TRANSNET-REF-BUNDLE-00001

TRANSNET INQUIRY
REFERENCE BOOK

A Resource for Parliament's Public Enterprises Inquiry

Civil Society, Journalists & Engaged Citizens

Version 1

In September 2017, Parliament's Public Enterprises Committee began its inquiry into alleged manifestations of state capture in three of South Africa's state owned companies (SOCs): Eskom, Transnet and Denel. The Committee is mandated to drive a targeted investigation that ultimately brings to light the information necessary to more fully understand the manner in which the governance of key institutions may have been repurposed to facilitate large-scale corruption by a politically connected elite.

The authors of this reference book have set out to provide an independent, accessible, concise, and fact-based account of some, but not all, of the alleged instances of governance failure and corruption at Transnet. The authors hope that a streamlined and objective account of the deeply complex challenges facing the SOC will be of assistance to the Committee, as well as members of the general public.

Beyond shedding light on specific instances of wrongdoing – whether through dereliction of duty or overt corruption, it is hoped that the Committee will also probe higher level structural and governance questions in order to make recommendations around strengthening and reforming institutions in the future.

GSB Graduate School of BUSINESS UNIVERSITY OF CAPE TOWN

PARI Public Affairs Research Institute

CST

DEVELOPMENT POLICY RESEARCH UNIT

UNIVERSITY OF JOHANNESBURG

TRANSNET INQUIRY
REFERENCE BOOK

This report is based on ongoing investigations and information available in the public domain. It is therefore being constantly updated as new information emerges.

STATE OF STATE CAPTURE

At the start of November 2016, former Public Protector Thuli Madonsela's State of Capture report was made public after President Zuma's legal team withdrew its bid to interdict its release. A turning point, Madonsela's report provided the first comprehensive legal analysis of the alleged systemic corruption being perpetrated through state owned companies (SOCs).

Since then, South Africans have witnessed the rallying of civil society, investigative journalists, academia, public leaders and concerned citizens, who have come together to further this civic work – including through groups such as the South African Council of Churches (SACC), the State Capacity Research Project (SCRP), and the Organisation Against Tax Abuse (OUTA). The SCRP's *Betrayal of the Promise* report was a defining moment in the turning tide against state capture.

From these efforts, an overwhelming and growing body of evidence - including that contained in the #guptaleaks – has been built, which indicates that the political power vested in the former President, certain Ministries, and the boards and executives of SOCs has been misused to benefit the interests of connected individuals and entities – most prominently the Gupta family. This has been to the detriment of the functioning of Government and those entities within the ambit of state governance.

By shedding light on the modus operandi of a network of implicated individuals and joining the dots between examples of known impropriety, the plausibility of any claim that reported irregularities are random or unconnected – as would be the case with generalised corruption or maladministration – has been diminished. What the *Betrayal of the Promise* report demonstrated, and what new, emerging information confirms, including this report, is that 'state capture' was a systematic project to repurpose government institutions. This is evidenced in the centralisation of decision-making power, the hollowing out of executive and oversight competencies by granting top positions in SOCs and Ministries to inept or corrupt individuals, and the cultivation of fear and mistrust through the establishment of 'shadow' institutions and lines of accountability. Such a 'project' would allow for the possibility of grand corruption at the highest level, the full ramifications of which have yet to be felt.

Allegations that such practices have been intentionally waged across a range of government institutions and within SOCs have been levelled, leading the Portfolio Committee on Public Enterprises to initiate an inquiry into governance failure and the abuse of public resources at Transnet, Transnet, and Denel.

SETTING SIGHTS ON TRANSNET

Transnet is South Africa's state-owned freight transport and logistics company and is the custodian of the country's rail, ports and pipeline networks. Transnet's infrastructure facilitates the movement of goods from where they are produced to where they are consumed within the country. This promotes trade with our neighbours and provides a connection to export markets. It is critical as an enabler of cost-effective, efficient, and seamless movement of goods through our economic system.

It operates as an integrated freight transport company, comprising five operating divisions five in addition to Group leadership in the head office. These divisions are: Transnet Freight Rail (TFR), Transnet National Ports Authority (TNPA), Transnet Port Terminals (TPT), Transnet Rail Engineering (TRE) and Transnet Pipelines (TPL).

Transnet's assets are valued at R351 billion and its annual income for the 2017 period was R65bn. Transnet is currently six years into its R300bn capital expenditure plan, the Market Demand Strategy, aimed at expanding rail, ports and pipeline infrastructure thereby enabling economic growth. Transnet has invested at least R145 billion in the last five years, and expects to invest a further R229.2 billion by 2024. This aggressive capex plan has left the SOC vulnerable to corrupt interests, especially in the realm of procurement.

As this report details, corruption at Transnet has centred largely on procurement, including questionable contracts for port cranes, locomotives, IT services, and advisory, financial management and consulting services.

Many of these contracts were awarded by confinement – that is, without a tender. Almost all of the contractors flagged in this report have paid kickbacks to front companies related to the Gupta family, often under the guise of paying local or BEE "empowerment partners". The evidence suggest that these payments were for arranging the contract awards.

These corrupt deals have been facilitated by the ongoing, systematic weakening of governance structures within Transnet. The appointments of captured or otherwise inept individuals to boards and executive positions has been exacerbated by the centralisation of power in Transnet – including hiring and procurement powers – within these boards and within the Group executive team. This has been compounded by the outsourcing of internal treasury, audit, enterprise data management and other corporate functions to a related network of private firms with corrupt interests.

Burgeoning costs, arguably propelled by rent-seeking and corruption, have massively increased Transnet's procurement spend. The impact of state capture – the weakening of treasury and governance functions within the Transnet – has damaged the institution's ability to effectively deliver on its mandate. The capture of company leadership, who focus more on malfeasance than on steering the company in its interests, has been tremendously damaging. The effects of this on the South African economy and prospects for economic development and transformation hardly need to be stated and reinforce the urgent need for governance and structural reforms at the SOC.

TRANSNET-REF-BUNDLE-00006

TIMELINE 2009–2015

2009 May
Jacob Zuma becomes President of South Africa

2009
Anoj Singh made Acting CFO of Transnet

2010 June
Siyabonga Gama dismissed from his position as Transnet Freight Rail CEO over irregular contract awards

2010 Nov
Barbara Hogan dismissed as Minister of Public Enterprises, having resisted President Zuma's alleged interest in SOC Board Appointments.

President Zuma appoints Malusi Gigaba as Minister of Public Enterprises

Chris Wells, acting CEO of Transnet since 2009, resigns, effective from March 2011.

2012 Aug
Iqbal Sharma made head of BADC

2012 July
Anoj Singh made permanent CFO at Transnet

2012
Guptas begin targeting Transnet locomotive contracts.

2012 April
Transnet launch the Market Demand Strategy, a R300bn capital investment programme (including locomotives of R51bn)

Dec **2011** to Jan **2013**
ZPMC makes payments of at least US$4.2m to JJ Trading. Most of it is sent to Gupta companies in UAE and South Africa.

2012 Oct
China South Rail win a R2.7bn tender to build and supply 95 locomotives.

2012 Dec
McKinsey-led consortium wins contract to provide financial advisory services of R35.2m for the project. McKinsey replaces their long-time empowerment associates, Letsema, with Regiments, when Transnet claims a conflict of interest.

2013 Feb
By this date, Guptas and Worlds Window (parent company of JJ Trading and Century General Trading) have made 251 transactions between their companies in Dubai, India and South Africa, including distributing payments from China South Rail and ZPMC.

2013
Transnet put out tender for 22 cranes.

Swiss-based Liebherr International AG are alleged to have entered into a contract with Guptas to land a crane contract with Transnet.

2014
Guptas try to buy Regiments, unsuccessfully.

2014 June
Singh begins first visit to Dubai, organized by Guptas.

2014 May
New Cabinet announced: Lynn Brown takes over as Minister of Public Enterprises.

An investment account, 'Venus Ltd', transferred by Gupta associate into the name of Anoj Singh in Dubai.

2014 May
Transnet awards Neotel a contract to provide CCTV services worth R329m, without a competitive tender.

2014
Amabhungane releases report revealing Sharma's evident conflict of interest with the locomotives tender.

2014
Sharma lodges complaint to press ombudsman over Amabhungane report, but loses case as the ombudsman finds that Amabhungane made reasonable arguments around the conflict of interest.

2014 Aug
Transnet award Neotel an R1.8bn contract to provide network services, but only finalise after Neotel agrees to pay Homix a 2% fee.

Singh in Dubai again, organized by Guptas.

Governance
Locomotives
Advisory
Cranes
Money laundering
IT & Media
Gifts

2010 Dec
Guptas' New Age accurately predicts new appointments to Eskom Board (Don Mkwananzi and Ellen Tshabalala) & CEO (Brian Molefe)

2011 Feb
Board assumes oversight of large tenders with creation of the Board Acquisitions and Disposals Committee (BADC)

2011 March
Brian Molefe appointed Transnet CEO despite objections from COSATU that he had close links with the Gupta family

Siyabonga Gama reinstated as a Transnet executive (head of Transnet Freight Rail) by new Board despite being dismissed for corruption.

2011 June
ZPMC sign contract with JJ Trading, a Gupta associate company, to help land crane contract.

Cabinet rejects Gigaba's proposal that Iqbal Sharma be made chairman of board at Transnet, reportedly due to concerns over his close ties with the Guptas.

2011 Sept
ZPMC wins contract to supply Transnet with 7 ship-to-shore cranes. The contract includes a US$12m premium to pay JJ Trading.

July **2013** to May **2014**
Liebherr pay Accurate Investments, a Gupta company, just under US$1m.

2013 Oct
Sharma leaks document on 100 locomotive tender to Guptas.

2013 Nov
Singh and Molefe increase McKinsey's contract to R41.2m, and McKinsey reassigns most of it to Regiments.

2013 Dec
Sharma and Essa negotiating to buy VR Laser, a potential supplier to locomotive builders.

2014 Jan
China South Rail awarded contract to supply 100 locomotives, without an open tender.

2014 Feb
Liebherr land a contract to supply 22 cranes to Transnet. Further payments made to Accurate, who forward most of it to Gupta relatives in the US.

2014 Feb–March
Salim Essa and the Guptas buy VR Laser's operations side, and Iqbal Sharma buys the property.

2014 March
China South Rail wins contract to supply 359 locomotives to Transnet, whilst General Electric, Bombadier and China North Rail win smaller contracts.

2014 April
Neotel wins contract worth R300m, after Homix offers to assist for a 10% fee.

2014 April
Singh and Molefe increase Regiments' contract by R78.4m.

2014 Nov
Singh in Dubai again, organized by Guptas.

Homix transfers payments from Neotel, Burlington, and Cutting Edge to BAPU Trading overseas.

Early **2015**
Group Treasurer, Mathane Makgatho, resigns. Replaced by Phetolo Ramosebudi, whose brother worked at Regiments, then Trillian.

Continues on next page

TIMELINE 2015–2018

2015 Feb

Singh in Dubai again, organized by Guptas.

Transnet award Neotel an extension on the CCTV services contract worth R505m, the day after Neotel sign another agreement with Homix, and again without a competitive tender.

2015 March

Burlington Strategy Advisors, a subsidiary of Regiments, enter into a contract with Liebherr for "market feasibility studies" on cranes for Transnet and are paid R2m deposit.

Ramosebudi approves expansion of Regiment's contract to R265.5m.

