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**ACQUISITION OF 1064 LOCOMOTIVES FOR TRANSNET'S GENERAL  
FREIGHT BUSINESS ("TRANSACTION"): INQUIRY  
REPORT**

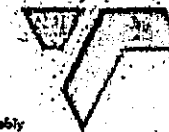
**VOLUME VII**

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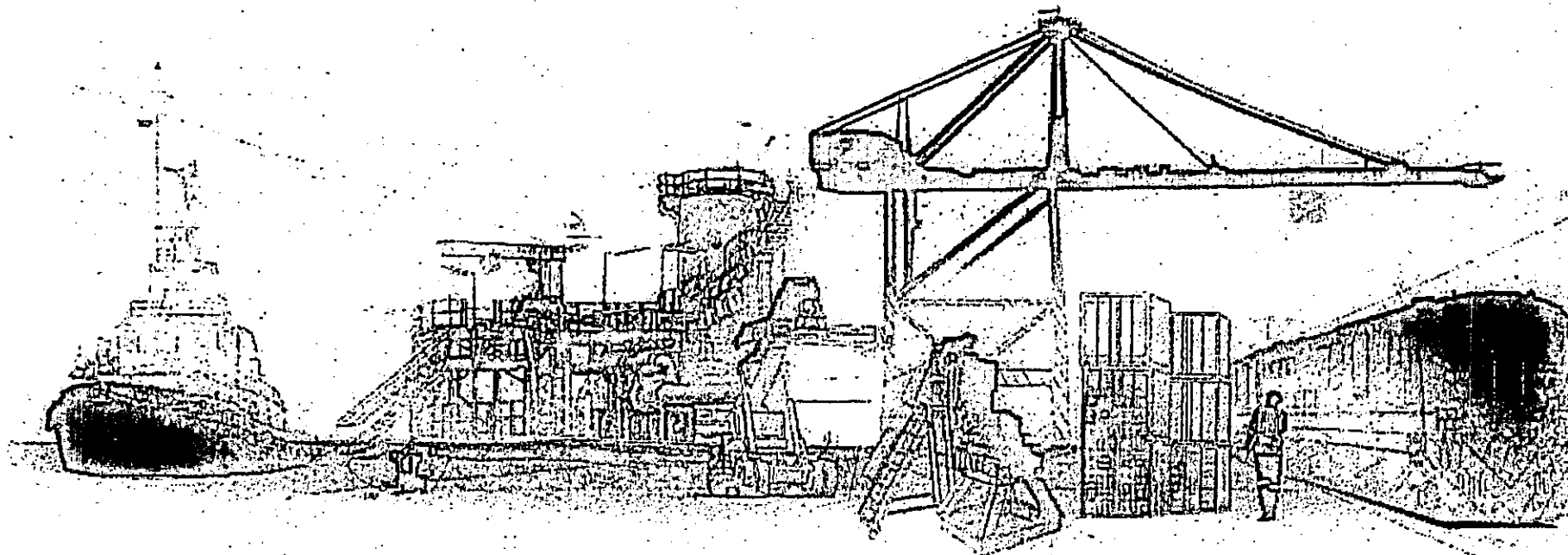
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enquiries@werksmans.com  
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Transnet  
1064 Locomotive Contract

Appendix 62

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# Cash flows – Inception to date



Summary	Mar-14	Mar-15	Mar-16	Mar-17	Apr-17	May-17	Jun-17	Jul-17	
Cash Flow									
BT	-	2 372 271 935	1 170 798 606	226 267 683	-	339 121	-	8 227	3 769 685 571
CNR	994 700 475	20 119 484	625 952 176	211 415 441	-	2 402 370	-	383 821	1 854 973 767
CSR	1 812 232 000	3 647 501 031	69 447 550	2 496 340 950	145 117 187	20 010 030	518 017 132	304 971 225	9 013 637 106
GE	842 869 345	24 295 371	486 209 207	2 989 618 555	513 566 384	-	1 842 312	536 464 497	5 394 865 672
	<b>3 649 801 820</b>	<b>6 064 187 820</b>	<b>2 352 407 540</b>	<b>5 923 642 630</b>	<b>658 683 571</b>	<b>22 751 521</b>	<b>519 859 445</b>	<b>841 827 770</b>	<b>20 033 162 117</b>

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# Contracted Delivery Schedule



	BT 240 Class 23E		CSR 359 Class 22E		GE 233 Class 44D		CNR 232 Class 45D	
	Contracted	Actual	Contracted	Actual	Contracted	Actual	Contracted	Actual
Year End - 25 March 2016	-	-	37	-	34	14	20	-
Year End - 25 March 2017	131	-	142	80	126	103	77	-
Year End - 25 March 2018	109	-	144	30	73	30	135	-
Year End - 25 March 2019			36		-			
	240	-	359	110	233	147	232	-

