIEL MATJILA:** I can't say because all – they were sent the information; the information was sent to them. And as I said a lot of them were travelling and so perhaps that's the reason why they didn't respond.

**MS GILL MARCUS:** My question really on the unsigning is because not every would have not signed. If they had sent it I would have said I've  
20 read it, sent it, signed it, sent it back. The fact that nobody signed, you're quite sure that they all received it. I mean, it wouldn't have been completed.

**DR DANIEL MATJILA:** Ja.

**MS GILL MARCUS:** What you said, it couldn't have been completed but you didn't get any responses back on a round robin.

**DR DANIEL MATJILA:** Ja.

**MS GILL MARCUS:** Nothing.

**DR DANIEL MATJILA:** H'm.

**MS GILL MARCUS:** Thank you.

**CHAIRPERSON:** But if I understand you correctly you are saying these people would reasonably have been expected to know about the transaction. Are you basing that on you saying because the round robin, attempted round robin was sent to them?

**DR DANIEL MATJILA:** Absolutely, it's also the disbursement memo  
10 that we spoke about that was sent to them. So ...[intervenes]

**CHAIRPERSON:** Yes, I'm sure I've seen a disbursement memo.

**DR DANIEL MATJILA:** So, Commissioner, these are senior people and they have people that also report to them and PAs and so on. So when you send stuff to them, normally it reaches them one way or the other. They get told that there is this important matter that needs their attention but circumstances, maybe as I said, quite a number of them were already on holiday travelling and so on, that's why it was difficult for them to either respond or even see the memo.

**CHAIRPERSON:** So everyone one of them were supposed to know  
20 reasonably that you and Mr Malebatsi had signed the subscription share form.

**DR DANIEL MATJILA:** That will be now at the stage of disbursement because the disbursement memo is clear. It's directed to us at an individual that should have known so this- ja, Commissioner 478, these are the names of people who would have known that we have already

signed in terms of the IPO. We have already signed the irrevocable subscription agreement.

**CHAIRPERSON**: I think I know where we are at the moment because it's the question of Ms More and Mr Seanie testimonies that it was not disclosed at the meeting of the 20<sup>th</sup> December.

**DR DANIEL MATJILA**: Yes.

**CHAIRPERSON**: That you had already signed the form.

**DR DANIEL MATJILA**: That's correct and we don't agree to that because IPOs are very standard.

10 **CHAIRPERSON**: No, what don't you agree to?

**DR DANIEL MATJILA**: To the fact that they didn't know or we had to tell the committee that a form has been signed which is not- I thought they knew because we've done so many IPOs in the same way.

**CHAIRPERSON**: That's fine. We will get to that at that stage.

**DR DANIEL MATJILA**: Okay.

**CHAIRPERSON**: But if you want to clear up anything, feel free to do so.

**DR DANIEL MATJILA**: Okay. Are they ready?

20 **CHAIRPERSON**: What is the- what is that, the top of the form or the right topside of it? PMCL1 or I RRR001122017, is that an indication of the date?

**DR DANIEL MATJILA**: Which?

**CHAIRPERSON**: In D69, sorry in D69.

**DR DANIEL MATJILA**: Oh D69

**CHAIRPERSON**: Mm. What is that at the top right-hand corner or what

does it indicate if anything?

**DR DANIEL MATJILA**: This is the numbering of the resolution, so there's a numbering this thing convention for each of the resolutions so this will have its own specific number.

**CHAIRPERSON**: So the 1122017, is insignificant.

**DR DANIEL MATJILA**: Yes. What is important is 122017 and that long number will identify it. There's a way they've generated some kind of an index for themselves.

**CHAIRPERSON**: I'm just wondering how the 1 got there.

10 **DR DANIEL MATJILA**: I'm also not sure.

**CHAIRPERSON**: Or is it just a number that we shouldn't bother about.

**DR DANIEL MATJILA**: I think the company secretary- I don't think we should worry about it. It's their own index so to access information easier.

**CHAIRPERSON**: It's fine.

**DR DANIEL MATJILA**: 481.

By the time of the PMC meeting of 20<sup>th</sup> December at the very minimum no senior person at the meeting could reasonably have been under the impression that the transaction had not been concluded.

20 The appraisal report of the 13<sup>th</sup> December, makes it clear that AYO is going to list on the 15<sup>th</sup> of December 2017 whilst the attended round robin resolution of the 14<sup>th</sup> of December states that AYO plans to list on the 21<sup>st</sup> of December 2017 and both states that the PIC intends to acquire shares up to 4.3 billion in this private placement.

Having regard to the fact that the PMC is comprised of

seasoned investment professionals and FAIS representative who would undoubtedly have know that PLS have a subscription timetable and that an IPO subscription ordinarily needs to be taken up some time before the listing.

It is simply a stretch too far to believe that none of these members did not know or did not reasonably suspect that the deal had already been done.

In addition and in particular Ms More could not reasonably and was in fact not under the impression that the transaction has been  
10 approved by the round robin resolution and that it needed to be ratified as required by paragraph 824 of the terms of reference of PMC.

A round robin resolution which has been passed is merely required to be tabled at the next PMC meeting for confirmation. The disbursement memo indicated the pages will need to be ratified and not confirmed.

Now as demonstrated above, could she or any other senior member of the meeting have been ignorant of the fact that AYO subscription offer was irrevocable.

The intention of the PMC meeting of the 20<sup>th</sup> December 2017  
20 was always to approve the AYO transaction although it had already been concluded. The disbursement memo authored by the deal team indicated ratification will be sort and it was due to a mistake that agenda prepared by the Co Sec and the resolution passed indicated that the transaction be approved.