2015 Aug

SAP sign contract with CAD House, a subsidiary of Sahara Computers, to land contracts with Transnet.

2015 Sept

Salim Essa buys Trillian, a competitor to Regiments. Eric Wood begins splitting from Regiments to join Trillian.

Regiments appointed as asset manager of Transnet's Second Defined Pension Fund.

2015 Oct

Regiments starts organizing interest rate swaps on Transnet loans, where the risk is transferred to the Transnet Second Defined Benefit Fund

Regiments presents unsolicited proposal to Transnet to monetise non-core property, appears to gain support from Transnet executives.

2015 Nov

Richard Seleke made Director-General at Department of Public Enterprises.

Transnet issues tender for an IT contract, to SAP only, and with condition that 60% be sub-contracted to GSS (a part-Gupta-owned company).

2015 Dec

Ramesobudi seeks approval for Regiments to arrange hedging on the loans, using interest rate swaps.

Regiments concludes the first tranche of interest rate swaps, earning R161.8m, and which involves passing risk to the Transnet Second Defined Pension Fund.

Burlington reneges on contract with Liebherr, but retains the payment made.

2016 July

The TSDBF terminate their contract with Regiments and sue Regiments and Trillian for the R228.9m in fees.

2016 Oct

Regiments and Trillian begin suing each other

2016 Dec

Tokyo Sexwale, chair of Trillian, launches a probe into Trillian's dealings with Transnet.

SARB seizes R14.5m held by Homix at Mercantile Bank, based on concerns over illicit flows.

2017 Feb

BADC, chaired by Stanley Shane, awards T-Systems new IT contract, defying Transnet management recommendations.

2017 April

Transnet advertises for a service provider to develop proposals to monetize its non-core properties.

2017 June

The Budlender report on Trillian is published, amidst attempts by Essa to remove Sexwale as chairman.

2017 July

Stanley Shane resigns from the Board and as chair of the TSDPF.

2017 Sept

Co-founder of SAP, Hasso Plattner, makes public apology to South Africa for the R100m-plus bribes paid by the company for contracts at Transnet and Eskom between 2014 and 2016.

2017 Oct

US and UK authorities announce that they will investigate money-laundering and corruption by the Guptas.

Governance

Governance
Locomotives
Advisory
Cranes
Money laundering
IT & Media
Gifts

2015 April

Neotel's auditors raise suspicions and their Board launch an investigation into payments to Homix. The findings lead to the chief executive and chief financial officer resigning.

Molefe moves over to Eskom. Gama takes over at Transnet as Acting CEO.

Regiments lands additional contract to design strategies for optimizing the General Freight Business.

2015 May

Ramosebudi tries to get JP Morgan to use Regiments in their financial advisory work for Transnet, but is refused.

Salim Essa's Tequesta signs agreement with China South Rail to assist with landing the '359 locomotives' contract, for a R3.8bn (which has already taken place).

Homix transfers R66m to two Hong Kong companies that appear to belong to Salim Essa, and against invoices that turn out to be fraudulent. SARB freezes transfers on the account.

2015 June

The CEO of Homix, Ashok Narayan, gets Eric Wood of Regiments Capital to invoice Techpro, a supplier to Neotel on the Transnet CCTV contract, for R15m, and sends through a back-dated contract. The New Age then invoices Regiments for the same amount. Techpro and other Regiments directors say they did not perform any of the work the invoices claimed.

2015 July

Anoj Singh seconded to Eskom as Acting CFO. Garry Pita takes over as Acting CFO at Transnet.

Eric Wood and Bobat appear to play a role in Finance Minister Nhalanhla Nene's removal, and prepare to assist his replacement, Des van Rooyen, who lasts only a few days in the position.

Dec **2015** to Jan **2016**

Mass Dubai gathering organized by Guptas, includes: their families, Salim Essa, Duduzane Zuma, Ace Magashule's sons, Ronica Ragavan, Ashu Chawla, Fana Hlongwane, Des van Rooyen, Anoj Singh, Ayanda Dlodlo, Tom Moyane, Kim Davids, Dan Mantsha, Matshelo Koko and Siyabonga Gama.

2016 Feb–June

Eric Wood sends fraudulent invoices to Transnet, in Trillian's name, for work done by Regiments.

2016 March

Eric Wood, Mohammad Bobat and others officially join Trillian from Regiments.

2016 March–April

Regiments perform further interest rate swaps, earning R335m.

Trillian takes over arranging the interest rates swaps, and Regiments siphons R228.9m from the Second Defined Transnet Benefit Fund to pay fees back to Trillian.

2016 April

Trillian takes over Regiments' proposal to monetize Transnet's non-core property portfolio, then invoices for R41m.

2016 April–Dec

SAP pay R100m to CAD House for landing them Transnet Contracts. CAD House distributes this to Sahara Computers and others.

2016 May

Transnet's internal audit calls a halt to the SAP/GSS contract award

Siyabonga Gama files court application to have T-Systems tender award overturned

2017 Dec

Transnet hires law firm Werksmans to investigate what it called media allegations of impropriety linked to procurements of the 1064 locomotives

2018 Jan

UK firm EMR begin investigating alleged involvement in money-laundering by Worlds Window, of which it owns 49%.

2018 Feb

Transnet calls the Werksmans report "inconclusive" and declines to act on its recommendations

REPURPOSING TRANSNET GOVERNANCE

Stature capture of SOCs has involved an organised process of reconfiguring the way in which these institutions are structured, governed, managed and funded so that they serve a purpose different to their formal mandates. At Transnet, governance structures have been repurposed to enable corruption and rent-seeking on a massive scale, often under the guise of "radical economic transformation". This repurposing has come at the cost of Transnet's ability to function effectively and to fulfil its mandate to the South African people.

This repurposing began with the appointments of boards and executives. Minister of Public Enterprises Barbara Hogan resisted this emerging undue influence on appointments, which likely accounted for her dismissal only 18 months after her appointment. Malusi Gigaba replaced her as Minister of Public Enterprises in November 2010. Gigaba was an early, vocal supporter of using the procurement budgets of SOCs to pursue economic transformation. He immediately appointed a new board headed by Mafika Mkwanazi, who has admitted to a personal relationship with the Gupta family. Over time, many individuals with ties to the Guptas would be appointed to Transnet's board and executive team.

In January 2011, Transnet created a new structure, called the Board Acquisitions and Disposals Committee (BADC), to oversee the planned pipeline of future large-scale infrastructure spending (all tenders worth more than R2.5bn). The BADC became central to state capture at Transnet.

Gigaba appointed Brian Molefe as CEO of Transnet in February 2011. By March 2011, the media was reporting several anomalies associated with the "miraculously quick" appointment of Molefe as the new CEO of Transnet. Details of the appointment process suggested it was a sham put up to disguise a pre-arranged outcome. The advertisement for the position was published on 26 January 2011 and candidates were only given until 1 February to respond. The Gupta newspaper the New Age had correctly predicted Molefe's appointment three months before it was announced, as well as other appointments to the new Transnet board. Transnet non-executive director, Juergen Schrempp, who had only been appointed a few months before, resigned shortly after Molefe's appointment. The media reported that he was unhappy about the handling of Molefe's appointment and the fact that Mafika Mkwanazi, the board chair, had submitted three names of candidates to Gigaba without prior board approval. COSATU also raised concerns about Molefe's links to the Guptas and the circumstances around his appointment at Transnet.

In July 2012, Anoj Singh, a close friend of the Gupta family, was appointed as Transnet CFO. He had been acting in that position since 2009.

Gigaba appointed a senior dti official Iqbal Sharma to the Transnet board in December 2010 and reportedly tried to have him appointed as the chairperson of the Transnet board in June 2011. This was vetoed by Cabinet, reportedly based on Sharma's close proximity to the Gupta family. In August 2012, Sharma was appointed to chair the Board Acquisitions and Disposals Committee.

The new board also reinstated Siyabonga Gama as CEO of Transnet Freight Rail, who had been previously dismissed on charges of misconduct and corruption. This followed "a review of his dismissal", sidestepping an appeal process at a bargaining council due five days later.

From the beginning of Molefe's tenure, there was a move to commission large-scale industrial projects, procure key services and goods from private companies, and displace established firms from government work in favour of selected beneficiaries. In 2012 Molefe announced the Market Demand Strategy, a R350bn capital expenditure program, including a plan to spend more than R50bn on new locomotives to kick-start the growth of its general freight business. These ambitious procurement plans are at the centre of many corruption allegations at Transnet. It was at this point that Gupta-linked entities began benefitting from Transnet tender opportunities.

This pattern was reiterated in the appointment of the next board in December 2014, under Lynne Brown as Minister of Public Enterprises. Brown appointed several board members with connections to President Zuma and the Gupta family, including Linda Mabaso, Brett Stagman and Richard Seleke. Many of these board members had no knowledge or experience of Transnet's business when they were appointed, according to Transnet employees.

In 2015, Siyabonga Gama took over as CEO when Brian Molefe was seconded to Eskom. Anoj Singh followed Molefe and was replaced by Garry Pita. In early 2015, the then-group treasurer of Transnet, Mathane Makgatho, resigned unexpectedly. The media reported that she told her staff: "I arrived here with integrity, and I will leave with my integrity intact." She was replaced by Phetolo Ramosebudi, the previous Treasurer of SAA, and whose brother was working at Regiments alongside Eric Wood.

Under Gigaba and Brown, multiple tenders were awarded to Gupta-linked companies, often under the guise of preferential procurement and "radical economic transformation". Many of these contracts were awarded without a competitive tender process (via "confinement"), and frequently ballooned in cost over time. The governance structure of Transnet was also changed to facilitate this repurposing. Many of the core functions of Transnet's treasury department (at one point, one of the largest and most sophisticated corporate treasury departments in the country) were outsourced to external companies at great cost. Transnet's individual operation divisions were also systematically disempowered, whilst many executive functions and responsibilities, including hiring and procurement decisions, were removed from the operating divisions and centralised in "Group" – Transnet's head office.

Rebuilding and reinforcing good governance at Transnet, including through reviewing systems of appointment and the structure of the SOC itself, will likely be a critical area where recommendations should be developed.

Questions on Transnet Governance

1. What were the processes for Ministers Gigaba and Brown's appointments of new Transnet boards in 2011 and 2014 respectively?
2. What were the nature and content of the Ministers' interactions with the Transnet board?
3. Did Ministers Brown and Gigaba ever give the board instructions to take any decisions incongruent with the rules of independence and good corporate governance?
4. Were board members suitably qualified? How did the Ministers satisfy themselves that the board appointments they made fulfilled the requirements from a skills, integrity, experience and transformational perspective?
5. Were links of the relevant board members to the Gupta family known at the time of their appointment?
6. If so, was this a cause for concern?
7. If not, what might this imply about the use of due diligence checks?
8. What role did the board chairs and individual board members play in procurement processes?
9. What is the role of the Board Acquisitions and Disposals Committee?
10. What is and is not in their remit?
11. Why was the BADC created?