	Contracted	Actual	Contracted	Actual	Contracted	Actual	Contracted	Actual
25 July 2017 Inception to Date	179	-	227	110	208	147	144	-

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Thank You

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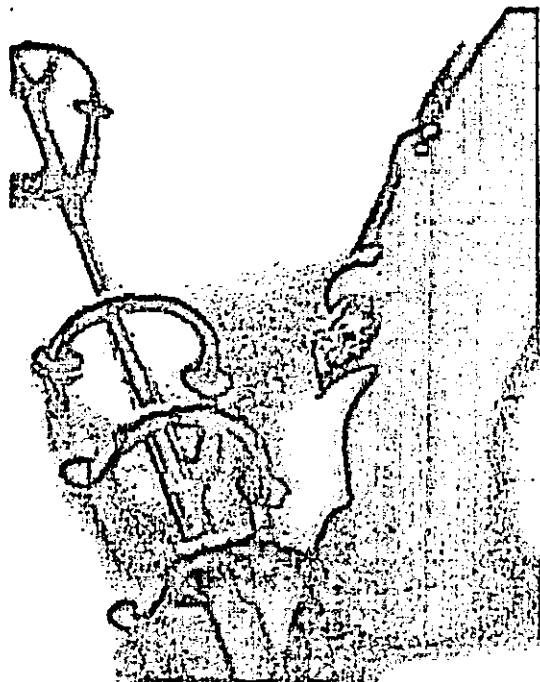
# Contents

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## Topics

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**1. Locomotive Delivery Schedule Update**

2. Supplier Development & Local Content

# Locomotive Delivery Schedule Update – Electric Locomotives



DEM	LOCO TYPE & QUANTITY	MANUFACTURING	ACCEPTANCE TYPE TEST	ACCEPTED INTO SERVICE	FINANCIAL YEAR 2017/18			
					CONTRACTUAL PLANNED DELIVERY	REVISED DELIVERY SCHEDULE	ON-TRACK BASED ON R/SCHEDULE YES / NO	NO OF DELAYED LOCOS
CRRC E-LOCO	22E (359)	1. TE manufacturing underframe E22128. 2. Car body E22122 complete. 3. Shot blast E22112 complete. 2 locos in shot blast process. 8 locos waiting for shot blast process (backlog). 4. Car body paint partial E22111 and E22112. 5. Loco assembly E22106 to E22110. 6. 3 locos waiting for 3kV/25kV testing E22104 – E22105. 7. 3 locos in final QA and fault free trips – E22099 to E22101.	1. RSR "No Objection" notice received on 20 June 2016 after successful completion of Acceptance Type testing.	98	110	110	NO	20
BTSA	23E (240)	1. Sixteen (16) car bodies received in TE Bayhead. 10 locomotives busy with assembly. 2 locomotive undergoing static testing. 4 locomotives transferred from Bayhead to Pyramid South for start of acceptance testing. 2) Twenty-four (24) more car bodies completed and signed off by TFR quality at DCD. 3) Bogle line fully operational. 4) 23005 and 23006 IOOS and Radio testing and commissioning will take place on the week ending 09 June 2017.	1. Acceptance testing on-going on loco 23001, 23002, 23003 and 23004.	0	137	0	Awaiting Revised Delivery Schedule	0

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# Locomotive Delivery Schedule Update – Diesel Locomotives



					FINANCIAL YEAR 2017/18			
OEM	LOCO TYPE & QUANTITY	MANUFACTURING	ACCEPTANCE TYPE TEST	ACCEPTED INTO SERVICE	CONTRACTUAL PLANNED DELIVERY	REVISED DELIVERY SCHEDULE	ON-TRACK BASED ON R/SCHEDULE YES / .NO	NO OF DELAYED LOCOS
GE	44D (233)	1. 135 x Locomotives in total have been manufactured to date and since been handed over to TFR inception.	Completed in November 2015.	125	108	0	NO	35
CRRC DALIAN	45D (232)	1. 20 locos completed by CRRC in China. 2 busy with acceptance type test, 4 shipped and will arrive in Durban by mid June 2017. 14 about to be shipped from Dalian. 2. 2 (Semi Knock Down Kits) completed in Durban but needs component change outs. Components will arrive in Durban by mid June 2017.	1. Received first two locomotives in August 2016 and testing started in September 2016.	0	87	0	Awaiting Revised Delivery Schedule	0



**Nkululeko Sibiyi Transnet Freight Rail JHB**

From: Yousuf Laher Transnet Freight Rail JHB  
 Sent: 04 May 2017 02:17 PM  
 To: Lindiwe Mdletshe Transnet Freight Rail JHB  
 Subject: FW: CNR Proposal

Mail below as requested.