Speaking for myself at the time, I did not see the practical

difference between an approval of a transaction post its conclusion and a ratification of a transaction post its conclusion, to me they meant the same thing.

It was ... (intervenes)

**CHAIRPERSON:** I just wonder why we talk of ratification if they're the same thing.

**DR DANIEL MATJILA:** The same effect.

**CHAIRPERSON:** Why should there have been an attempted ratification and so on if ratification and approval means the same thing?

10 **DR DANIEL MATJILA:** I mean the effect is the same in my view Commissioner.

**CHAIRPERSON:** And one just wonders Dr Matjila, maybe you still coming to that I'm not sure, you have indicated earlier that you signed the form and simply said or said it will be ratified later.

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

**CHAIRPERSON:** And then now you say, you always believed that that meeting was to approve, the meeting of the 20<sup>th</sup>.

**DR DANIEL MATJILA:** To ratify.

**CHAIRPERSON:** Say that again.

20 **DR DANIEL MATJILA:** To ratify.

**CHAIRPERSON:** I don't think I heard you.

**DR DANIEL MATJILA:** To ratify.

**CHAIRPERSON:** To ratify?

**DR DANIEL MATJILA:** Yes, Commissioner.

**CHAIRPERSON:** Okay, maybe I misunderstood you. I thought that you

said you understood that it's going to be an approval meeting.

**DR DANIEL MATJILA:** No Commissioner.

**CHAIRPERSON:** At first you said the ratification meeting.

**DR DANIEL MATJILA:** Yes and then Commissioner, we've always been clear that we are going to sit ratification at the next meeting that we could get. Round robin didn't work so the sequence of events is that a disbursement memo was prepared and on the day when I had a meeting with as I've explained with MMI and the department of monitoring and evaluation.

10 Ms More then raised the fact that there is a disbursement memo but there's no PMC and then she advised that let's have a PMC to ratify the actions so that they can disburse. I was happy with that. I was also happy if they could disburse on the basis that you can have a PMC later on but it was clear that it was possible to have a special PMC on that day on 20 when I was there to finalise.

Ja, so it's always been ratification.

**CHAIRPERSON:** Let me get a simpler answer if I can. What was that meeting for? The meeting of the 20<sup>th</sup>, what was it for?

**DR DANIEL MATJILA:** That meeting Commissioner was to ratify, yes.

20 **CHAIRPERSON:** And you attended that meeting?

**DR DANIEL MATJILA:** I was at that meeting.

**CHAIRPERSON:** Yes. But the meeting did not ratify anything.

**DR DANIEL MATJILA:** The meeting approved the transaction.

**CHAIRPERSON:** Yes, it did not ratify a decision that already been taken.

**DR DANIEL MATJILA:** Yes.

**CHAIRPERSON:** It approved afresh as it were.

**DR DANIEL MATJILA:** Which was incorrect, it was supposed to have been a ratification as I've said.

**CHAIRPERSON:** That's precisely where I want to come to. Why didn't you correct it?

**DR DANIEL MATJILA:** It never came into my mind that it will be an issue Commissioner.

**CHAIRPERSON:** Okay.

10 **MS GILL MARCUS:** Sorry, can I just ask one question if you go to 484 just following on from the Commissioner.

On 484, the first sentence, can you just read the first sentence again?

**DR DANIEL MATJILA:** The intention of the meeting of 20 December was always to approve- I think this is a mistake here. It has to be ratify because it already been concluded. I think it's the same thing, it's ratify.

**CHAIRPERSON:** That's precisely what I've been asking about.

20 **DR DANIEL MATJILA:** Ja, Commissioner it's ratify because it says it was always to approve AYO transaction, it had already been concluded. The transaction has already been concluded. So effect of this is is ratification, I should have said ratification.

**MS GILL MARCUS:** What would other members have understood it because the resolution is approved? It wasn't a ratification, it was an approval. So the conduct of that meeting and the participants in the

meeting the resolution shows that the decision was approved. So clearly the approval issue was the content of that meeting not ratification and being present in that meeting comes back to the Judges question.

If it was the whole process and resolution was approval, why did you not at the time say, but we've done the deal and this isn't approval post event. This is a ratification of a decision taken.

**DR DANIEL MATJILA:** As I said, I see any need at that time.

10 **MS GILL MARCUS:** You didn't see a difference between approval and ratification.

**DR DANIEL MATJILA:** Ja.

**MS GILL MARCUS:** And therefore there was no issue.

**DR DANIEL MATJILA:** Because I was under the impression that everyone knows that the subscription agreement has been signed because of the nature of an IPO as I've said. It's so standard to me, I thought everyone knows that once there's a disbursement memo then it means an irrevocable has been signed and therefore the deal has been done.

20 So that's why later on when internal audit raised the matter that why did we approve and we said it was supposed to be ratification and then that was sorted out later on formerly. I mean there's another meeting that ratifies the action eventually.

**CHAIRPERSON:** And you were under no illusion that this meeting is to ratify and it's not to approved.

**DR DANIEL MATJILA:** Yes.

**ADV ALEXANDER ROELOFSE:** Paragraph 486.

**DR DANIEL MATJILA:** It was only subsequently when internal audit pointed out the mistake that AYO transaction had been approved as opposed to ratify that I appreciated the difference between the two and the PMC round robin resolution of the 11<sup>th</sup> of May 2018 noted the mistake and corrected it which was subsequently confirmed in a PMC meeting of the 23<sup>rd</sup> of May 2018.

Copies of the IC minutes and resolution on AYO and PMC minute and resolution of 23<sup>rd</sup> May 2018 attached and marked DD70 and  
10 DD 71.

I cannot recall making a comment to the effect that funds will flow if the put option was not agreed to AYO.