Questions for Transnet executives and managers

1. Were you put under pressure to approve decisions that you did not feel comfortable with?
2. Did you experience anything untoward taking place that would put procurement operations in jeopardy of interference?
3. Did you at any time during your leadership at Transnet take instructions from third parties?
4. Did you ever declare your close relationship with these parties?
5. Were you involved in the award of any tenders to these parties?
6. Did members of the executive/board ever exert, or threaten to exert, power beyond their mandate?
7. Do you know of any cases where sensitive information was shared with the Guptas, their close associates or others who had not been cleared to receive such information?
8. Were you given any instructions by the Guptas?
9. Did you feel under pressure at any stage to take or comply with demands from them, and if so, how did this play out?
10. What was your understanding at the time of the Gupta's relationship with Transnet, and with other SOCs, and the executive?
11. Describe your relationship with the Gupta family, Salim Essa and senior executives of the Gupta companies?
12. Why was sensitive information shared with the Guptas and associates?
13. Were you ever offered any gifts from the Guptas and associates?

Potential Interviewees: Transnet Executives and Managers

CHIEF EXECUTIVES
Brian Molefe
Siyabonga Gama
Chris Wells

FINANCE DIRECTORS / CFOs
Anoj Singh
Garry Pita

OTHER TRANSNET EXECUTIVES
Mathane Makgatho, former head of Treasury
Phetolo Ramesobudi, head of Treasury

FORMER BOARD MEMBERS
Mafika Mkwanazi, former chairperson
Linda Mabaso, former chairperson
Richard Seleke, former board member for Transnet, and Director General at DPE
Brett Stagman, former board member
Jeurgen Schremp, former board member

PROCUREMENT
Iqbal Sharma, former head of procurement sub-committee on Transnet Board
Stanley Shane, former head of procurement sub-scommittee on Transnet Board

PENSION
Peet Maritz, Transnet's Principal Officer of the Transnet Second Defined Benefit Fund

OTHER INTERVIEWEES OUTSIDE OF TRANSNET
Lynn Brown, former Minister of Public Enterprises
Malusi Gigaba, former Minister of Public Enterprises
Kim Davids, former personal assistance to Lynn Brown
Tsediso Matona, former Director General of DPE
Matsietsie Mokororo, former acting Director General of DPE and Head of Legal at DPE
Siyabonga Mahlangu, advisor to Minister Gigaba at DPE
Thamsanqa Mahlomi, advisor to Minister Gigaba at DPE

FROM THE PRIVATE SECTOR
Eric Wood, Magandheran Niven Pilay, Saliem Essa, Daniel Roy, Jan Fourie of Trillian and/or Regiments
Kuben Moodley of Albatime
Liebherr International
Oliver Wyman
SAP
McKinsey

TRANSNET BOARD UNDER **MALUSI GIGABA**

Minister Public Enterprises

November 2010 to May 2014

Director General Public Enterprises

Tshediso Matona
Dec 2010 – Sept 2014

Advisors to the Minister

Siyabonga Mahlangu
Dec 2010 – May 2014

Thamsanqa Msomi (Chief of Staff)
Dec 2010 – May 2014

Transnet Board Chair

Mafika Mkwanazi *
Dec 2010 – Dec 2014

Chair of Board tender committee

Don Mkwananzi
Jan 2011 – July 2012

Iqbal Sharma *
Aug 2012 – Dec 2014

Transnet Board Members

Ellen Tshabalala
Israel Skosana
Nazmeera Moola
Michele Fannuchi
Doris Tshepe
Iqbal Sharma *
Nunu Ntshingila/Njeke*
Ayanda Ceba (company secretary) *
Juergen Schrempp (a)
Nishi Choubey (b)(d)
Yasmina Forbes (b) *
Peter Malungani(c)
Peter Moyo (c)
Nowazi Gcaba (c)
Don Mkwananzi (c) *
Tembakazi Mnyaka (c)
Harry Gazendam (d)
Nomavuso Mnxasana (e) *

* *On Board Acquisitions and Disposals Committee*

Transnet CEO

Chris Wells (Acting)
Mar 2009 – Mar 2011

Brian Molefe
Mar 2011 – April 2015

Financial Director

Anoj Singh
2009 – Aug 2015

TRANSNET BOARD UNDER **LYNNE BROWN**

Minister Public Enterprises

May 2014 to February 2018

Director General Public Enterprises

Richard Seleke
Nov 2015 to Present

PA to the Minister

Kim Davids
May 2014 – July 2017

Transnet Board Chair

Linda Mabaso *
Dec 2014 - Present

Chair of Board tender committee

Stanley Shane (i) * #

Transnet Board Members

Gideon Mahlalela
Potso Mathekga
Vusi Nkonyane
Zainul Nagdee *
Yasmina Forbes #
Richard Seleke (f) *
Nazmeera Moola (f))
Ayanda Ceba (company secretary) (g)
Nokuthula Khumalo (company secretary) (h)
Stanley Shane (i) *
Peter Williams (j)
Lana Kinley (k)
Seth Radebe (k)
Brett Stagman (l)

Transnet CEO

Brian Molefe
Feb 2011 – April 2015

Siyabonga Gama *
April 2015 - Present

Financial Director

Anoj Singh
2009 – Aug 2015

Garry Pita
Oct 2015 to Present

Financial Director

Mathane Makgatho
Mar 2013 to early 2015

Phetolo Ramesobudi
Early 2015 to Present

** On tender committee*

(a) Resigned 2011
(b) Appointed 2011
(c) Dismissed / resigned 2012
(d) Retired 2013
(e) Appointed 2013
(f) Resigned 2015
(g) Resigned 2016
(h) Appointed 2016
(i) Resigned 2017
(i) Passed away 2017
(k) Appointed 2017
(l) Appears to have resigned/ been dismissed by 2018

 # Director of Transnet Second Defined Benefit Fund

LOCOMOTIVE PROCUREMENT

95 LOCOMOTIVES

2011	August 2012	9 October 2012	October 2012	December 2012
Tender for 95 locomotives issued	Management recommends the CSR bid to the BADC, as well as retrospective changes to the bid criteria	Brian Molefe flies to Hong Kong to meet CSR	Contract awarded to CSR	CSR begins payments to CGT

95 Locomotives

In late 2011 Transnet issued a R2.7bn tender for 95 electric locomotives for its general freight business, which eventually awarded to a consortium led by China South Rail Zhuzhou Electric Locomotive (CSR). CSR owned 70% of the consortium with local partner Matsetse Basadi owning the remainder.

In August 2012, the Board Acquisitions and Disposals Committee (chaired by Iqbal Sharma) approved retrospective changes to the bid criteria and the way locomotive "cost" was calculated – both of which altered the result in CSR's favour. According to the minutes: "Management informed the committee that [CSR] was recommended as the supplier that can deliver in 2014, whereas other bidders can only deliver 18 months from the appointment date. [...] The total cost of ownership did not take into account the delivery date. By the time the other bidders deliver, the Company would have earned revenue."

CSR was awarded the contract in October 2012, shortly after Transnet CEO, Brian Molefe, had visited them in Hong Kong, which he claims was to check they had the necessary facilities to do the job.

CSR agreed to pay R537m (a 20% "commission") to a Dubai company called Century General Trading (CGT), which is based in the UAE and appears to be a subsidiary of the India-based Worlds Window conglomerate established by its chairman, Piyoosh Goyal. CGT and Worlds Window appear to have been integral to the business dealings of the Guptas at one time, according to correspondence and financial data in the #GuptaLeaks documents. One email chain from January 2012 shows that CSR directors forwarded a letter to the Transnet chief executive seeking participation in the locomotive tender to several employees and executives at Gupta-owned companies.

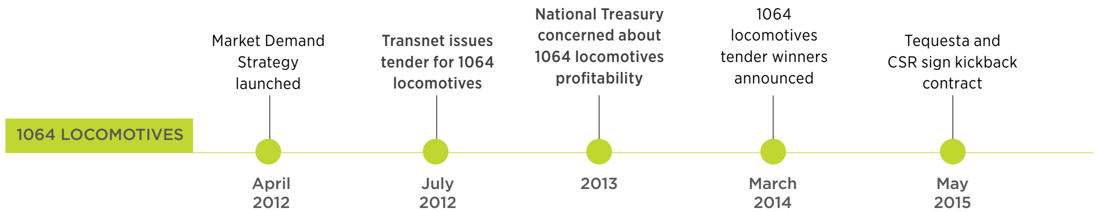
A spreadsheet contained in the Sahara server, entitled "359, 100 and 95 Project Workings" sets out the commissions owed for each locomotive contract by CSR to Worlds Window companies, CGT and JJ Trading (JJT). The spreadsheet was sent by Worlds Window director Rupesh Bansal to the vice-president of CSR Locomotives, and then forwarded to the Guptas. On the "95 Project", it shows that R537m commission was agreed, and of this US$16.7m had been paid by 6th January 2015.

A further spreadsheet in the #GuptaLeaks, simply called "Worlds Window", contains a Hawala ledger where transfers take place between individual Gupta and Worlds Window companies on an almost daily basis between January 2010 and February 2013, across South Africa, Dubai and India. The spreadsheet shows how these transfers offset the overall balance between the two groups at any one point in time. There are entries showing transfer from CSR to CGT: on the 29 December 2012 for US$5,932,935 from CSR to CGT, and on 9 February 2013 for US$351,941 – and the spreadsheet then shows how these amounts increase what is owed by the Worlds Window group to the Guptas.

1064 Locomotives

In 2012 Transnet's Market Demand Strategy was launched: a capital expenditure plan to spend more than R300bn between 2012-2019 in upgrading infrastructure and capacity. R51bn would be directed towards expanding the coal and iron ore export lines. To that end, Transnet initiated the largest procurement project in its history, the purchase of 1064 locomotives.

Despite concerns raised by Transnet Freight Rail chief executive **Siyabonga Gama** and his senior executives that they would not have capacity for an additional 1 064 locomotives or the staff to oversee the building of them, an urgent business case was made to buy them. Gama told Werksmans investigators that the 1 064



locomotive tender was presented to him as a done deal by his parent company executives.

By 2013, National Treasury and the Minister of Finance were concerned that the profitability of the project relied upon Transnet's general freight business being able to grow the volumes transported at amounts above GDP growth and tariffs charged above inflation. While Transnet claimed that increasing locomotive capacity and efficiency would lead to lower tariffs for customers, real increases in tariffs were being projected to sustain the project.

The Werksmans report found that with the assistance of **Brian Molefe**, **Anoj Singh**, **Iqbal Sharma**, and TFR chief procurement officer **Thamsanqa Jiyane**, the contract ballooned from R38.6bn to R54.5bn. Molefe asked the board to approve the increase in costs, saying that the inflated amount was to accommodate fluctuations in currency value and variations in cost. However, these had already been factored into the R38.6bn figure.

In March 2014 the winning bidders for the 1064 locomotives were announced. It was split between four companies: **China North Rail** (232 diesel locomotives at R7.8bn), **China South Rail** (359 electric locomotives at R14.6bn), **General Electric** (233 diesel locomotives at R7.1bn) and **Bombardier** (240 electric locomotives at R10.4bn). The decisions to split the locomotive order was based on a strategy developed by **Regiments**, a Gupta-linked company. Although this would make each locomotive more expensive, it was argued that the full complement of 1 064 could be delivered more quickly, saving Transnet in escalation and hedging costs. The strategy also supposedly decreased the risk of relying on only one company to deliver. After the contract was awarded, CNR and CSR merged to become China Railway Rolling Stock Corporation (CRRC) contracted to supply 591 units in total, 56% of the entire contract.