Best Regards  
 Yousuf Laher CA(SA)

---

From: Yousuf Laher Transnet Freight Rail JHB  
 Sent: 03 July 2015 02:31 PM  
 To: Lindiwe Mdletshe Transnet Freight Rail JHB <Lindiwe.Mdletshe@transnet.net>  
 Cc: Enima Molotsane (emolotsane@tia-snk.co.za) (emolotsane@tia-snk.co.za) <emolotsane@tia-snk.co.za>  
 Subject: FW: CNR Proposal

Reser d.

Best Regards  
 Yousuf Laher CA(SA)

---

From: Yousuf Laher Transnet Freight Rail JHB  
 Sent: 21 June 2015 06:41 PM  
 To: Lindiwe Mdletshe Transnet Freight Rail JHB  
 Cc: Atooj Singh Corporate JHB; Garry Pita Transnet Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Ndiphwe Sillinga Transnet Corporate JHB  
 Subject: RE: CNR Proposal

Dear all, my comments as follows:

- 1 Increasing the team size does not make sense considering the learning curve will mitigate this requirement within a short time
- 2 Negotiating with suppliers will eliminate the inflationary cost related to the 4 additional months. In any case material costs generally don't increase on a monthly basis, thus the impact should not be as large as 1.8 %. Also 1.8 % for 4 months does not equal 5.5 % but rather 7.2 % which is excessive.
- 3 From the explanation provided, the incremental cost of procurement does not relate to the move to Durban. This should not be charged. In any case 9 % interest is excessive.
- 4 The additional technical support requirement in Durban does not make sense. The cost of this technical support should have been included in the original price.
- 5 On site service by technicians should have been included in the original price. R31.5 m for travel and relocation seems excessive.
- 6 Can the transport not be done by TFR via rail containers? If so then insurance costs would also be minimal as would be internally insured.
- 7 R 11200 psm for shelving seems excessive? SCS can research this.
- 8 Has consideration been given to TP or TFR property for the warehousing?
- 9 Why the additional forklifts?
10. How much is the incentive and relocation cost per staff member?
11. Labour inflation does not increase on a monthly basis. The impact could possibly only be at the end of the project.
12. Labour inflation rate applied at 5.5 % for the full year, whereas it should only be for 4 months (Cell E23 in "Staff" sheet)

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13. The additional cost to rollover the hedge must be checked by treasury
14. Additional bond costs must be checked by treasury
15. Contingency risk of 4 % and risk provision of 9 % is unexplained and seems to be additional profit. This seems excessive.
16. Obtain a detailed list of suppliers being used in Durban versus those in JHB.
17. The cost of the long term maintenance consulting does not relate to the move to Durban (Cell E29 "staff"). This should not be charged as it should have been included in the original contract.
18. Labour inflation is double counted (ref cell D7 & cell E23 "staff")

Best Regards  
Yousuf Laher CA(SA)

---

From: Lindiwe Mdletshe Transnet Freight Rail JHB  
Sent: 20 June 2015 01:12 PM  
To: Yousuf Laher Transnet Freight Rail JHB  
Cc: Anoj Singh Corporate JHB  
Subject: CNR Proposal

Hi Yousuf,

Please find attached CNR proposal FYA.

Regards



Lindiwe Mdletshe  
Snr Manager: Strategic Sourcing (Locomotives)  
Supply Chain Services  
Transnet Freight Rail

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011 773 0832  
[www.transnet.net](http://www.transnet.net)

083 2683365  
[Lindiwe.Mdletshe@transnet.net](mailto:Lindiwe.Mdletshe@transnet.net)



## Nkululeko Sibiyi Transnet Freight Rail JHB

---

**From:** Yousuf Laher Transnet Freight Rail JHB  
**Sent:** 04 May 2017 02:16 PM  
**To:** Lindiwe Mdletshe Transnet Freight Rail JHB  
**Subject:** FW: Manufacturing Facility Relocation for Class 45D Locomotives Supply Project

Mail below as requested.

Best Regards  
Yousuf Laher CA(SA)

---

**From:** Yousuf Laher Transnet Freight Rail JHB  
**Sent:** 25 June 2015 10:12 AM  
**To:** Lindiwe Mdletshe Transnet Freight Rail JHB <Lindiwe.Mdletshe@transnet.net>  
**Cc:** Emma Molotsane (emolotsane@tia-snk.co.za) <emolotsane@tia-snk.co.za>; Anoj Singh Corporate JHB <Anoj.Singh@transnet.net>; Thamsanqa Jiyane Transnet Engineering PTA <Thamsanqa.Jiyane@transnet.net>; Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net>; Ndiphiwe Silinga Transnet Corporate JHB <Ndiphiwe.Silinga@transnet.net>  
**Subject:** RE: Manufacturing Facility Relocation for Class 45D Locomotives Supply Project

Hi Lindiwe, their proposal has not changed from the previous submission except for their new offer on payment terms.