I think this was mentioned by Ms More in her statement.

The future performance of the company was dependent on strong governance and a strong team to execute the deal pipeline. I believe at that time of the investment that AYO had a strong team but the board needed to be beefed up.

PIC did make recommendations on appropriate board changes to AYO after the listing in line with ESG report and I believe the board  
20 is a lot better than it was during the listing.

Following media reports that the PIC did not follow process when investing in AYO, the IC held a number of special meetings to get explanations from management.

Internal audit also raised a finding in relation to the decision of PMCLI of the 20<sup>th</sup> and that its resolution should have been one of

ratification as opposed to the one of an approval.

The decision to fund AYO did not come from the PIC board- did not come before the PIC board at that time of the determination as it was within the delegated authority of management to deliberate and decide on the matter in terms of section 6.2 of the delegation of authority.

But the negative media report has caused some members of PIC board to request that the board investment committee examine the matter.

10 Management provided explanation to the IC, the IC accepted this and instructed management to rectify the administrative error of having approved as opposed to ratifying the transaction.

The internal audit also expressed satisfaction with the decision of IC at this meeting.

The PMCLI resolved via round robin on the 11<sup>th</sup>- I think there's a typo, it's the 11<sup>th</sup> of May 2018 to ratify the AYO investment.

I was therefore shocked and surprised to learn that after I had left the PIC another internal audit investigation was launched which resulted in the suspension of two employees on the basis of a draft  
20 report from internal audit.

The draft report is used by the board to suspend and thus ruin careers of professionals on the basis of these reports, the draft report.

I understand the board were presented with a report for the very first time in the meeting and took such a critical decision on the basis of a draft report.

I think Commissioner, you will recall also that there was an allegation that the board cleared me on the basis of a draft report end up saying but there seem to be double standards by the board in this instance.

There is a requirement according to our board charter that the board must receive document at least 5 working days before the meeting to ensure that the directors are able to apply their minds properly on matters.

10 A matter of suspending an employee should have been handled more sensitively and not held in a haste. A press statement on the suspension of employees showed that someone does not care. This behaviour is not in keeping with the PIC values.

Because I believe a press statement was issued that some people have been suspended, employees have been suspended there by the PIC which is something very unusual Commissioner.

I believe internal audit has been used like a mercenary hit man to remove employees that were either aligned to me or sympathetic to me. I don't believe Mr Nemagovhani is innocently conducting their first of internal audit.

20 The AYO share price has not performed as anticipated due to certain aspects of the deal pipeline not having materialised in particular the BT transaction and the move of that business into the company, negative media reports, CIPC notice of non compliance and litigation about company and even the testimony concerning AYO transaction before this Commissions have also affected the share price.

However the current share price more or less reflects the NAV of the company at present, in other words, without any future opportunities being priced in.

And the PIC needs to exercise its leadership as a significant shareholder in the company to put together a strong management and board in order to start driving the company affairs forward and to make opportunities in the deal pipeline even better opportunities materialise.

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

10 **CHAIRPERSON:** Around this time we usually take a break but the two of us feel that we can carry on. Do you want a break Dr Matjila?

**DR DANIEL MATJILA:** If it's possible, Mr Commissioner.

**CHAIRPERSON:** Yes, let's take a 10 minute break.

**DR DANIEL MATJILA:** Ja.

**ADV ALEXANDER ROELOFSE:** Thank you, Commissioner.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready, Mr Mohapi?

20 **ADV SECHABA MOHAPI:** Yes, thank you, Mr Commissioner. Dr Matjila, I would like to start with the document which you referred to in your statement at paragraph 339.

**CHAIRPERSON:** Did you say paragraph 339?

**ADV SECHABA MOHAPI:** 339.9. It is Annexure DD51. Is that correct?

**DR DANIEL MATJILA:** [No audible reply]

**ADV SECHABA MOHAPI:** Paragraph 339 of your statement. Point nine.

**DR DANIEL MATJILA:** [No audible reply]

**ADV SECHABA MOHAPI:** We are just waiting for Dr Matjila to get hold of the document, Mr Commissioner. To make it easy ...[intervenes]

**MS GILL MARCUS:** His statement. It is not in the DD's.

**ADV SECHABA MOHAPI:** Ja, it is the Standard Operating Procedure for Listed Investments.

**DR DANIEL MATJILA:** Yes.

10 **ADV SECHABA MOHAPI:** This is how you introduced this document in your statement. You say:

“In line with the Standard ...[intervenes]

**MS GILL MARCUS:** Sorry to interrupt you, Mr Mohapi. Can you just give us...? Which DD are you referring you to?

**ADV SECHABA MOHAPI:** It is DD51. Apologies.

**MS GILL MARCUS:** DD51?

**ADV SECHABA MOHAPI:** That is correct, Commissioner. So the remarkable manner in which this document has been introduced is as follows:

20 “In line with the Standard Operating Procedure for Listed Investments, a copy of which is attached hereto and marked DD51. That I have designed to give effect to the DOA, Allegation of Authority.  
The deals are presented at PMC1 for approval to do due diligence or sometimes to proceed to prepare for PMC2, if DD

has been done, without incurring any costs, except for PIC time...”

So, I just wanted to say, this is the manner in which it is introduced and we are about to then look into this document. If we go to that document, Dr Matjila and you look at page 14 of that document. So, but, I am correct with what you are saying introducing this document, that you designed it. So this is your document. This is your policy. This something that you have basically created in order to align processes in the PIC with the Delegation of Authority.