The "359, 100 and 95 Project Workings" spreadsheet mentioned above showed that commission of 21% was due to be paid on the "359 project" to JJT, equivalent to R3.8bn. The spreadsheet shows that by 6 January 2015, CSR had paid JJT US$107,203,921, for both the 359 and 100 locomotives contract. However, it appears that JJT and CGT were replaced as conduits during 2015: a contract was put in place on 18 May 2015 (after the contract had been awarded) between CSR and a company called **Tequesta** that was directed by Gupta-associate **Salim Essa**. CSR would pay 21% of the total fee it received from Transnet for the supply of 359 locomotives to Tequesta or any other firm of Tequesta's choosing as an "advisory fee". The total amount that was to be received from CSR was around R3.8 billion.

Media investigations found that a portion of this money ($65m) went into the account of a company called **Regiments Asia**, which is closely connected with Tequesta. They share the same Hong-Kong address and were both founded by Essa. Regiments Asia is a subsidiary of Regiments Capital based in South Africa, a key player in what occurred at Transnet. The money received by Regiments Asia and Tequesta was moved on to more than a dozen shell companies with no substantive activities or capacity in places like Dubai, London, Johannesburg and Hong-Kong.

According to the investigation by Werksmans Attorneys, by September 2017, about 2.5 years into the contract, CSR had underperformed by 59%, delivering 124 locomotives of the 302 it was supposed to have supplied by that point. China North Rail and Bombardier Transportation had delivered none of their respective 179 and 215 locomotives. The best performer was General Electric, which underperformed by 29%, delivering 162 of its 228 locomotives. Werksmans found that instead of speeding up delivery, the division of the contract between four companies slowed down procurement of the locomotives and hiked the cost by R5.1bn.

VR LASER

July 2012	Transnet put out tender for R51bn acquisition of locomotives
August 2012	Iqbal Sharma becomes head of BADC
December 2013	Sharma and Salim Essa negotiating to buy VR Laser, a potential supplier to locomotive builders. Sharma received R20m from Aerohaven
February 2014	Essa, Guptas and Duduzane Zuma acquire VR Laser
March 2014	Sharma acquires VRLS Properties
March 2014	1064 tender winners announced

VR Laser

In February 2014, a company called Elgasolve, owned by Salim Essa, acquired a 75% stake in **VR Laser Services**, a Gauteng engineering firm that produces steel plate components for heavy vehicle bodies. The other 25% was acquired by Craysure Investments in the same month. Craysure is owned by Westdawn Investments, which is in turn owned by the Guptas and Duduzane Zuma. Around this time, Iqbal Sharma's Issar Capital bought **VRLS Properties**, which owns the factory premises where VR Laser operates.

At the time, Sharma was a director of the Transnet board and chaired the BADC, the board subcommittee that oversees the company's tender processes and approves tender recommendations. Throughout this period, Sharma was overseeing the 1064 locomotive tender process. He tied up his acquisition of VRLS Properties a matter of weeks before Transnet announced the main tender winners in March. On 19 December 2013, documents in the #GuptaLeaks show that Gupta company Aerohaven paid R20m to Sharma. It was styled as a loan to finance his portion of the purchase of VR Laser.

The winning bidders for the locomotives deal were required by state procurement policy to source up to 60% of their components from South African subcontractors, placing VR Laser in a highly advantageous position. While Amabhungane was informed that each of the four multinational train manufacturing companies that would later win a portion of the 1064 locomotive supply contract had visited the engineering company's premises to assess the possibility of subcontracting work to VR Laser, Sharma claims this is untrue .

Sharma claimed that he had "no direct or indirect relationship with VR Laser Services", and Transnet stated that there was no conflict of interest as Sharma does not own shares in VR Laser. However, during the initial purchase negotiations Sharma represented both companies, and Sharma has a close business relationship with Essa. Leaked emails show that Sharma sent a letter to Tony Gupta with a VR Laser valuation in July 2013. The valuation was done for Issar Investment Holdings - Sharma's company. He also sent an offer for the acquisition of VR Laser Services to Benny Jiyane, the COO of VR Laser at the time. VLRS Properties also clearly stood to benefit indirectly from VR Laser's business.

Following media revelations of Sharma's apparent conflict of interest, Transnet hired PWC to investigate the matter. The Werksmans' report found that Sharma refused to recuse himself from the meeting where the draft report by PWC containing those allegations was discussed. The results are unknown, but Sharma was removed from the board months later when there was a general board rotation.

100 Locomotives

On 11 October 2013, the then chief executive of the Transnet Freight Rail division, Siyabonga Gama, circulated a document addressed to the Board Acquisitions and Disposals Committee calling for the procurement of 100 heavy haul electric locomotives from Japan's Mitsui via a "confinement" (without an open tender). Gama's motivation for the confinement was the delay in the procurement of 1064 locomotives for Transnet's general freight business, creating a temporary gap in the fleet. Gama argued Transnet would not be able to meet its aggressive freight targets without this emergency procurement.

On 14 October Iqbal Sharma, the chair of the BADC, sent a letter to the Director General of the Department of Public Enterprises Tshediso Matona arguing against the confinement, stating that: "We do not readily support the use of confinement as a method of procurement and in this instance we would urge the [acquisitions and disposals committee] to not grant approval for this procurement with a confinement." On 17 October 2014, Sharma sent this letter to Tony Gupta, along with a proposed draft response in Matona's name. The #GuptaLeaks showed that Sharma had sent this document to a Gupta employee, Ashu Chawla, on 19 October 2013.

A few months later, Molefe submitted a new confinement motivation to a special Transnet board

100 LOCOMOTIVES

- **11 October 2013** – Gama calls for 100 locomotives acquisition confined to Mitsui
- **14 October 2013** – Sharma writes to DG motivating against the tender
- **19 October 2013** – Sharma sends document on 100 locomotive tender to Gupta associate Ashu Chawla
- **21 October 2013** – Molefe withdraws Mitsui proposal
- **24 January 2014** – Molefe submits new confinement motivation to special board meeting, for 100 locomotives from CSR; 100 locomotives/CSR confinement approved
- **10 April 2014** – Mkwanazi (board chair) seeks ministerial approval to raise the tender price from R3.87bn to R4.84bn

meeting – almost identical to the previous one, except that the contract was to be confined to CSR, not Mitsui. Molefe's request to the Transnet board to confine the bid to CSR was still based on "urgency", despite the fact that CSR (unlike Mitsui) did not have a proven, off-the-shelf product, which would lead to significant delays in production and delivery. Transnet's board approved the uncontested award for 100 Electric Locomotives to CSR the same day, 24 January 2014.

On 10 April 2014, Mafika Mkwanazi, the then-Transnet board chairperson, directed a memorandum to Minister Malusi Gigaba, copied to Matona, in which he sought "section 54 approval" under the PFMA for the confinement to CSR. Just three months after a price of R3.87bn was approved by the board, the price had now risen to R4.84bn.

Once again, the spreadsheet "359, 100 and 95 Project Workings" shows that CSR was committed to pay a commission to Worlds Window subsidiary, JJ Trading: this time for R924m against a R4.4bn Transnet contract. As mentioned earlier, the spreadsheet indicates that payment of US$107.2m had been made against what was owing for both the "100 Project" and the "359 Project" by 6 January 2015.

Localisation

Meanwhile, the Department of Trade and Industry (dti) had been working on a large-scale localisation programme for the production of locomotives. It had reached a deal with GE to build a factory in South Africa, which would employ local labour and sub-contract with other South African industrial firms. This was in alignment with the New Growth Path developed by the Economic Development Department. These initiatives were largely thwarted.

Central to the process of the state awarding contracts is the Preferential Procurement Policy framework, through which the dti can prescribe the local content required in the procurement of designated sectors. For the procurement of locomotives, National Treasury issued an instruction note allowing dti to determine the minimum percentage of local content required when procuring rolling stock.

These local content expectations do not appear to have been enforced by Transnet. GE and Bombardier appear to have made significant strides in local investment in their supply chain for skills and manufacturing development. Despite assurances that CRRC would commit to local investment, including the signing of a MOU with Transnet to cooperate on setting up development and training facilities, none of this has appears to have come to fruition. Research by Trade and Industrial Policy Strategies (TIPS) indicated that, despite local-content obligations, by April 2017 not one of the CSR locomotives being procured for Transnet has been assembled in South Africa and that all have been manufactured in China. However, Transnet disputed this, saying that CSR manufactured the first 40 of the 359 locomotives in China, and were in the process of assembling the rest locally, with 58 already tested and accepted into operation.

Localisation is the fundamental consideration with regard to preferential procurement. It is clear that while there are stringent mechanisms in place in adjudicating the awarding of contracts to bidders who display an intended commitment to localisation, there are not equally robust mechanisms to ensure compliance.

Questions

1. What work did Tequesta carry out in return for the 21% commission earned on the CSR contract? Given that Tequesta's role was to advise CSR on BEE related matters, has CSR been able to fulfil its BEE requirements on the contract?
2. In accordance with the logic of undertaking a split tender, why were the CNR and CSR contracts not re-negotiated after the two merged?
3. Why did the 1064 locomotive tender balloon from R38.6bn to R54.5bn?
4. Why was Iqbal Sharma's stake in VLRS Properties not declared as a conflict of interest?
5. During his time on Transnet's Board, what contact did Iqbal Sharma have with the Guptas and Saliem Essa? How often did they meet, and why? Were any of these meetings related to Transnet business?
6. Why did the tender committee approve the confinement of the 100-locomotive contract to CSR? How was this confinement different to the proposed confinement to Mitsui, which had been rejected?
7. Transnet commissioned an investigation into the locomotives deals in 2017, which was conducted by Werksmans, but then the Board appears to have dismissed its findings, and appears not to have acted on them, why?
8. What local development commitments have CRRC actually demonstrated? Why was the largest portion of the locomotives contract given to a company that has displayed little to no commitment to investment in local manufacturing and skills development?

ZPMC AND THE SEVEN SHIP-TO-SHORE CRANES

June 2011	September 2011	Dec 2011– Mar 2012
ZPMC sign contract with JJ Trading, a Gupta associate company, to help land crane contract	ZPMC wins contract to supply Transnet with 7 ship-to-shore cranes. The contract includes a US$12m premium to pay JJ Trading	ZPMC makes payments of at least US$4.2m to JJ Trading. Most of it is sent to Gupta companies in UAE and South Africa

In late 2010, Transnet put out a tender for two ship-to-shore gantry cranes, which would be placed at Durban's container terminal and used to offload containers from ships. But in 2011, the tender then got changed to seven cranes and with a different set of specifications. Insiders who spoke to Amabhungane alleged this was done at the behest of certain bidders, who had gotten hold of confidential documents, such as port budgets, upcoming procurement plans and competing bidders' proposals. Moreover, industry experts have claimed that the high-spec cranes were not needed, and that in fact, outside of China, no-one used them, partly because they are double-left cranes which are difficult to operate, making the operation less efficient.

Brian Molefe, who was by now the Chief Executive of Transnet, claimed that the new specifications were necessary as Durban sometimes hosted very wide ships and the existing cranes could not reach the other side of the vessels. He argued that the new cranes would be able to do this, and to take two containers instead of one. But Amabhungane's crane expert said that most cranes can do the double container lifts, refuting Molefe's argument.

Meanwhile, a Chinese state-owned supplier, Shanghai Zhenhua Heavy Industries (ZPMC) signed an "agent agreement" with JJT Trading, registered in Dubai, in June 2011. JJT would "facilitate" and "handle" ZPMC's bid "and other relevant matters". It would communicate with Transnet on behalf of ZPMC and help the Chinese staff to understand South African laws, codes and customs. JJT would even send out invitation letters, make hotel reservations and arrange airport shuttles.