As such the comments per my mail over the weekend would still apply.

Their payment terms offer needs to be considered in light of Transnets cash flow situation, for which treasury must advise.

Best Regards  
Yousuf Laher CA(SA)

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**From:** Lindiwe Mdletshe Transnet Freight Rail JHB  
**Sent:** 23 June 2015 04:13 PM  
**To:** Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Garry Pita Transnet Corporate JHB; Ndiphiwe Silinga Transnet Corporate JHB; Yousuf Laher Transnet Freight Rail JHB  
**Cc:** Emma Molotsane (emolotsane@tia-snk.co.za)  
**Subject:** FW: Manufacturing Facility Relocation for Class 45D Locomotives Supply Project

Good day,

Please find attached revised CNR proposal for your review and comments.

Please note that both meetings that were scheduled to take place today, 23 June 2015 were postponed.

BT's proposal is still outstanding. They are having an alignment session this afternoon and they will revert back to us today with an indication on when the "revised proposal" will be submitted to Transnet.

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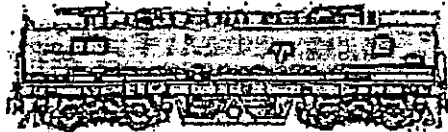
Kind Regards



Lindiwe Mdletshe  
 Snr Manager: Strategic Sourcing (Locomotives)  
 Supply Chain Services  
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[Lindiwe.Mdletshe@transnet.net](mailto:Lindiwe.Mdletshe@transnet.net)




---

**From:** Jane Dong [<mailto:cnrrssapm@163.com>]  
**Sent:** 23 June 2015 02:58 PM  
**To:** Lindiwe Mdletshe Transnet Freight Rail JHB  
**Cc:** 王刚 (南非公司); 于涛 (南非公司); Jane  
**Subject:** Manufacturing Facility Relocation for Class 45D Locomotives Supply Project

Hi Lindiwe,

As requested, I attached the revised proposal behind for your reference.

Once you confirmed the meeting time, just let me know.

Appreciated.

Regards,

2015-06-23

**Jane Dong**  
 Communication Manager & Project Manager CNR Rolling Stock South Africa(Pty Ltd.  
 Add : 3rd Floor, 95 Grayston Drive, Sandton, 2196, Johannesburg, South Africa

Cell: +86 138 8958 3608 (CHINA) +27 61 984 7989 (SA)  
 Tel: +86 411 84197600 (CHINA) +27 10 007 2316(SA)  
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INVESTIGATION

OPERATION DIVISION: Transnet SOC Ltd

TIA CASE REF NO: To be confirmed

TIP-OFFS NO: N/A

FORENSIC FIRM LEADER	Lionel van Tonder
DATE OF REPORT	14 June 2017
BUDGET HOURS	160 hours per team member (6 team members)
ACTUAL HOURS	960
VARIANCE	960
MATTER INVESTIGATED:	Assisting Transnet SOC Ltd ("Transnet") with a forensic investigation into allegations in the media pertaining to a possible conflict of interest involving Mr Iqbal Sharma ("Mr Sharma").

1	<b>BACKGROUND</b>
	<p>1. PricewaterhouseCoopers Inc. ("PwC") was appointed to assist with a forensic investigation relating to allegations in the media. These allegations relate to a possible conflict of interest involving Mr Sharma, Chairperson of Transnet's Board Acquisitions and Disposals Committee "BADC", which evaluated tenders in respect of the acquisition of new locomotives for an amount of approximately R50 billion ("the locomotive contract").</p> <p>2. During our meeting on 31 July 2014, we were briefed and provided with a copy of a newspaper article (Mail &amp; Guardian dated 4 July 2014) containing the allegations involving Mr Sharma.</p> <p>3. As per the said article, Mr Sharma was at all relevant times a non-executive Director of Transnet and the Chairperson of the BADC, which evaluated tenders in respect of the acquisition of new locomotives for an amount of approximately R50 billion.</p>

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4. The successful bidders, (all foreign entities), were required (in terms of their contracts with Transnet) to procure 60% of their components from the South African market.
5. As per the media report, it was alleged that Mr Sharma acquired a share in an entity styled "VR Laser Services" (name that appeared in the newspaper article, which refers to "VR Laser Services (Pty) Ltd", ("VR Laser Services")), an engineering company that manufactures *all types of vehicle hulls for any original equipment manufacturer*. It was also alleged that the said share was acquired shortly prior to the announcement of the winning bidders on the locomotive contract.
6. As per the newspaper article, it was also alleged that the winning bidders, prior to the awarding of the locomotive contract, performed a site visit at the premises of VR Laser Services to assess the possibility of subcontracting to VR Laser Services.
7. The newspaper article also alleged that, shortly after Mr Sharma's share acquisition in VR Laser Services, an entity in which Messrs Rajesh Gupta ("Mr Gupta") and Duduzane Zuma ("Mr Zuma") have a share, also acquired a share in VR Laser Services.
8. During our meeting on 31 July 2014, we were also requested to include the possible unauthorised disclosure of confidential information relating to the matter in our mandate.