10 **DR DANIEL MATJILA:** [Indistinct]

**ADV SECHABA MOHAPI:** Your mic is not on, Dr Matjila. So, just to repeat.

**DR DANIEL MATJILA:** Yes, yes.

**ADV SECHABA MOHAPI:** Okay. Thank you. If we look under what is headed: Aim and objective of the Standard Operating Procedure on page 14 and we look at paragraph 3.2 and I would just like to read the following into the record, which I would like you to please confirm:

20 “The aim and objective of this Standard Operating Procedures:  
To provide a framework for the operations of the Fixed Income  
Department within the PIC. The controls specified in this  
Standard Operating Procedure will ensure that investments are  
done in accordance with adherence and in line with the  
legislation and best practice, as appropriate to the company.  
To support this aim, the Standard Operating Procedure will  
achieve the following objectives...”

And there are seven of them. But I would like to point out the following. 3.2.2:

“Consider solely the interest of the PIC’s clients...”

And then another one which is quite important for purposes of this transaction, is 3.2.4:

“Enhance the total return of PIC’s client’s portfolios...”

Is that correct?

**DR DANIEL MATJILA:** Yes.

**ADV SECHABA MOHAPI:** So these are things that you have put into  
10 the Standard Operating Procedure. Is that correct?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** I have noted that the Standard Operating Procedure is dated 20 October 2018. It seems to have been revised by Mr Fidelis Madavo in October 2018.

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

**ADV SECHABA MOHAPI:** Does it materially differ from what would have been in operation during the material time when AYO was concluded? That would be between November 2017 and December 2017.

20 **DR DANIEL MATJILA:** Unfortunately, I will not be in a position, you know, to provide you with an accurate answer for that, because I do not have too. But I do not... I do not expect there to be a significant change.

**ADV SECHABA MOHAPI:** Okay.

**DR DANIEL MATJILA:** Ja.

**ADV SECHABA MOHAPI:** Thank you. Now, can we also then turn to page 18 of this document? Under the heading: Investment Philosophy and Process. It reads as follows in the first bullet:

“We believe that financial markets are inefficient due to behavioural biases which caused discrepancies between a company’s fundamental value and its market price...”

Correct?

**DR DANIEL MATJILA:** H’m.

**ADV SECHABA MOHAPI:** Then the second bullet says:

10 “We believe that a strategy of purchase and quality companies at attractive valuations, outperforms the market over time...”

Correct?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** Then the fourth bullet, says:

“We believe that the empirical evidence of a quality company is the one that generates high returns on its invested equity capital at lower than peer group risk. We seek to identify these companies and add them to our portfolio at attractive valuations...”

20 Correct?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** So, am I correct to understand that this is the underlining philosophies when you make an investment in this particular division?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** Then if we can just then turn to page 33  
...[intervenes]

**DR DANIEL MATJILA:** I think, if we can just make a small correction,  
Commissioner. I think this was a... It is always a problem with cut and  
paste. On 3.2, it talks about fixing company department. That must be  
listed investments.

**ADV SECHABA MOHAPI:** Okay. Thank you.

**DR DANIEL MATJILA:** Yes.

**ADV SECHABA MOHAPI:** But that is the document as we have it at  
10 the PIC and everybody within the company would understand that we  
are talking about the Listed Investments Division?

**DR DANIEL MATJILA:** Yes, this is used by the Investment Division.

**ADV SECHABA MOHAPI:** Page 33.

**DR DANIEL MATJILA:** I am there.

**ADV SECHABA MOHAPI:** On page 33. It is given a heading:  
Corporate Actions. And these include IPO's, rights issues and book  
bill, etcetera.

**DR DANIEL MATJILA:** Yes.

**ADV SECHABA MOHAPI:** And we are talking about an IPO in respect  
20 of the AYO transaction. Correct?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** Now, if we look at the paragraph in the  
middle of that page. It says:

“All specific deals, such as BEE funding or taking up strategic  
stakes, should be accompanied by an origination report that

request permission from PMC Listed Committee to do a due diligence, along with Legal, Risk and ESG Departments. At that point, the Legal, Risk and ESG Departments are encouraged and a due diligence process is undertaking, along with the Equities Department...”

**CHAIRPERSON:** I think that word is engaged.

**ADV SECHABA MOHAPI:** Apologies, Commissioner.

10 “At that point. The Legal, Risk and ESG Departments are engaged and a due diligence process is undertaken, along with the Equities Department...”

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** And in the following paragraph, the following is gleaned:

“After the due diligence has been done, a final PMC submission should be made...”

And that is quite important.

“This should be followed up by a report and presentation to a follow-up meeting of the PMC Listed Committee to approve or reject the deal...”

20 Is that correct?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** Then there is a flow or a diagrammatical representation of how deals would flow and it gives the following under Five Sequential Processes. There is origination. That is number one. Correct?

**DR DANIEL MATJILA:** That is right.

**ADV SECHABA MOHAPI:** Then there is Initial Analyses. That is number two. Then there is first PMC submission. That is number 3. Correct?

**DR DANIEL MATJILA:** Yes.

**ADV SECHABA MOHAPI:** This is what is generally referred to as PMC1?

**DR DANIEL MATJILA:** Ja.

**ADV SECHABA MOHAPI:** Then number four. There should be a  
10 detailed DD process. Is that correct?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** And then number 5. It says that there should be a final PMC submission and that is generally referred to as PMC2?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** Now, Dr Matjila. This is a document which you have championed. So to speak. There is no reference in it of deviations or ratification. Why is that the case when it, as you have said, enables you to carry out the PIC's mandate? Or... Ja. In respect  
20 of the Delegation of Authority.

**DR DANIEL MATJILA:** Commissioner, as he has rightly said. This is my document. It is process document. It is not a policy. And I have authority to make deviations to it in line with the Delegation of Authority. Its application is controlled by the CEO. He can make changes or deviations, as and when is necessary.