JJT's website claims that it is a scrap metal trader, and just why a Dubai scrap metal company would provide the listed services to an industrial-size crane supplier is a mystery.

JJT is a subsidiary of Worlds Window Index in India, one of the biggest scrap metal traders in India, and which itself has a close business relationship with the Guptas. This includes investing in Gupta mines in South Africa (which turned out to be a farce, as no shares where transferred to Worlds Window and the relevant mines are dormant), assisting with certain aspects of their trips to India, and, according to financial records contained in #Guptaleaks, appears to operate as a conduit for Gupta money laundering. A spreadsheet contained in #Guptaleaks shows there were 251 transactions between Worlds Window (including JJT) and Gupta companies between January 2010 and February 2013. This included payments in its Dubai accounts from China South Rail of over US$107m for helping them land Transnet locomotive contracts. The UK's largest metal recycler, EMR, owns a 49% in Worlds Window, announced in January 2018 that it has begun investigating the company after revelations of money-laundering by at Worlds Window surfaced in the #Guptaleaks.

In the contract, ZPMC made it clear that payment would only take place, if they won the contract. JJT certainly did appear to deliver: and in September 2011, ZPMC won the contract, and the cranes were delivered to Durban in 2012 and 2013.

But Transnet appears to have ended up buying the seven cranes at highly inflated prices. The price had been inflated from US$81m (R570m then) to US$92m (R650m then) in order to pay "commissions and fees" of US$12m (ie a fee to Guptas, via JJT Trading, for landing the contract for ZPMC) and Transnet appears to have paid this. A crane expert interviewed by Amabhungane advised that this would make them the most expensive cranes in the world that they knew of.

Thereafter, records contained in the #Guptaleaks show how ZPMC made transfers to JJ Trading in the UAE, of just under US$1m in December 2011, again in March 2012, May 2012, and then US$1.2m in January 2013. It is not clear where the remainder of the US$12m was paid. At one stage during this time instructions are sent from Gupta employees to JJT and Worlds Window on how to distribute a larger sum of US$3.3m to three G-owned companies in India. JJT promptly transfers funding to these companies.

Goyal denied he works with JJT, and that Worlds Window never received money from JJT, the Guptas or ZPMC.

ZPMC has also stated to AmaBhungane, "What you intend to report relevant to ZPMC is untrue. We have no business or other relationship with the Guptas, your president Jacob Zuma or his family." But declined to explain their relationship with JJT.

Questions

1. Were the bid specifications for the cranes changes because it was necessary or because it suited a particular potential supplier?
2. If the changes were necessary to achieve a certain efficiency rate, then can it be confirmed that this rate has now been achieved (the cranes have been in place for a number of years)?
3. Did JJT do the work it was required to do in terms of its contract with ZPMC, it was this just a means to pay The Guptas and Essa for illicitly securing the contract?
4. Why would JJT be the natural party to perform the required duties for ZPMC – they are a Dubai-based company focused on scrap metal and agricultural products, according to their website?
5. Why would ZPMC only pay JJT if the contracts were secured, when South Africa law says that public sectors contracts will be determined by an open, fair, competitive process, over which JJT should have had no control? Or was JJT hired to ensure that the contracts were fraudulently secured?
6. Why was Transnet prepared to pay the premium of US$12m on top of the contract so that JJT could get paid? Did Transnet not find it irregular, suspicious and against its policies?
7. Given the evidence from #Guptaleaks, is there any other way to explain the relationship between World Window Index companies, such as JJT and Century General Trading, and the Gupta companies, than that of money-laundering?

LIEBHERR AND THE 22 CRANES

July 2013	17 February 2014	May 2014
Liebherr pays $905,000 to Accurate investments	Liebherr lands 22 cranes contract, and pays $202,000 to Accurate	Liebherr pays $1.1m to Accurate

In a familiar pattern, the Guptas once again appear to have been central to help another international supplier to land crane contracts with Transnet.

In 2013, Transnet had put out a tender to supply 22 cranes. During that year, Amabhungane reported that they'd had a tip-off that the Guptas had signed a deal with Swiss-based Liebherr International AG to help them land the contract. The tip-off alleged that the deal involved referring Liebherr to 'local partners' of the Guptas, who in turn are alleged to have spoken to then-Public Enterprises Minister Malusi Gigaba.

According to #Guptaleaks, Liebherr began making payments to the Guptas during 2013, ahead of even landing the contract. In July 2013, Liebherr paid $905,000 to Accurate Investments in the UAE. Liebherr went on to win the tender. The same day they announced the news, 17 February 2014, they made another payment of $202,000 to Accurate. A further transfer of US$1.1m is made in May 2014. (Accurate Investements is the company that the Guptas purportedly used to launder the Free State funding for the Vrede farm, partly to pay for the infamous 2013 Wedding).

#Guptaleaks also reveal that Accurate investments then forwarded a large part of the funds on to Ashish and Amol Gupta in Texas, USA, to their company Brookfield Consultants. According to their website, Brookfield specialise in healthcare consulting. Perhaps as a cover, Ashish Gupta had written to Accurate Investments during 2014 claiming that a payment was due to him of US$10m, and that it should be paid into Brookfield's bank account at Standard Chartered, New York. However, this was done shortly after US$2m was transferred to the account.

In 2017, after the #Guptaleaks surfaced, the US Authorities announced they would start investigating the potential illicit flows of Gupta money into the US, notably sparked by the Brookfield case. The US Department of Justice and Federal Bureau of Investigation (FBI) are undertaking a joint investigation into potential violation of the US' Foreign Corruption Practices Act, of potential money laundering and according to Business Day are preparing to seize bank accounts and confiscate propertied linked to Gupta relatives living in the US. The UK is believed to be undertaking similar investigations and preparations for asset seizure.

Questions

1. Why did Liebherr feel it needed the Gupta's assistance to land the 22-crane contract?
2. Why did Liebherr make payments to Accurate Investments? What business did they believe Accurate was in, and what did they expect in return?

TRANSNET AND SAP

August 2015	September 2015	November 2015	December 2015	May 2016
SAP signs sales commission agreement with CAD House	SAP lands R100m software contract with Transnet	Transnet confines IT tender to SAP and requires 60% of the value to be spent on "supplier development"	SAP submits bid and commits itself to placing the entire 60% with GSS	Transnet's internal audit halts contract award process

SAP and CAD House

In August 2015, German software multinational SAP signed a sales commission agreement with CAD House, a 3D printer sales company linked to the Guptas. The terms of the contract state that if CAD House were the "effective cause" of SAP landing a Transnet contract worth R100-million or more, it would receive 10% of the contract value.

Transnet was already a SAP client at this point, and SAP considered the SOC a key "strategic customer" in 2014. It is unclear why they needed assistance in landing a contract with Transnet. It is also unclear why CAD House was considered for this software deal: the group sells 3D printers and has little marketing or sales capability, and was going through business rescue at the time. It had no previous relationship with SAP and no apparent expertise in the field. SAP South Africa's CFO Deena Pillay claimed that SAP engaged CAD House because of its "existing relationship [and] understanding the processes within Transnet".

The sales commission agreement contains a number of red flags. 10% is very high for a commission agreement, which would usually be around 2 or 3%. The timeline of deliverables attached to the agreement is very short – SAP wanted the deal signed within a month. CAD House was expected to secure a meeting with Transnet CFO Garry Pita within just three days to "position the financial benefit" of SAP's proposal. The timeline expected that Pita would have the required R100m - plus budget "reallocated for capital approval" only a week later. By 21 September 2015, a month after SAP signed the commission agreement, CAD House was expected to "fast-track and attempt to obtain contract signature" from Pita and Transnet's chief information officer – although it had leeway until the end of December still to qualify for the commission.

CAD House is owned by Duduzane Zuma and businesses within the Guptas' Sahara Group. It was further revealed through the #GuptaLeaks that confidential SAP-Transnet contracts were forwarded to the Guptas. amaBhungane identified R99.9m in SAP payments (including business with other SOCs) of which all but R5.7m flowed straight out of CAD House to Gupta controlled companies, including Sahara Systems, Cutting Edge, and Futureteq.

SAP and GSS

IIn November 2015 Transnet Freight Rail (TFR) issued a tender for an IT solution and confined the tender to one bidder – SAP. The tender was for a four-year deal to re-engineer all TFR's commercial business processes and retire all its old software in favour of an "end-to-end" system supplied by SAP.

A condition of the tender was that an unusually high 60% of the value was to be spent on "supplier development", normally aimed at black economic empowerment (BEE). The 60% condition originated from the board tender committee, which included Linda Mabaso, Stanley Shane, Richard Seleke and its chair, Iqbal Sharma.

When SAP submitted its bid in December, it committed itself to placing the entire 60% with just one company, Global Softech Solutions (GSS). At that time, GSS was half-owned by the Guptas' Sahara Systems and the remainder by an associate of theirs. GSS is led by Leela Yemineni who previously worked as a SAP consultant to Transnet and Mukul Teckchandani, a general manager at the Gupta's Sahara Systems.

In its bid documentation, SAP told Transnet that the price it had quoted (R800m) was pushed up by the "risk" of subcontracting so much to GSS, a company it had not used before. SAP suggested the choice lay with Transnet, saying: "Should Transnet have a preference of an additional specific partner to engage with, SAP will be happy to review their skills and their resource matrix."

The freight division forwarded a letter of award to the Transnet group executive to sign off in February 2016, but the tender was stalled and withdrawn on 1 June. The withdrawal was based on a technical concern raised by Transnet's internal auditors that CEO Siyabonga Gama had not signed off on the tender. Five days later, Gama signed approval for the tender to be re-issued — again confined to SAP. The tender was reissued with very tight deadlines — providing for 11 working days to receive the new bid, evaluate it and recommend the award — which suggests that the award was a foregone conclusion.

Transnet's technical team appeared puzzled by the choice of GSS. Minutes of a January 2016 meeting between Transnet and SAP representatives to discuss SAP's bid noted: "SAP to use GSS for local supplier development. Why only one entity? Where [is] GSS track record? Not provided."

The memo presented to the board committee setting out the case for confinement and award of the contract draws heavily on SAP's pre-existing promotional material. It appears that TFR had not analysed its existing business processes to define how best to re-engineer them, but entrusted this to SAP, who were trying to sell their own solution. The benefits of software integration were not compared with the risks of relying on a single supplier, and the stated annual savings of R18m in respect of retired software applications were not balanced against the cost of new software requirements set out by SAP. Commercial arguments were based on data and projections that appear to be highly speculative.

The risks the committee appears to have ignored are illustrated by the way in which SAP later refused to accept Transnet's terms and conditions, especially regarding penalties. Comments by Transnet's own negotiation team highlight concerns about the way in which SAP transferred risk to Transnet.

Had the deal gone through, GSS would have received roughly R500m.

Fallout

In the fallout from the media exposés, SAP launched an internal investigation and subsequently suspended three of its managers in South Africa. SAP also approached the US Department of Justice and the Securities Exchange Commission in a voluntary disclosure regarding the Gupta deals.

The probe confirmed that there were payments to Gupta-related entities, indications of misconduct relating to the management of Gupta-related third parties and irregularities in the adherence to SAP's compliance processes. The principal contact for GSS and CAD House was Gupta intermediary Santosh Choubey, an employee at Sahara.