2.	<b>LIMITATIONS</b>
	<ol style="list-style-type: none"> <li>1. We draw your attention to the following limitations:                     <ol style="list-style-type: none"> <li>a) The contents of this report is strictly confidential;</li> <li>b) We conducted the investigation in terms of our mandate, on behalf of</li> </ol> </li> </ol>

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Transnet;

- c) The scope of our work was limited to an analysis of documentation and information made available to us and specific enquiries undertaken to pursue our mandate;
- d) We have not verified the authenticity or validity of the documentation made available to us. In some instances we were only allowed to review the documentation, without being authorized to make copies of the said documents;
- e) Probity search results returned and used during the course of this assignment are limited to publicly available information made available by the Companies and Intellectual Property Commission ("CIPC"). In this regard we also had sight of relevant entities' share registers. We cannot guarantee the authenticity, validity and completeness of such information;
- f) We have included information that we obtained verbally in this report. We cannot verify that this information is credible or truthful;
- g) If additional or new documentation or information is brought to our attention subsequent to the date of this report, which would affect the findings detailed below, we reserve the right to amend and qualify our findings accordingly;
- h) Any recommendations made in this report should only be acted upon after consultation with your legal advisors;
- i) This report was prepared solely for the purposes of reporting our findings to Transnet. It should therefore not be utilised for any other purpose. No part may be quoted, referred to or disclosed to any third party, without our prior written consent; and
- j) The procedures performed do not constitute an audit or a review in accordance with International Standards on Auditing or International Standards on Review Engagements (or relevant national standards or practices). Consequently, we do not provide any audit assurance.

3.	<b>PROCEDURES PERFORMED</b>
	The following procedures were performed:

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1. We obtained and reviewed copies of the following documentation / datasets:

- a) The Transnet Group Company Secretariat Code of Ethics, effective date 1 June 2013, policy reference number "TG/GCS 2/4/1P" ("Code of Ethics", attached hereto as *Appendix 1.1*);
- b) The Transnet Declaration of Interest and Related Party Disclosures Policy for Directors, effective date 15 September 2013, policy reference number "TG/GCS 2/4P" ("Declaration of Interest Policy", attached hereto as *Appendix 1.2*);
- c) The Transnet Supply Chain Policy, effective date 1 May 2012, policy reference number "ISCM 01/2011" ("May 2012 SCM Policy", attached hereto as *Appendix 1.3*);
- d) The Transnet Supply Chain Policy, effective date 1 October 2013, policy reference number "TG/ISCM 15/1P" ("October 2013 SCM Policy", attached hereto as *Appendix 1.4*);
- e) The Transnet Memorandum of Incorporation for a State Owned Company, dated 25 June 2013 ("Transnet Memo of Incorporation", attached hereto as *Appendix 2*);
- f) The following media report:  
The Mail & Guardian media report styled "*Transnet tender boss's R50-billion double game*", dated 4 July 2014 (attached hereto as *Appendix 3.1*);
- g) Mr Sharma's email response to Mr Mafika Mkwazi (Chairman of the Board, Transnet, "Mr Mkwazi") styled "*Re: Mail & Guardian article July 4, 2014*", dated 10 July 2014 (attached hereto as *Appendix 4.1*);
- h) Mr Sharma's email complaint to Mr Johan Retief, Press Ombudsman ("Ombudsman", attached hereto as *Appendix 4.2*), in respect of the media report styled "*Transnet tender boss's R50-billion double game*", dated 4 July 2014;
- i) The Mail & Guardian's email response, including attached appendices, to Mr Johan Retief, Press Ombudsman (including related share registers, attached

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hereto as *Appendix 4.3*);