**ADV SECHABA MOHAPI:** Now, another important part of the document that I would just like to place on record. One page 13, under Introduction. Do you have it?

**DR DANIEL MATJILA:** I got it.

**ADV SECHABA MOHAPI:** I do not intend to read the entire introduction, but the following, I think, are quite important. In the last part or the last sentence of 1.1., it is said:

10 “The PIC, as custodian of substantial assets generated by the labour of generations of South African’s public sector employees, the PIC has a responsibility to conduct its affairs with integrity, transparency and exemplary fashion...”

Is that correct?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** Then paragraph 1.2. I will just read the first sentence:

“As a public entity, the PIC is listed in Schedule 3B of the PMFA and thus has to comply with the requirements of the act...”

Is that correct?

20 **DR DANIEL MATJILA:** That is correct. Insofar as PIC operation assets are concerned.

**ADV SECHABA MOHAPI:** Can you explain that?

**DR DANIEL MATJILA:** This relates to the PIC, the corporation and not the assets under management. Assets management are handled differently.

**ADV SECHABA MOHAPI:** Okay.

**DR DANIEL MATJILA:** That needs to be understood.

**ADV SECHABA MOHAPI:** Okay. Now I just wanted to clarify, because you had said earlier in your testimony, and this was in relation to a question that my learned colleague, Mr Monnahela asked. You had said that the PIC does not fall under the PMFA. That was an over-simplification. Was it not?

**DR DANIEL MATJILA:** No, the explanation that I made here was that PIC, the corporation, is a state owned company and it falls under  
10 PMFA, but the assets that the PIC manage on behalf of its client, is not the PIC's money. These are monies of the clients and the relationship, it is governed differently.

**ADV SECHABA MOHAPI:** Quite correct.

**DR DANIEL MATJILA:** There is a FSCA, the regulator, but most importantly, the client mandates that then spells out how those monies should be managed.

**CHAIRPERSON:** Yes, I understood you to have said that.

**ADV SECHABA MOHAPI:** Okay, thank you. Then just two further parts that I would like us to put into the record:

20 "Is that the PIC as a state owned enterprise is obliged by legislation, as well as good business practice, to develop and implement an effective framework and systems to guide its planning, monitoring and evaluation practices..."

But that is consistent with what you have said.

**DR DANIEL MATJILA:** H'm.

**ADV SECHABA MOHAPI:** But the important part of this document in relation to the AYO transaction, as we have looked at, is page 33 because that provides a flow of or... Ja, a flow of how deals should be handled within the PIC. And, Dr Matjila you have said that you have got authority under the DOA to make deviations. Why would that not be included in this process or in this Standard Operating Procedure?

**DR DANIEL MATJILA:** Because DOA is a policy. This is just a method of complying with the DOA. DOA super cedes this document.

**CHAIRPERSON:** Are you able to point it out, a provision dealing with  
10 deviations?

**DR DANIEL MATJILA:** [No audible reply]

**ADV ALEXANDER ROELOFSE:** For the assistance of the Commission. It is page 298, Item 6... No, sorry. It is not page 298. It is...

**ADV SECHABA MOHAPI:** In the file of annexures.

**ADV ALEXANDER ROELOFSE:** It is in the annexures.

**DR DANIEL MATJILA:** It is on page 296.

**MS GILL MARCUS:** Which DD?

**DR DANIEL MATJILA:** DD... Commissioner, that will be DD14.1. That will be 3.4. It says: Deviation from AVM Procurement Policy and  
20 Guidelines.

**ADV ALEXANDER ROELOFSE:** That is what I was looking for.

**ADV SECHABA MOHAPI:** Yes, my question, Dr Matjila relates mostly to process and deviation from process. I would have expected that because the Standard Operating Procedure says that it assist the PIC in relation to the Delegation of Authority, it would include all things

which the PIC are entitled to do or which yourself as the Accounting Officer would be entitled to do under the Delegation of Authority. Does the Standard Operating Procedure refer anywhere to deviations?

**DR DANIEL MATJILA:** Commissioner, as I have said. It May not have Standard Operating Procedures, may not have deviations because I can deal with the deviations as I... And as we have said. This is the document that allows the CEO to run the company, in other words, and comply with corporations policies. So if deviation is missing in Standard Operating Procedure, but it is allowing the main document,  
10 the policy document, then there should not be any contradiction.

**ADV SECHABA MOHAPI:** But it is ...[intervenes]

**MS GILL MARCUS:** Can you just refer us back to the exact...? Which number you are referring to in that Delegation of Authority, because it is a different... So if we go ...[intervenes]

**ADV ALEXANDER ROELOFSE:** It is page 296.

**MS GILL MARCUS:** No, we do not have pages and that. If we can.. Under DD14.1.

**ADV ALEXANDER ROELOFSE:** Item 3.4. on the third page of that document

20 **DR DANIEL MATJILA:** And guidelines.

**ADV ALEXANDER ROELOFSE:** Yes, that is what Dr Matjila is referring to.

**MS GILL MARCUS:** Ja, but is that the guide... I read that as, assets under management procurement policy and guidelines. Is that the same thing?

**DR DANIEL MATJILA:** Yes. I have read it as procurement policy and guidelines.

**MS GILL MARCUS:** But what is procurement policy refer to there?

**DR DANIEL MATJILA:** How we procure services. Whether it is a DD.

**MS GILL MARCUS:** Sure. That is services. That is not procuring assets. I mean, that is the way I read it. It is procurement of services and the guidelines for that.

**DR DANIEL MATJILA:** But procuring for DD is part of it. We do procure services for ...[intervenes]

10 **MS GILL MARCUS:** Due diligence, yes.