SAP confirmed it had two contracts with Transnet:

- A December 2014 contract for the sale of software to Transnet, with GSS serving as a sales commission agent. SAP provided software and received revenue of around R65m and paid a commission to GSS of about R6.5m. Including VAT, SAP paid the third party R7.4m. This represents a 10% commission.
- A September 2015 contract for the sale of software to Transnet. CAD House acted as a sales commission agent. SAP provided software and received revenue of about R100m, and paid a commission to CAD House of R14.9m. Including VAT, SAP paid the third party about R17m. This represents a 14.9% commission.

Questions

1. Was SAP approached by CAD House or did CAD House approach SAP? Why was CAD House chosen to secure a software deal? How was the commission of 10% justified? How much money was paid to CAD House specifically for securing Transnet business? What was the existing relationship between Transnet and CAD House? What role did CAD House play in securing business between Transnet and SAP?
2. Why did the BADC insert the 60% supplier development precondition? Are there any other contracts that have a 60% SD precondition? Why was only one SD partner chosen? Why did SAP choose GSS, despite having no prior relationship with them? Did Transnet suggest GSS as the SD partner? What is the relationship between Transnet and GSS?
3. Why was the 2015 TFR tender confined to SAP? What was the motivation to re-engineer all TFR's commercial business processes and retire all its old software in favour of an "end-to-end" system?

NEOTEL AND HOMIX

April 2014	May 2014	August 2014	December 2014	Jan-Feb 2015	February 2015	March 2015
Neotel pays R35m to Homix for facilitating R300m IT equipment contract with Transnet	Neotel awarded R329m CCTV contract without competitive tender	Neotel preferred bidder for R1.8bn telecom service agreement with Transnet, but negotiations stall	Neotel agrees on 2% success fee with Homix. Transnet returns to negotiations table and awards contract to Neotel	Transnet delays paying Neotel, allegedly because Neotel has not paid Homix	Neotel and Homix sign a business consultancy agreement	Neotel awarded R505m extension of CCTV contract without competitive tender. Neotel subcontracts Techpro and money flows to TNA Media

National telecom company Neotel was awarded multi-million rand Transnet tenders between 2014 and 2015, after making payments to a shell company named Homix, from multi-million rand Transnet tenders. Homix, linked to the Gupta family and named in numerous money laundering allegations, appeared to have positioned itself as a facilitator of SOC contracts. Despite Homix being virtually untraceable, Neotel paid the company tens of millions of rands in "commissions" – ultimately more than R100-million – for assisting them to secure Transnet deals. Neotel management seems to have approved the Homix payments despite not knowing "who this entity is", according to their auditors.

In April 2014, Homix offered to land contracts for Neotel with Transnet in return for a 10% fee. Neotel subsequently secured an IT equipment sales contract worth over R300m with Transnet, and paid Homix R35m.

In May 2014, Neotel was awarded a large contract to install CCTV cameras at ports, worth R329-million, without a competitive tender.

In August 2014, Neotel was the preferred bidder for a master service agreement to provide Transnet with a suite of telecom services. Contract negotiations seem to have stalled until Neotel reached out to Homix again in December 2014, following a meeting between Neotel executive Sunil Joshi and Transnet CFO Anoj Singh. A "success fee" was agreed between Neotel and Homix – 2% of the R1.8-billion contract value, R36-million, plus R25-million later. Transnet subsequently returned to the negotiating table and Neotel was awarded the contract.

In February 2015, Neotel and Homix signed a "business consultancy agreement" to give effect to the success fee agreed in 2014: R36 million, or 2% of the contract. Leading up to this, Transnet had failed to pay Neotel for its January and February services – on the "express instruction" of Anoj Singh, Neotel staff told journalists, "precisely" because Neotel had not yet paid Homix.

One day after the business consultancy agreement was signed, Transnet management recommended extending the CCTV contract with Neotel. Transnet notified Neotel that it had been awarded the extension, worth another R505-million over three years, at the end of March 2015. Neotel then subcontracted a CCTV specialist company, Technology and Procurement Holdings (Techpro). 10% of this second contract (R17.1-million) seems to have been laundered through Techpro and Regiments, another Gupta-linked company discussed in this book, before being channelled to the Gupta-owned TNA Media.

After Deloitte, Neotel's auditors, alerted the Neotel board to the questionable payments to Homix, Neotel ordered an investigation which led to the resignation of its chief executive and financial officer. The matter was also reported to Independent Regulatory Board for Auditors (IRBA). In May 2015, the Reserve Bank froze Homix's transfers to Hong Kong on suspicions of money laundering.

Questions

1. Why did Transnet and Neotel need an obscure shell company to broker a contract between the two large companies? What was the role of Homix in brokering: the April 2014 R300-million equipment deal and the December 2014 master agreement deal?
2. Why did negotiations between Transnet and Neotel on the master agreement stall in December 2014? How was this subsequently resolved? What was discussed at the meeting meeting between Neotel's Sunil Joshi and Anoj Singh?
3. Why did Transnet management recommend confinement for the CCTV contract and its extension?
4. What are the results of the investigation into Transnet suppliers, announced by Transnet CEO Gama in November 2017, concerning Neotel?

REGIMENTS/TRILLIAN

Transnet seems to have paid excessive fees for services that could have been performed internally, to two companies, Regiments Capital and Trillian. The total paid to the two companies appears to be in excess of R600-million.

Transnet had, at one point, one of the largest and most sophisticated corporate treasury departments in the country. This unit, which managed the risk and cost of Transnet's multibillion-rand borrowing portfolio, has been side-lined in favour of Regiments, and subsequently Trillian, at great cost.

Who are Regiments and Trillian?

Regiments, started by six Johannesburg-based entrepreneurs in 2004, is a fund manager and investment advisor specialising in public sector infrastructure programmes and projects.

In 2014 the Guptas had tried to buy Regiments, but Eric Wood's partners at Regiments had refused the offer. The financial advisory firm Trillian Capital Partners was acquired in 2015 by Gupta partner Salim Essa. In March 2016, Wood officially left Regiments to join Trillan as CEO, intending to take the Transnet business with him. An agreement that would specify which areas of business Wood could take with him was never finalised. Yet, in April, the Board approved the cession of contract work from Regiments to Trillian, although this appears not to have been agreed with Regiments.

The details of Wood's transfer to Trillian are entangled in controversy. Regiments's remaining partners have claimed that both Transnet and Eskom paid Trillian for work their company had done. In some cases, Transnet even paid Trillian after already paying Regiments. Regiments's directors are now locked in a legal battle with Wood, who remains a 32% shareholder in the company; they want the court to declare him a delinquent director. Wood has a similar application against his former partners. Regiments's directors accuse Wood of diverting SOC business away from them, leading to material losses from losing business from Transnet, among others, worth more than R40-million.

Numerous media reports have linked both Regiments and Trillian to the Gupta family and state capture. Former public protector Thuli Madonsela named Trillian in her State Capture report in 2016. Former Trillian Chair Tokyo Sexwale asked Advocate Geoff Budlender to investigate the controversies after a whistleblower's account of the goings-on at Trillian, including that Trillian executives had been aware that Nhlanhla Nene would be fired as finance minister months ahead of time. Budlender's report revealed concerning links to corruption at the company, and confirmed that the company was intrinsically linked to the Gupta family.

Trillian CEO Eric Wood is named in court papers as a key figure in helping to process kickbacks for Gupta entities. In a 2016 affidavit, Regiments director Nyhonya submitted evidence he says was discovered after Wood left that shows that Wood "knowingly allowed Regiments to be used as a conduit for an entirely fictitious set of transactions" to launder money.

In July 2017, Essa sold his shares in Trillian Capital Partners to Trillian CEO Eric Wood. The acquisition brought Wood's share to 85% with the rest of the shares owned by management and staff.

Transnet director and board member Stanley Shane, who was the chairperson of the Board Acquisitions and Disposals Committee, was actively involved in Trillian management according to whistle-blower Bianca Goodson, representing a clear conflict of interest.

LOCOMOTIVES

2012	December 2012	November 2013	February 2014	April 2014
Transnet announces 1064 locomotives tender	McKinsey-led consortium wins contract to provide financial advisory services of R35.2m for the project. McKinsey replaces their empowerment associates, Letsema, with Regiments, when Transnet claims a conflict of interest.	Transnet CFO Anoj Singh confirms that the main scope of the contract is now allocated to Regiments.	The contract value is increased to R41.2m of which a R21m "fixed price" would now go to Regiments	Singh sends Molefe a memo motivating for a revision in the fee allocation to Regiments, to add an additional R78.4m for a total of R99.5m

Locomotives

In 2012, when Transnet issued the 1064-locomotives tender, the rail company appointed a consortium led by consultants McKinsey to advise on the deal structure and how to fund it. Financial advisory services were included in the mandate and payment was capped at R35.2-million. Months after the contract was awarded, Transnet invoked unexplained conflict-of-interest concerns relating to first Letsema, then to Nedbank, two of McKinsey's partners. To resolve this conflict of interest, Transnet proposed the relatively unknown Regiments as a substitute.

Regiments was subsequently given an estimated R10-million share of the contract. The scope and cost of this contract ballooned dramatically over the next three years, driven by Transnet CFO Anoj Singh and approved by Transnet CEO Brian Molefe.

The nature of the relationship between Regiments and McKinsey is disputed. Both Transnet and Regiments claim that Regiments was selected and subcontracted by McKinsey as a supplier development partner. McKinsey claimed that Regiments did not begin its relationship with Transnet through McKinsey, and that neither Regiments nor Trillian were supplier development partners to McKinsey.

In November 2013 Singh confirmed in writing that the main scope of the engagement was now allocated to Regiments. McKinsey, originally the consortium leader, remained "only responsible for the business case and limited technical optimisation aspects".

In February 2014 the contract scope for Regiments was amended to reflect the new arrangement. Singh, signing on behalf of Transnet, also increased the contract value by R6-million, bringing the total contract to R41.2-million, of which a R21-million "fixed price" would now go to Regiments.

In April 2014 Singh sent a memo to Molefe in which he now motivated for a post-facto revision in the fee allocation to Regiments, to add an additional R78.4-million. This fee was based on Regiments's own calculation of the billions its advice had supposedly saved Transnet.

The Regiments strategy for the locomotive purchase was to split the locomotive order between four bidders. Although this would make each locomotive more expensive, the full complement of 1 064 could be delivered more quickly, which would supposedly save Transnet in escalation and hedging costs.

Singh also noted that Regiments had been brought in under a fixed remuneration model accepted by McKinsey, but preferred a "success fee", and the contract was consequently amended again. This amendment to the value of the contract increased Regiments's take from R21-million to R99.5-million.

REPURPOSING TREASURY

2015 — Regiments appointed transaction advisors on China Development Bank loan

April 2015 — Ramosebudi proposes contract extension for Regiments, raising fee to R166m

November 2015 — Transnet announces R12bn club loan for purchase of 1064 locomotives, pays Regiments and Trillian (who had not done the work) R93m for arranging it

December 2015 — Ramosebudi proposes outsourcing interest rate management to Regiments

Repurposing treasury

In 2015 Regiments was, without any competitive process, appointed as transaction to be lead negotiator OR ELSE to lead negotiations on from the China Development Bank. The Chinese state-owned bank was proposing to put up the cash to fund Transnet's purchase of locomotives from the two Chinese bidders, China North Rail and China South Rail. The bank's initial terms and the fees proposed by Regiments appear to have been very expensive – and outsourcing such a negotiation process was contrary to Transnet policy and practice, given that it had an experienced internal treasury department.