- j) Ms Ayanda Ceba's ("Ms Ceba"), Transnet Group Company Secretary, letter to Mr Sharma styled "*Annual General Declaration of Interest in Contracts and Related Party Disclosure for the 2013/14FY*", dated 25 February 2013 (attached hereto as *Appendix 5.1*);
- k) Mr Sharma's declarations of interests to Transnet, dated 28 February 2013 ("February 2013 declaration", attached hereto as *Appendix 5.2*);
- l) Mr Sharma's declarations of interests to Transnet, dated 14 April 2014 ("April 2014 declaration", attached hereto as *Appendix 5.3*);
- m) A Microsoft Excel spreadsheet styled "*Transnet Active Vendors for all OD – 12 Aug 2014*", containing a list and relevant details pertaining to active Transnet vendors as at 12 August 2014;
- n) A Microsoft Excel spreadsheet styled "*SAP Vend Deleted Vendors 2 – 14 Aug 2014*", containing a list and relevant details pertaining to deleted Transnet vendors as at 14 August 2014;
- o) A Microsoft Excel spreadsheet styled "*X1 Archived Vendors – 14 August 2014*", containing a list and relevant details pertaining to archived Transnet vendors as at 14 August 2014;
- p) A list of the four winning bidders and their contact details (attached hereto as *Appendix 6.1*);
- q) A list of the Board of Directors ("BOD") of Transnet and their contact details (attached hereto as *Appendix 6.2*);
- r) Transnet Payment Advice to Ithemba Governance & Statutory Solutions (Pty) Ltd ("Ithemba") dated 30 June 2014 for a total amount of R 42,750.00 (attached hereto as *Appendix 6.3*);
- s) BBBEE Verification Certificate of VR Laser Services dated 19 October 2007 (attached hereto as *Appendix 7.1*);
- t) Transnet Vendor Process Record ("VPR") for CSR E-LoCo Supply (Pty) Ltd ("CSR-E-LoCo") (attached hereto as *Appendix-7.2*);
- u) Supplier Declaration Form of CSR E-LoCo dated 10 December 2012 (attached hereto as *Appendix 7.3*);
- v) Locomotive Supply Agreement between CSR E-LoCo and Transnet dated 22

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- October 2012 signature page (attached hereto as **Appendix 7.4**);
- w) A Microsoft Excel spreadsheet showing all payments made to Ithemba (attached hereto as **Appendix 7.5**);
  - x) Supplier Declaration Form of Ithemba dated 23 January 2014 (attached hereto as **Appendix 7.6**);
  - y) A Microsoft Excel spreadsheet showing all payments made to VR Laser Services;
  - z) A Microsoft Excel spreadsheet showing all payments made to CSR E-Loco;
  - aa) Excerpt of selected minutes of meetings of the BADC from 23 March 2011 to 26 February 2014 (attached hereto as **Appendix 8.1**); and
  - bb) Excerpt of selected minutes of meetings of the BOB of Transnet from 20 April 2011 to 30 July 2014 (attached hereto as **Appendix 8.2**);
2. We reviewed the following documentation in the presence of Mr Thamsaqa Jiyane from Transnet (Not related to Mr Benny Jiyane from VR Laser Services) on 10 September 2014:
- a) Various advertisements of the 1064 tender, the first of which was dated 13 July 2012 in the Sunday Times newspaper;
  - b) The tender Opening Form for tender numbers TFRAC-HO-8608 Electrical and TFRAC-HO-8609 Diesel dated 30 April 2013;
  - c) The Terms of Reference (TOR) in so far as it related to us determining the closing date of the tenders;
  - d) The first register of evaluators for the TFRAC-HO-8608 Electrical and TFRAC-HO-8609 Diesel tenders dated 8 May 2013;
  - e) Memorandum submitted by Mr Molefe ("Management") to the BADC dated 17 January 2014 with the subject: "Request for approval to negotiate and award of business to the short listed tenderers for the supply of 599 (COCO) new dual voltage locomotives for the general freight business (GFB)".
  - f) Memorandum submitted by Mr Molefe ("Management") to the BADC dated 17 January 2014 with the subject: "Request for approval to Negotiate and Award of Business to the Short Listed Tenderers for the Supply of 465 New Diesel Locomotives for the General Freight Business (GFB)"; and

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- g) Letters of intent dated 28 January 2014 sent to the four winning bidders.
3. Interviews and/or consultations and/or telephone conversations were held with the following individuals:
- a) Ms Caba, Group Company Secretary, Transnet;
  - b) Mr Thamsanqa Jiyane, TFR CPO, Transnet;
  - c) Mr Stefaans Brummer ("Mr Brummer"), Reporter, Mail and Guardian;
  - d) Mr Fanie Botha ("Mr Botha"), VR Laser Services;
  - e) Mr John van Reenen ("Mr van Reenen"), previous shareholder, VR Laser Services;
  - f) Mr Lionel Faulk ("Mr Faulk"), Reporter, Mail and Guardian;
  - g) Mr Gary Bloxam ("Mr Bloxam"), previous shareholder, VR Laser Services;
  - h) Mr Madoda John "Benny" Jiyane ("Mr Jiyane"), Director, VR Laser Services;
  - i) Mr Ian McNeil ("Mr McNeil"), previous director, VR Laser Services;
  - j) Dobi Makhubela ("Mr Makhubela"), Projects Contracts Manager, Bombardier Transportation South Africa (Pty) Ltd ("Bombardier Transportation"). We received a written reply from Bombardier Transportation;
  - k) We received a written reply from General Electric;
  - l) Mr Pan Wang ("Mr Wang") from CSR E-LoCo Supply (Pty) Ltd. We received a written reply from Mr Wang and we interviewed Mr Wang; and
  - m) Mr Rajat Sharma ("Mr Sharma"), non-executive Director of Transnet.
4. Robity searches (including directorship/membership searches, company searches, property searches, general "Google" searches, etc.) were performed and analysed in respect of individuals and entities identified during the course of this investigation.