**DR DANIEL MATJILA:** For due diligence at time. And when we feel, we do not have to, which is the case with AYO that we have the information. We do not have to do that. And when we do not pay... We do not have to pay any money. We can do all the work internally. There is no need for PMC1, in other words. We can deviate from normal – from processes if we can do work without spending any money. That is what I am trying to get to.

**MS GILL MARCUS:** Okay, but in that delegation, it requires the prior approval of the CFO. If you look at the same column, under CFO, b:  
20 Must agree beforehand.

**DR DANIEL MATJILA:** Commissioner, if we are not going to spend money, I do not see any [laughs]

**MS GILL MARCUS:** No, no. I am only going by your reference.

**DR DANIEL MATJILA:** If we are spending monies, we can consult with them. It is easy.

**MS GILL MARCUS:** I am only going by your reference. The question is. That you are referring to this in relation to practice.

**DR DANIEL MATJILA:** Ja.

**MS GILL MARCUS:** And the practice, in terms of the DOA, is that the CFO must agree beforehand. So, it is just a little confusing when you say it is procurement and it is not going to be spend, but you have not... Your DOA then is selective. That you... I mean, if it requires the CFO prior, then it requires the CFO prior.

**DR DANIEL MATJILA:** I think we spoke about it in general,  
10 investment, as well. That there are instances where we do not... We do not have to consult in that manner. And the Delegation of Authority was subsequently fixed to ensure that, you know, it deals with the functions of the CEO properly. I mean, the CFO, properly.

**MS GILL MARCUS:** Yes, but at this point in time, this was in place.

**DR DANIEL MATJILA:** It was in place, but ...[intervenes]

**MS GILL MARCUS:** And therefore... I mean, I am only going by your reference to it, Dr Matjila. I mean, this is what you have highlighted as the delegation. It gives you the authority. But it gives you the authority with a prior consultation.

20 **DR DANIEL MATJILA:** But, Commissioner. As I have said. Practically, if we do not spend money, I do not have to tell her that now we do not spend money. [laughs]

**MS GILL MARCUS:** Does the board know that you do not actually follow these processes of DOA?

**DR DANIEL MATJILA:** The... You mean DOA or process. The

Standard Operating Procedure?

**MS GILL MARCUS:** Well, no. It is the question... I am looking at the DOA. The question is. That when it is... If you sometimes follow it and if it is not practical, then you just do not do it.

**DR DANIEL MATJILA:** Ja.

**MS GILL MARCUS:** Did the board...? I mean the question is. Yes, subsequently this has been addressed, partially. Because it is a slightly different thing. Because my concern is. We are dealing with a process of acquiring an assets. Not simple procurement of due  
10 diligence. So, I am a little confused about how this DOA ...[intervenes]

**ADV SECHABA MOHAPI:** If I can draw the distinction, Commissioner. So, Dr Matjila. 3.4. What does...? So this authority, what does it entitle you to approve? Ja, what...? The deviation. What does it entitle you to do?

**DR DANIEL MATJILA:** [No audible reply]

**ADV SECHABA MOHAPI:** Does it entitle you to bind the PIC and agreements without PMC approval?

**DR DANIEL MATJILA:** Yes, I can do that if there could be a ratification in the end.

20 **ADV SECHABA MOHAPI:** You draw... Are you drawing that from 3.4?

**DR DANIEL MATJILA:** [No audible reply]

**ADV SECHABA MOHAPI:** So, my question ...[intervenes]

**DR DANIEL MATJILA:** I think what is very important here. Is that, there are many steps that happen in this – to a point where I can decide not to do something. The initiators become very critical,

because there would be those that say: This is what we can do and so on. And the memo comes to me. And we look at the circumstances and say: What should be done? Then I approve if there are any deviations and there are reasons why it should be – we could deviate. You know.

So, I cannot simply on my own deviate on something. In other words, initiate something and deviate from policy, as it were. So, I need to, you know, explain that there is a process and there are certain steps that need to be taken by certain people for me to get to a point where I say, we can deviate or we can do ...[intervenes]

10 **ADV SECHABA MOHAPI:** Okay, perhaps.

**DR DANIEL MATJILA:** Or we cannot deviate.

**ADV SECHABA MOHAPI:** Perhaps I can clarify the question this way. When we look at that investment process, 3 and 5. Let us simplify it and call it PMC1 and PMC2. First, PMC submission and first PMC... I mean, second - final PMC submission. Where does the procurement of services occur?

**DR DANIEL MATJILA:** At PMC1.

**ADV SECHABA MOHAPI:** So that is...[intervenes]

**DR DANIEL MATJILA:** This is an approval at PMC1 to say: You can  
20 spend money if there is money to be spend.

**ADV SECHABA MOHAPI:** Spend money towards what?

**DR DANIEL MATJILA:** To DD. To this number 4. To give effect to  
number 4.

**ADV SECHABA MOHAPI:** Correct.

**DR DANIEL MATJILA:** Yes.

**ADV SECHABA MOHAPI:** Now, can you deviate...? Does 3.4 entitle you to deviate in respect of final PMC submission?

**DR DANIEL MATJILA:** Yes. If all work can be done internally without spending any money. We can go straight to this process. Because the detailed DD would be done without spending any money.

**ADV SECHABA MOHAPI:** Now, Dr Matjila. This flow in respect of first PMC, that is where there is assessment and whether there is appetite and to see whether we should take a transaction to DD. Am I correct?

**DR DANIEL MATJILA:** That is correct.

10 **ADV SECHABA MOHAPI:** Now, what is the difference between that PMC and the final PMC?

**DR DANIEL MATJILA:** The final PMC is the one where a detailed DD process would have been done a recommendation that says: Do the transaction is made to the final PMC.