Transnet's treasury department is said to have pushed back, but in early 2015 the then group treasurer, Mathane Makgatho, resigned unexpectedly. The media reported that she told her staff: "I arrived here with integrity, and I will leave with my integrity intact". In March 2015 Phetolo Ramosebudi, the previous Treasurer at SAA, and whose brother worked at Regiments and then Trillian alongside Eric Wood, was appointed as her replacement. On April 28 2015, he compiled a proposal purporting to approve a "contract extension" for Regiments's support to Transnet on the 1 064-locomotive transaction, raising its fee from R99.5-million by R166-million to total R265.5-million.

The document credits Regiments with a series of supposedly innovative adjustments to the Chinese loan and estimates the financial benefits to Transnet from the negotiating strategy "pioneered by Regiments" to be in excess of R2.7-billion. This transaction was supported by Singh in one of his last acts as CFO before he joined Molefe at Eskom. Transnet's external auditors later queried the R166-million payment, pointing out that Transnet's treasury was well equipped to handle this transaction.

Ramosebudi also proposed appointing JP Morgan, the American bank, to manage the foreign currency hedging on the Chinese loan, which was in dollars. He claimed this would also benefit Regiments as the empowerment partner of JP Morgan. But JP Morgan and Regiments have denied any such relationship. According to AmaBhungane, JP Morgan was asked to pay Regiments what appears to have been a form of commission ment in respect of JP Morgan's work on the Chinese loan. Marc Hussey, head of JP Morgan in South Africa, is said to have refused.

In November 2015, Transnet announced it had signed a R12-billion "club loan" with Absa, Nedbank, Bank of China, Futuregrowth Asset Managers and Old Mutual Specialised Finance, in order to purchase the 1064 locomotives.

Transnet paid Trillian R93mn for arranging this club loan, supposedly as a supplier development partner of Regiments, who were the funding advisory for the 1064 locomotive purchase. However, it seems that Trillian had not actually done the work, had no contract with Transnet, and it had never been a supplier development partner to Regiments. It also appears that Regiments, not Trillian, did the work and was paid for it – meaning Transnet may have paid double.

It is unclear why either Trillian or Regiments (or both) were paid for arranging the loan, as Transnet's own corporate treasury, one of the largest in the country, was accustomed to doing this type of work itself.

A further loan of R6.99bn loan was arranged, mostly from Investec, to pay for the Bombardier locomotives. Transnet paid a fee of R73m to Regiments for arranging these loans.

At the same time, Regiments began organising hedges on these loans, but this would require an official mandate. On 3 December 2015 Ramosebudi sent a memo to Transnet's acting chief financial officer, Garry Pita, calling for unusual changes in the company's securities trading policy. The memo made three key recommendations. First, to hedge the exposure from a float to a fixed basis on the amount of R12bn. Second, interest rate risk management, rather than Transnet handling it in-house, as had been the normal practice, would be outsourced to Regiments. Third, Regiments' consulting fees for this would be paid in the rates on the interest rate swaps -- essentially hiding them from scrutiny. The motivation given was that inflation was expected to be volatile in the period ahead, causing the interest rates to spike, so it was best to hedge at a fixed rate now – even though the immediate results was that the effective average interest rate would rise from around 9.2% to 11.8%.

The execution of the swaps then involved using Nedbank and the one of Transnet's pension funds, and is covered in the Pension Fund section below.

PENSION FUND

Date	Event
September 2015	Regiments appointed as asset manager of TSDBF
October 2015	Regiments starts organising interest rate swaps on Transnet loans, where the risk is tran
December 2015	Regiments concludes the first tranche of interest rate swaps, earning R161.8m, and which involves passing risk to the Transnet Second Defined Pension Fund. Transferred to the TSDBF
Mar - April 2016	Trillian takes over arranging the interest rates swaps, and Regiments siphons R228.9m from the TSDBF to pay fees to Trillian
July 2016	the TSDBF terminate their contract with Regiments and sue Regiments and Trillian for the R228.9m in fees
July 2017	Stanley Shane resigns from the Board and as chair of the TSDPF

Pension Fund

The Transnet Second Defined Benefit Fund entered into a contract with Regiments to manage its assets in September 2015, which was later cancelled in September 2016. Regiments' contract gave it "powers, without prior approval or consent from the fun, to deal with the portfolio in whatever manner it deemed necessary or appropriate in order to achieve the fund's investment objectives", according to court papers filed by TSDBF. It also came with a generous management fee that would amount to over R300m per year. On top of this, Regiments paid itself a R4m outperformance bonus after its first three months of managing the fund – by incorrectly measuring its own performance. It paid itself the bonus without authorisation from the fund, which was investigating the invoice at the time.

Meanwhile, Regiments became involved in arranging interest rate swaps on some of Transnet's loans. This was organised from the Transnet Treasury side, where Regiments had been gaining control. Ten interest rate swaps were carried out in all. The first three took place on 4 December 2015 – the very next day after Ramosebudi's memo was submitted. Nedbank was used as the counterparty, and Regiments received R161.5m in fees, and Nedbank R28.2m. A further three on 7 March 2016; Regiments earned R335m and Nedbank R46.1m. On both these tranches, further back-to-back swaps were organised from Nedbank to the Benefit Fund, essentially now passing the risk from Transnet to Nedbank and finally to the Benefit Fund. Regiments, in its role as asset manager of the Benefit Fund, approved the transactions from the Fund's side. Firstly, this represented a serious conflict of interest from Regiments' side, as they could not be looking after the Funds' best interests if they were using it to benefit their work on Transnet's loans for the locomotives. Secondly, it was inappropriate, if not illegal, to manage the Benefit Fund in this way, replacing their safe low-risk investments with higher risk ones.

At this point, around March 2016, Trillian took over from Regiments in managing various functions in Transnet's Treasury, including arranging further interest rate swaps. It should also be noted that the chair of the Benefit Fund at the time was Stanley Shane, who was also on the Transnet board. According to whistle-blowers at Trillian, he was also actively involved in operations and management at Trillian at the time, alongside his partners in a company called Integrated Capital Management.

On 30 March 2016, a single interest rate swap was arranged, and on 8 April 2016, a further three. This time, however, the swaps were arranged directly with the Benefit Fund. Regiments continued to approve the transactions from the Benefit Fund's side, and also that fees be drawn from the Benefit fund for the amounts of R284.6m and R184m respectively. Regiments transferred most of this to Trillian, and sent a further R50m to Albatime, a company that assists with arranging contracts with state-owned companies, owned by Kuben Moodley. Certain payments made to Albatime and Trillian were made to the same Bank of Baroda account – the same account flagged by former public protector Thuli Madonsela as having been used to raise funds for Gupta company Tegeta to buy Optimum.

The Benefit Fund's financial statements show that in all, Regiments moved 14% of the pension's funds out of bonds and into more risky derivatives. Not only was there no defensible reason for this, but the volume of derivatives that the Benefit Fund ended up holding was a violation of pensions regulations aimed at protecting pensioners from excessive risk. There was no legitimate reason for the Pension Fund to pay these fees, regardless of whether these transactions were legitimate or not. The Benefit Fund terminated Regiments' contract later in 2016 and is currently suing Regiments, Trillian and Albatime for the misappropriated funds. Old Mutual has since taken over the management of the fund, and has reversed the swap transactions.

Regiments are suing to be re-instated as the fund's managers and to reclaim potential lost earnings. Official statements from Transnet claim that Pita and Transnet were unaware of the payments, but this contradicts a a letter produced by Garry Pita, Transnet's CFO at the time, authorising the payments.

Property fund

In July 2017 Linda Mabaso, chairperson of the Transnet board, called a special board meeting where it was resolved to pay R41-million to Trillian for a proposal to sell off various properties — including the Carlton Centre in Johannesburg's city centre — to enhance Transnet's balance sheet.

Non-core estate assets worth R14-billion would be sold to a fund created by Trillian and Fuel Property Group (FPG), in which former Transnet board member and former Oakbay director Mark Pamensky was a director. The properties would be sold at market value and developed, with returns flowing back to Transnet. Although the proposal was never implemented, Trillian was paid R41-million for it.

Media reports alleged that Mark Pamensky drew up the scheme while privy to inside information as chairperson of Eskom's investment and finance sub-committee. The intention was to offer the same service to other parastatals, including Eskom.

By November 2016, Transnet terminated the contract. On 26 April 2017, Transnet then posted a tender for "the development and implementation of a holistic and sustainable non core property solution for Transnet that achieves improved profitability". The tender closed in mid-June but the results are so far unknown.

Questions

1. Did Transnet pay the R93-million to Trillian, Regiments or to both companies? Did either company have a contract with Transnet for this work?
2. Why was Regiments needed to arrange the club loan and not Transnet's own treasury? Were the fees that were paid to Regiments and Trillian justified?
3. Why was Regiments appointed as transaction adviser without a competitive process?
4. Why did group treasurer Mathane Makgatho resign?
5. Why were changes made to Transnet's securities trading policy, ceding normal treasury functions to Regiments? What was the response of Transnet's treasury?
6. Why were Regiments's consulting fees folded into interest rates?
7. Why was Stanley Shane's conflict of interest not declared? To what extent was Shane involved in the contract with Trillian?
8. Was Regiments allowed to work on the interest rate swaps without a mandate, and thus requiring a memo to be rushed through by Transnet the day before it was ready to conclude the first tranche?
9. Why did Transnet authorise the interest rate swaps on its floating rate loans, which did not seem in its best interest?
10. Why was Regiments allowed so much control of the Benefit Fund?

TRANSNET-REF-BUNDLE-00031

T-SYSTEMS AND ZESTILOR

2009
T-Systems buys into arivia.com and inherits five-year ICT contract with Transnet

2014
Transnet contract up for extension
- T-Systems subcontracts Sechaba Computer Services for Transnet work
- T-Systems cedes Transnet contract to Zestilor

2015
New IT contracts goes out to tender

February 2017
BADC, chaired by Stanley Shane, awards T-Systems the new IT contract, defying Transnet management recommendations

November 2017
Siyabonga Gama files court application to have BADC decision overturned

T-Systems South Africa (TSSA), the local branch of German ICT company T-Systems, bought into local IT company arivia.com in 2009. TSSA inherited a five-year contract (worth R1.7 bn) to supply Transnet with ICT services. Transnet started to prepare a tender process near the end of 2013, as T-Systems' contract was set to expire at the end of the following year. But in January 2014, T-Systems was awarded a two-year extension, which would start in 2015, a decision that earned the company nearly R1.3bn in additional revenue.

Media sources within Transnet allege that the Transnet board gave those who had worked on the tender no reasons for extending T-Systems' contract, and that the decision "bypassed every process that exists in Transnet". They also claim that Transnet's decision to extend the tender in 2014 came as a result of orders from Transnet CFO Anoj Singh.

In 2014 TSSA ceded a rental contract to a company named Zestilor. The ceding of this contract was approved and signed by Transnet CEO Brian Molefe in December. Zestilor was owned at the time by Zeenat Osmany, the wife of Salim Essa. Media sources within Transnet allege that Essa would attend meetings during 2013 and 2014 as a negotiator for TSSA, but TSSA have denied that there was an agreement in place for Essa to act as an agent to secure deals.