4.	<b>REGULATORY FRAMEWORK</b>
	1. Constitution of the Republic of South Africa Act No. 108 of 1996 ("The Constitution");

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2. Companies Act No. 71 of 2008 ("Companies Act");
3. Public Finance Management Act No. 1 of 1999 ("PFMA"); and
4. Prevention and Combatting of Corrupt Activities Act No. 12 of 2004 ("POCA").

5.1	<p style="text-align: center;"><b>FINDINGS:</b></p> <p style="text-align: center;"><b>TRANSNET POLICIES AND PROCEDURES, INCLUDING RELATED LEGISLATION</b></p>
	<p>1. October 2013 SCM Policy, the policy was approved in September 2013 and sets out in paragraph 35.1 on page 17 the roles and responsibilities of the BADC from the perspective of Supply Chain Management. The policy states: <i>"The Transnet Board comprises of Board members appointed from time to time by the Minister of Public Enterprises. For the acquisition and disposal of Transnet assets, the Board has delegated powers to the BADC. The committee must have and maintain:</i></p> <p style="padding-left: 40px;"><i>An appropriate Supply Chain Management system, which is fair, equitable, transparent, competitive and cost-effective; and</i></p> <p style="padding-left: 40px;"><i>Effective, efficient and transparent systems of financial and risk management and internal control."</i></p> <p>2. October 2013 SCM Policy, the policy states in paragraph 35.1 on page 17: <i>"The BADC members must</i></p> <p style="padding-left: 40px;"><i>Act with fidelity, honesty, integrity and in the best interest of the Transnet in managing its financial affairs, including the avoidance of conflict of interest and provide safeguards against favouritism, improper practices and opportunities for fraud, theft and corruption;</i></p> <p style="padding-left: 40px;"><i>Prevent any prejudice to the financial interests of Transnet or the State;</i></p> <p style="padding-left: 40px;"><i>Take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct and expenditure not</i></p>

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*complying with the operational policies of Transnet;*

*Ensure that expenditure of Transnet is procured in accordance with the approved budget; and*

*Approve certain bids not delegated to any other Acquisitions Council.*

*The BADC may delegate powers and duties or instruct specific officials in Transnet to perform any of the duties assigned to it."*

3. **October 2013 SCM Policy**, the policy states in paragraph 38 on page 20 that: "All Transnet employees should uphold the following key values (amongst others): *Desist from allowing personal interests to influence business decisions or tasks and disclose any actual or potential conflict of interest*".
4. **Declaration of Interest Policy**, the purpose of the policy is set out in section three, page three, and states:
 

*"3.2.4 the duties of Directors to avoid a conflict of interest and the disclosure of directorships held in other companies*

*3.3 provide guidelines to all Directors as to how to disclose and manage conflicts of interests*
5. **Declaration of Interest Policy**, the policy states in section 4. Application, on page three that: *"This policy applies to every Director of Transnet, every alternate Director of Transnet, any person occupying the position of a Director or alternate Director by whatever name designated."*
6. **Declaration of Interest Policy**, the policy states in section 5. Definitions, on page three that: *"In this policy the following terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings namely:*

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**5.1. 'Director':** means a member of the board of Transnet or an alternate Director of Transnet and includes any person occupying the position of a Director or alternate Director. In this regard it should be noted that Mr Sharma is a non – executive Director, but according to Ms Caba all policies applicable to Directors are also applicable to Non – Executive Directors.

**5.2 'Conflict of interest':** is described in paragraph 6 and includes, inter alia, a situation in which:

**5.2.2.** a Director has private interests or personal consideration or has an Affiliation or a Relationship which affects, or may affect, or may be perceived to affect a Director's judgement in acting in the best interest of Transnet, or could corrupt the Director's motivations for acting in a particular manner, or which could result in, or be perceived as Favouritism or Nepotism;

**5.2.3.** a Director uses his/her position, or privileges, or information obtained while working in the capacity as a Director for:

**5.2.3.1.** private gain, or advancement, or any other advantage; or

**5.2.3.2.** the expectation of private gain, or advancement, or any other advantage;

**5.2.3.3.** accruing to the Director or any member of his family, or friends or business associates.

**5.3. 'Affiliation'** means involvement with a vendor, service provider, or competitor of Transnet on the part of the Director, a person related or inter-related to the Director or the Director's friends or business associates; including serving as a shareholder, board member, employee, consultant or advisor to the aforementioned entities.