**ADV SECHABA MOHAPI:** So, there we are not talking about procurement of any services. Am I correct?

**DR DANIEL MATJILA:** That is correct.

**ADV SECHABA MOHAPI:** So, does...? Can you deviate? Does 3.4 entitle you to deviate from PMC – final PMC?

20 **DR DANIEL MATJILA:** It depends on circumstances, because if this step, number 4, is done then the... In instances, if we make use of AYO, as an example. Four has been done.

We try to deal with number 5, without success because of challenges and the deadline. And then I evoke that thing to say: Then in this case we can now buy those things. You can invest. And then

seek ratification at a later stage.

**ADV SECHABA MOHAPI:** So my question to you is whether you can bind the PIC without PMC approval?

**DR DANIEL MATJILA:** Yes provided number four is done properly. Because number four is the one that recommends to five.

**ADV SECHABA MOHAPI:** Doctor Matjila I am talking about the three. The 3.4. It talks about due diligence. Am I correct?

**DR DANIEL MATJILA:** Yes.

**ADV SECHABA MOHAPI:** So that is the procurement of services to  
10 due diligence?

**DR DANIEL MATJILA:** Due diligence Commissioner it depends who does it. Its – it's very important to understand that who does the due diligence. It is a stage, if we do not pay the due diligence, we are great, because at least we are saving money for the corporation as well as the client, and we can do all internally. To our satisfaction ...[intervenes]

**ADV SECHABA MOHAPI:** So ...[intervenes]

**DR DANIEL MATJILA:** Then we – we are fine, its, if – if you regard that as -as deviation because we are not spending any money  
20 ...[intervenes]

**ADV SECHABA MOHAPI:** So two things ...[intervenes]

**CHAIRPERSON:** I think, I think, I think counsel is trying to establish the question of deviation from the processes that are listed. PMC 1, PMC 2 and so forth. Whether you are using paragraph or item 3.4 as authority for you to deviate from the processes, I think that is what he

is trying to understand. It has nothing to do with due diligence and ...[intervenes]

**DR DANIEL MATJILA:** Ja.

**CHAIRPERSON:** And whether someone from outside was appointed and therefore you could – you could there. He is talking about the processes as they are supposed to be followed, initiation and so forth and so forth to PMC's. What gives you authority to deviate from that process?

**DR DANIEL MATJILA:** Ja. I think Commissioner it will be easier for  
10 us to - to look at overall structure of the PIC, how it is – its formulated. The governing structure. If I may just quickly. We know we have the board of the PIC with the sub-committees an IC being the one that deals with investment and IC has got his own sub-committees that deal with, in other words the fields that deal with different aspects of that, so that is the – the board and its sub-committees.

And then there is a CEO of the organisation who is then assisted and – and – and the delegation of authorities they say CEO is assisted by EXCO in discharging his responsibilities. And EXCO has got sub-committees like PMC listed and unlisted that will look after  
20 investment and other committees. So the CEO has authority over those committees.

But in the delegation of authority there is an express eh – eh delegation to PMC on certain matters. Also we spoke about Section 8 that gives the CEO authority in investments, which authority we have not used because we had loved to be more consultative and inclusive in

our decision making process and therefore we adopted Section 5 of the Delegation of Authority in discharging our responsibilities.

And so in terms of the standard operating procedures this are the CEO's instruments of ensuring that they are able to comply with Delegation of Authority, and that authority means that they can deviate on certain things, they can approve deviation on certain matters. That is what I was trying to ...[intervenes]

**CHAIRPERSON**: Sorry in terms in what Delegation of Authority? Because what we have been discussing is whether the authority that  
10 you say you exercised is contained in 3.4 of the Delegation of Authority at 14.1.

**DR DANIEL MATJILA**: That what I understood it, because it took us about procurement and certain guidelines.

**CHAIRPERSON**: Right.

**DR DANIEL MATJILA**: And I am saying yes it gives that authority because then we can deviated from procuring certain services in relation to due diligence.

**CHAIRPERSON**: I do not have a difficulty with that if you – if you are talking about procurement of certain services under due diligence, then  
20 3.4 applies.

**DR DANIEL MATJILA**: Yes.

**CHAIRPERSON**: But does it apply, are you saying you rely on it to, for instance to do away with PMC 1 and say it is not necessary?

**DR DANIEL MATJILA**: Yes.

**CHAIRPERSON**: Or PMC 2 ...[intervenes]

**DR DANIEL MATJILA:** Absolutely.

**CHAIRPERSON:** Are you using the same?

**DR DANIEL MATJILA:** I am using the same to say where money is spent and all work can be done without any problem, there are certain steps that we can skip. But in essence what is important here is that due diligence has to be done. How it is done and how we spend money on it, it is another matter.

**ADV SECHABA MOHAPI:** Doctor Matjila my question relations to, specifically this part of – of the, of- the, of -the, of the process of the  
10 standard operating procedure that after due diligence has been done and a final PMC should be made. This should be followed up by a report and presentation to follow up, to a follow up meeting of the PMC listed committee to approve or reject the deal. So it is in the approved or rejection that I am interested. We know that in AYO there was a due diligence that was in the process, so you are saying that you were, you could – you could deviate from the due diligence process. That – that is fine.

**DR DANIEL MATJILA:** Ja.

**ADV SECHABA MOHAPI:** What I am asking is whether you could  
20 approve, you could enter into an agreement, in other words sign the irrevocable subscription form without PMC approval.

**DR DANIEL MATJILA:** It, and I, we – we said yes I have authority to do so and seek ratification at the next meeting ...[intervenes]

**ADV SECHABA MOHAPI:** When did ...[intervenes]

**DR DANIEL MATJILA:** Because – because I – I – I am also Chair of

that meeting.