TSSA claims to have been originally introduced to Zestilor through its work for Eskom in 2011. TSSA has stated that it ceded some of the ICT services it performed for Eskom to Zestlior, and due to its inheritance of ICT rental work from Arivia.com which was not a core part of its work, it also ceded the contract it had with Transnet to Zestilor.

Correspondence in the #Guptaleaks then indicates that Zestilor was taken over by the Gupta's Sahara Computers during the first half of 2015, and include details of the secondment of Sahara staff, new organisational structures and new banking arrangements. When Transnet's business support manager, Karen Ferreira, delayed payments to Zestilor because she had questions about why they had been allowed to take over the contract, a Gupta employee, Stephan Nel wrote to Siyabonga Gama on Zestilor's behalf to make a complaint about her.

In 2011, TSSA began a working relationship with another development partner, Sechaba Computer Services, on the basis of what is described as "body-shopping" contracts which essentially aims to contract services for short-term work. In 2014, when TSSA's Transnet contract was up for extension, TSSA subcontracted Sechaba for some of its Transnet work. The GuptaLeaks emails have revealed that Zestilor was invoicing a R200 000 a month management fee to Sechaba, for work done for Transnet. The emails also contain statements that Zestilor owned Sechaba Computer services and that the company structures were meant to reflect that arrangement.

In November 2015, Transnet issued a request for proposals inviting bids for a contract to provide IT data services for a period of five years with an option to renew for a further two years. T-Systems was bidding for the new contract, which it was awarded in February 2017.

On November 2017 Siyabonga Gama filed an affidavit in an application at the Pretoria high court to have the board's decision to award T-systems the data services contract set aside. The affidavit claims that the awarding of the new data services tender to T-Systems went against recommendations by executive management to award the contract to another company called Gijima which had earned higher points in the bidding process. Gama claims that the Acquisitions and Disposals sub-committee, at that time headed up by Stanley Shane, went against the recommendation and awarded T-Systems the contract.

Solly Tshitangano, the chief director of governance, monitoring and compliance at National Treasury warned Gama in a letter dated 18 July that Transnet's board had an obligation to award the tender to the preferred bidder, Gijima.

Treasury and Transnet's own legal team have both concluded that the tender should be awarded to Gijima following two separate probes, but the matter is now being heard in the high court in Johannesburg after Transnet sought to obtain a declaratory order.

T-Systems cancelled the Zestilor contract on 17 August 2017.

Questions

1. Why was the T-Systems contract extended in 2014? What role did Anoj Singh play in this decision?
2. Was Zestilor properly vetted by Transnet when it approved the ceding of its contract with T-Systems to Zestilor?
3. For what reasons did the BADC award the 2017 IT contract to T-Systems contrary to recommendations from management and Treasury? What role was played by Stanley Shane in this decision?
4. What role did Salim Essa play in negotiations between T-Systems, Zestilor and Transnet?
5. What is the relationship between Zestilor, Sechaba, Sahara Computers and T-Systems?
6.

SOFTWARE AG

October 2014	March 2014	May 2015	2015	September 2015
SAP's Kandaswami sends GSS details on Software AG deals	Sensational Signs kickback agreement drafted	"Power Up" agreement between Software AG and GSS signed	Transnet begins pilot project with Software AG and GSS	Sahara acquires GSS

Leaked emails and documents show a second German company, Software AG, entered into an apparent kickback agreement with a Gupta-controlled company in an attempt to secure a R180-million contract from Transnet Freight Rail (TFR). Evidence shows that Software AG agreed to pay Global Softech Solutions (GSS) up to 35% of the value of the contracts it secured with Transnet, the department of correctional services, Mangaung municipality, Sasol and MultiChoice.

Lawrence Kandaswami, the now-suspended managing director of SAP South Africa, first introduced Software AG to GSS in October in 2014. In the months to follow, GSS became Software AG's chosen partner on a number of potentially lucrative opportunities. Although Sahara Systems would only formally take up its shareholding in GSS by September 2015, minutes of monthly meetings show that by March that year it was already in control of GSS.

On 4 March 2015, Santosh Choubey sent GSS's new budget to Essa and Tony Gupta. It included four Software AG deals with potential revenue for GSS of R56.9-million by December 2015 and another R54-million by December 2016. The largest was a R180-million project for Transnet Freight Rail. The commission agreement that Software AG would eventually sign with GSS allowed GSS to claim "referral fees" and "sales assist fees" for helping Software AG identify leads and helping Software AG close these deals.

Also exposed in the leaked documents was an apparent plan for secondary kickbacks to a company called Sensational Signs, as a 'finder's fee'. Sensational Signs' sole director is Mohamed Mobeen Jeena, who has links to Software AG's sales director, Riaaz Jeena. This arrangement was set up in what appears to be an attempt to ensure that Jeena would benefit personally from securing contracts for Software AG, beyond his mandate.

This resulted in Transnet entering a pilot project with Software AG and GSS in 2015. The draft agreement between GSS and Transnet found in the #GuptaLeaks indicates that GSS would receive between 49.5% and 50% of the revenue generated for Transnet: a potential R263-million in total. Software AG would receive a royalty for providing the software.

"Transnet received an unsolicited proposal from Software AG and Global [Softech] Solutions for the provision of a demurrage system..." Transnet spokesperson Viwe Tlaleane confirmed. Transnet bills clients for demurrage fees when a scheduled rail trip cannot go ahead because of delays on the client's side. The proposed system would help Transnet to increase the amounts it collects. "At the time, [Transnet] did not have a structured way of determining demurrage fees, and saw the value in having a system that would enable it to ensure effective and optimal use of its rolling stock," Tlaleane said.

Although Transnet said the pilot project was ongoing, Software AG's Cassoojee denied any knowledge of it: "Software AG has not generated revenue from any of the references made in your request ... apart from one Private Sector transaction which we cannot disclose... All other Proposals have subsequently expired and we have not entered into any additional agreements with GSS since December 2015."

Questions

1. Is the demurrage pilot project with GSS and Software AG ongoing?
2. Why has Software AG denied knowledge of the project?
3. What are the details of the project?
4. Was GSS properly vetted as a service provider?
5. How much money was paid by Transnet to Software AG, and by Software AG to GSS?
6. What is the procedure for responding to unsolicited proposals of this sort?
7. Why did Transnet not put out a tender for the demurrage project?

STILL IN THE SHADOWS

There are additional stories that arguably warrant further investigation.

1. More locos – CNR

Having awarded a contract to China North Rail (CNR) in March 2014 to deliver 232 diesel locomotives, Transnet then decided that they should be built in Durban, rather than in Pretoria. CNR hired an unknown company, Business Expansion Structured Products (BEX), to negotiate the relocation costs with Transnet. BEX's sole director was listed as Taufique Hasware, who has been a director of other shell companies registered to Salim Essa, such as Forsure and Foretime. While CNR apparently originally estimated the relocation costs at R9m, BEX negotiated for a significantly R647m, receiving an R65.9m fee for itself. CNR's local minority partners objected to this, ultimately reporting it to the police. CNR's auditors, KPMG, have reported it to the auditing authoritiees, whilst the Werksmann's report into the locomotives deals also highlighted this as suspicious.

2. Nkonki

Nkonki, a local auditing firm, were revealed by Amabhungane as having effectively come under the control of Salim Essa in recent years, following Essa's funding of a management buyout where significant control was ceded to him. Were Nkonki targeted because of the significant share of work they did for state-owned entities? And how did this affect Nkonki's work for Transnet? Nkonki had been playing a significant role in internal audit at Transnet, including recent years where many irregularities should have been surfaced. Outside of Transnet, there are also questions being explore over how Nkonki were brought in by Eskom in a non-standard way to work on an illegal 'risk-based' contract alongside PwC in 2017; they were also specifically targeted as the company that must handle a sensitive investigation into Eskom Acting CEO, Matshela Koko; and were also used by Essa to provide an 'independent opinion' to the South African Reserve Bank when he required clearance to buy a bank, which the SARB evidently did not find credible.

3. Cutting Edge

Cutting Edge Commerce, is a small consultancy that provides IT services and consulting services, that has been active at Transnet, but which is owned by the Guptas (51% owned by the Sahara). Cutting Edge have apparently taken over a floor at Transnet, having been hired indirectly via Trillian "on the grounds that they can secure cost savings for Transnet". The nature of their involvement deserves special attention, given their Gupta connection, and their likely access to key corporate information through their data systems work. The #Guptaleaks suggests that they have been involved in dubious financial transactions, such as transferring funds to Homix, a shell-company used for by the Gupta network for money-laundering, between October 2014 to February 2015. The bribery scandal surrounding SAP and SOCs has revealed that payments were made by SAP to CAD House and then on to Cutting Edge, Futureteq and Sahara Systems. Cutting Edge have also been based at Eskom's headquarters, including as part of a McKinsey team focused on procurement.

4. External Audits

As with other SOCs, attention needs to be paid as to why so many of the substantial irregularities that are now coming to light did not show up as findings in Transnet's annual reports, or even trigger qualified audits. The fact that those who are legally responsible, and/or those with well-founded suspicions of on-goings at the SOC, failed to trigger this and other important mechanisms that are meant to prevent the abuse of resources or executive power indicates either an alarming failure or extensive usurpation of Transnet's governance. In addition, the role that internal audit, which was outsourced, needs to be understood, as they have contributed to the suppression of findings.

5. The Dubai meetings – Gama

#Guptaleaks shows that between December 2015 and January 2016, the Guptas made travel arrangements for a number of key public servants to go to Dubai, stay in the Oberoi Hotel, be chauffeured around, and all during a time when the Guptas and their business network were based there. The record of officials includes Transnet CEO Siyabonga Gama, with bookings for 22-24 January 2016. Why was he there at the same time as: Atul Gupta, Ajay Gupta, Rajesh Gupta, Salim Essa, Ronica Ragavan, Ashu Chawla and Duduzane Zuma, and shortly after: Des van Rooyen, Anoj Sign, Ayanda Dlodlo, Tom Moyane, Gift Tshepiso Magashule, Thato Magashule, Kim Davids, Mantsha, and Matshela Koko?

6. The General Freight Business

McKinsey, together with Regiments, also landed a contract with Transnet “for the provision of professional services to support Transnet increasing General Freight Business with breakthrough to reach the planned volume targets for the financial year 2015/16 and 2016/17”. However, McKinsey apparently withdrew in March 2016, and the contract was terminated in November 2016, by which time McKinsey had been paid R187m. What happened on the project? Did the failure of the project have anything to do with the fact that McKinsey substituted Trillian for Regiments as its partner midway, citing “political exposure and under-delivery by Regiments”, but then weeks later also had to fire Trillian as they failed a due diligence?

RECOMMENDATIONS

This work is part of a larger academic initiative – the State Capacity Research Project - convened by Prof Mark Swilling of the University of Stellenbosch's Centre for Complex Systems in Transition, together with researchers at the University of Cape Town's Development Policy Research Unit and Graduate School of Business, the University of Witwatersrand's Public Affairs Research Institute and Department of Economics, and the University of Johannesburg, as well as independent journalists and key informants.

We would like to acknowledge the work of researchers and journalists on which this booklet has drawn.

Design by: Design for Development (www.d4d.co.za)
Printing by: Hansa Print