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Zondo Commission – BNP facilitator’s conflict of interest concealed in SAA tender bid

The bid documents sent to South African Airways (SAA) in early 2016 by BNP Capital in response to a request for proposals to tender for transaction advisory services to the national airline did not include the name of the sole facilitator, Masotsha Mngadi, because he asked BNP to remove his details for fear of being caught in a conflict of interest.

This is the testimony of BNP director Daniel Mahlangu before the commission of inquiry into state capture, which he concluded on Friday. He decried Mngadi’s use of his company’s good profile in the transaction tender, saying all the revelations over the matter have tarnished its reputation.

SAA was in search of R15-billion to help it consolidate its debt. The process of securing funding started in 2015, but two proposals that had been brought before the board in December of that year were dismissed, with the national airline’s executive having to re-start the process at the beginning of 2016.

Mahlangu told the inquiry that after he had been approached by Mngadi in February 2016 regarding the opportunity for his company to bid for the tender, he trusted not only his insight, but took what Mngadi relayed to him after consultations with SAA as the “gospel truth.” In hindsight, however, he admits that his company was used to facilitate Mngadi’s pursuit of the contract for his own personal gain.

In his initial discussions with Mahlangu, Mngadi presented himself to be a director of Inline Trading, but did not mention the background of the company in the motor vehicle sale industry, a point only submitted so far to the commission by a former Inline director, Brandon King, in the form of an affidavit quoted by evidence leader Kate Hofmeyr.

Mahlangu said of Mngadi: “He was the person who brought the transaction to us, we didn’t make an assumption over his role.

“When we asked him who the CEO of Inline Trading was, he told us the gentleman had just passed on,” he said. The late CEO referred to in the engagement was Eric Mbezi, who according to King’s affidavit, passed on shortly before the latter’s resignation from Inline Trading in early February. The purpose of King’s submission to the commission was to clarify a point in Mahlangu’s own statement that Mngadi had asked BNP to use King’s details in the documentation, instead of Mngadi’s, to conceal his part in the process.

Mngadi’s conflict of interest arose from the fact that he was, at the time of approaching and partnering with BNP, employed by Nedbank. The bank had previously bid in the earlier round of the same tender, along with other banks, and their bid was among the two that were turned down by the SAA board in December 2015.

Mahlangu defended his company against a proposition by Hofmeyr that BNP had removed Mngadi’s details in light of the conflict issue. “Mr Mngadi at the eleventh hour removed his details from the bid documents, it’s not like it’s BNP Capital’s doing ... he sent information to one of our guys to say ‘can you take me out’.”

Throughout his testimony, Mahlangu asserted that it was Mngadi who liaised directly with SAA on the one hand, and with the company that would potentially source the funding, Grissag AG, on the other. Mngadi, acting as the middle man in the negotiations, had drafted all correspondence sent to both parties.

This includes the correspondence relating to BNP's Financial Services Board (FSB) license having expired at the time that it bid for the tender. The absence of an FSB-accredited license would disqualify the company, and according to the testimony of former SAA chief financial officer Phumeza Nhantsi, when she requested proof in July 2016 from Mahlangu of BNP's compliance with the FSB, she was told that it had already been sent to SAA in May, along with all other documentation requested by SAA. Nhantsi asked Mahlangu to resend it, she told the inquiry earlier this month, but never got the e-mail. Mahlangu on Friday said that this was not a priority, in the context of events at that time.

"Whether I did send her the response she wanted was neither here nor there at that point in time," he said, "because her mind was already made to say 'rectify your position' so I had to think about how we respond to that threat as far as our contract was concerned." At this point, commission chairperson Deputy Chief Justice Raymond Zondo asked if the easiest option was not simply resending the documentation that Mahlangu had claimed had already been sent, to which Mahlangu responded by saying it was a matter of priorities.

Another matter of contention during Mahlangu's evidence was that of the fees that BNP proposed to charge SAA. One was a success fee of 1.25% of the total R15-billion funding sought. Hofmeyr questioned Mahlangu on the fact despite BNP's proposal of 1.25%, the SAA board approved a 1.5% fee. This, Mahlangu argued, was not outside of industry practice. Clients involved in such transactions have a set budget that may cover such fees, and it could be that SAA had set its budget for this one at 1.5% and therefore saw no harm in staying on that figure, despite BNP's lower option.

The other fee, which BNP proposed around the time that the agreement with SAA was concluded in May, was a cancellation fee, should SAA see fit to cancel the transaction. Mahlangu defended this proposal too, saying it applied in the event that funds were actually raised, SAA had signed the term sheet on those funds, draft agreements were drawn up and finalised, and SAA decided not to use the funds that BNP raised.

Hofmeyr argued that the standard chronology Mahlangu described was not the basis on which BNP requested the R49.9-million cancellation fee. The company actually used the argument that Grissag had already done the groundwork of securing potential international funders, and on this basis needed to be compensated. Mahlangu said that this proposal did not originate from BNP, but from Mngadi.

SAA cancelled the deal amidst media and civil society pressure.

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