**ADV SECHABA MOHAPI:** But where do you source the authority to bind the PIC without PMC approval?

**DR DANIEL MATJILA:** I thought we have explained that. I – I mean I am not sure if the Chief Executive hasn't got powers to – to bind the organisation as a, in that sense because the – the -the -the Delegation of Authority is clear that the CEO is responsible for day-to-day running of the organisation, and it is also expressly say including assets under management.

10 **ADV SECHABA MOHAPI:** Can – can you point to the, to the provision in the DOA that entitles you to deviate from getting approval for deal approval?

**CHAIRPERSON:** Doctor Matjila you referred earlier to Section is it 8?

**DR DANIEL MATJILA:** Eight. Eight Commissioner.

**CHAIRPERSON:** Isn't that rather the provision than 3.4?

**DR DANIEL MATJILA:** I think Commissioner we did – we did mention which mention that as well, but – but it looks like we are not – we are not finding each other on this matter as to the level of authority that I have as a CEO and I think I have authority ...[intervenes]

20 **CHAIRPERSON:** The thing is you – you refer to 3.4, instead of Section 8, or item 8.

**DR DANIEL MATJILA:** Okay Commissioner I thought we had mentioned both of them.

**CHAIRPERSON:** Can we look at item 8 and see whether the authority stems from there.

**ADV SECHABA MOHAPI:** So Doctor Matjila which provision do you say entitles you to approve a deal?

**DR DANIEL MATJILA:** That will be Section 8.1.2.

**ADV SECHABA MOHAPI:** And do you say that entitles you then to – to deviate.

**DR DANIEL MATJILA:** Yes.

**ADV SECHABA MOHAPI:** To deviate the process?

**DR DANIEL MATJILA:** Yes – yes Commissioner.

**ADV SECHABA MOHAPI:** Now if we can just then refer to uhm your –  
10 your evidence. Am I correct to summarise it as follows, that you are entitled to deviate. There was nothing untoward in this deal. Everything was above board and that there was nothing about time pressure that was extraordinary in the – in the AO transaction.

**DR DANIEL MATJILA:** I think we did – we did say that the timelines were tight.

**ADV SECHABA MOHAPI:** Can I – can I then refer you to some – some – some themes in this transaction, and I have provided you with a timeline which provides a context. And this timeline Doctor Matjila, I have provided to you because you know, there is maxim that context, in  
20 law context is everything.

**DR DANIEL MATJILA:** Laughing. Commissioner I – I ...[intervenes]

**ADV SECHABA MOHAPI:** Should be true with deals ...[intervenes]

**DR DANIEL MATJILA:** I – I – I think I went to school to add numbers. [laughing] I will have difficulty with some of the terminology that is used here, but it is okay. [Laughing]

**ADV SECHABA MOHAPI:** My - my point is a simple one and that is, in order for you to invest you should know what the company, how it performs, what is the value *etcetera*. So that provides context. You show know how, whether it has got a market, and – and so on. So there has got to be a context in approving a deal or as the PIC whether or not you can approve a deal.

So the following and – and the timeline that I have provided you with is build on the back of the timeline that is in the audit, the final audit report. The yellow parts are what we have supplemented  
10 and the green parts in this timeline are what you have said yourself in your statement. And this provides the context. But just to say in broad strokes.

This is the context we have the Sekunjalo Group which is headed by Doctor Iqbal Survé and we have what Doctor Survé said in a meeting with the deal team and Victor mentions it in his evidence that he considers you a – a friend. So he, basically there is a personal relationship. That is what – what he said.

**CHAIRPERSON:** Who said so?

**ADV SECHABA MOHAPI:** Doctor Iqbal Survé said that he considers  
20 you a friend. Do you perhaps have Victor – Victor Seanie's statement with you?

**DR DANIEL MATJILA:** No I – I do not think I have Victor's  
...[intervenes]

**CHAIRPERSON:** Sorry I am worried about time now. It seems you are getting into a new issue.

**ADV SECHABA MOHAPI:** Mister Commissioner I – I do not know perhaps we, I – I am not sure. I am – I am in the hands of the Commission because I am not done ...[intervenes]

**CHAIRPERSON:** No you are nowhere near that being done, and maybe it is actually better to stop here rather than go ahead and – and – and leave a particular halfway.

**ADV SECHABA MOHAPI:** I am – I am – I am happy to do that ...[intervenes]

**CHAIRPERSON:** Will this be convenient Mr Roelofse?

10 **ADV ALEXANDER ROELOFSE:** If we are going to, if we are going to break Mr Commissioner this sounds like it would be a natural point in the questioning to – to break it.

**CHAIRPERSON:** Yes I – I think so. You remember that indicated to counsel that I have got a commitment.

**ADV ALEXANDER ROELOFSE:** Indeed so that is why I am suggesting Mr Commissioner that this seems a natural break in the – in the questioning of the, of Doctor Matjila.

**CHAIRPERSON:** Will 09:30 be alright on Monday.

**ADV ALEXANDER ROELOFSE:** 09:30 will be fine Mr Commissioner.

20 **CHAIRPERSON:** Would the date be the 29<sup>th</sup>?

**MS GILL MARCUS:** Ja the 29<sup>th</sup>. Ja it is.

**CHAIRPERSON:** Yes.

**MS GILL MARCUS:** Monday the 29<sup>th</sup>.

**ADV ROELOFSE:** 29<sup>th</sup> Mr Commissioner.

**CHAIRPERSON:** Yes we will then adjourn at this stage until Monday

the 29<sup>th</sup> at 08:30

**INQUIRY ADJOURNS TO 29 JULY 2019**