**5.5. 'Favouritism':** means an inclination in attitude or behaviour to show preferential treatment towards a certain person, group or entity.

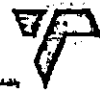
**5.7. 'Personal Financial Interest':** means a direct Material interest of a person, of a financial, monetary or economic nature, or to which a monetary value may be attributed."

**5.8. 'Material':** when used as an adjective means significant in the circumstances of a particular matter, to a degree that:

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5.8.1. is of consequence in determining the matter, or

5.8.2. might reasonably affect a person's judgment or decision-making in the matter, or

5.8.3. could influence the economic decisions taken in a matter.

5.10. 'Related': when used in respect of two persons, means persons who are connected to one another in any manner contemplated below:

5.10.2. an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance paragraph 5.12 below, and

5.10.3. a juristic person is related to another juristic person if:

5.10.3.3. a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance to paragraph 5.12 below.

5.11. 'Inter-Related': when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in paragraph 5.10 above and one of them is related to the third in any such manner, and so forth in an unbroken series.

5.12. 'Control' for the purpose of paragraph 5.10.2 and 5.10.3 above, a person controls a juristic person, or its business, if:

5.12.1. in the case of a company:

5.12.1.1. that company is a subsidiary of that first person, as determined in accordance with the Companies Act; or

5.12.1.2. that first person together with any related or inter-related person, is:

5.12.1.2.1. directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise (e.g. Director and a person related to him, together hold more than 50% of the voting shares in company Y); or

5.12.1.2.2. has the right to appoint or elect, or control the appointment or election

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of, Directors of that company who control a majority of the votes at a meeting of the board (e.g. Director is able to appoint Directors to the board of company Y, and those Directors appointed by him can exercise more than 50% of the votes at a board meeting);

5.12.4. that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraphs 5.12.1, 5.12.2 or 5.12.3.

5.13 'Relationship': includes the connection subsisting between any two or more persons who are related or inter-related.

5.15 'Significant influence': is the power to participate in the financial and operating policy decisions of an entity, but does not necessarily amount to Control.

7. Declaration of Interest Policy, the policy states in section 6; duty to avoid and disclose a conflict of interest, on page five that:

"6.1. Directors have a duty to avoid a conflict of interest in terms of inter alia the common law, the Public Finance Management Act No. 1 of 1999 ("PFMA"), the Companies Act and the King Report on Governance for South Africa, and the King Code of Governance Principles, 2009 ("King III"). A summary of key principles relating to a Director's responsibility to avoid and to disclose a conflict of interest that have been set out below, in a non-exhaustive manner, as a guide to Directors.

6.2. One of the most important fiduciary duties of Directors under the common law is the duty to avoid a conflict of interest. Directors have a duty to observe the utmost good faith towards Transnet, and in discharging that duty they are required to exercise independent judgment and to take decisions according to the best interests of Transnet. Any Director who is appointed to the Board of Transnet as a representative of a party with a substantial interest in Transnet should recognise the potential for conflict. That Director must understand that the duty to act in the best interests of Transnet. That Director must recognise that the duty to act in the best interests of Transnet remains paramount. Certain conflicts of interests are fundamental and should be avoided.

6.3. In this regard, Directors have a duty inter alia to:

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6.3.1 to act with fidelity, honesty, integrity, independence of mind and in the best interests of Transnet, and to exercise the powers and perform functions in good faith;

6.3.2. account for secret profits;

6.3.3. not misappropriate corporate opportunities;

6.3.4. not improperly compete with Transnet;

6.3.5. not to use their position as Director, privileges, or any information obtained while acting in the capacity of a Director:

6.3.5.1 to gain an advantage for themselves or for another person, other than Transnet or a wholly-owned subsidiary of Transnet, (this test does not require that the Director gains a material or a financial advantage, any advantage will bring the Director within the realm of this provision;

6.3.5.2 to knowingly cause harm to Transnet or a subsidiary of Transnet and, communicate with the Board at the earliest practical opportunity any information that comes to the Director's attention;

6.3.6 disclose:

6.3.6.1. conflicts of interest (whether real or perceived) in good time together with full details to the Board of Transnet and such conflicts should then be appropriately managed;

6.3.6.2. any interest in a contract with Transnet;

6.3.6.3 any direct or indirect personal or private business interest that they, or any spouse, partner, or close family member may have in any matter before the Board of Transnet and, subject always to paragraph 6.5, must withdraw from the proceedings when that matter is being considered unless the Board of Transnet decides that the direct or indirect interest is trivial or irrelevant and the Director is not required to withdraw in accordance with paragraph 6.5; and

6.3.6.4. any Personal Financial Interest in respect of matters to be considered at a meeting of the Board of Transnet, and/or any matter in respect of which a Director knows that a related person has a Personal Financial Interest, in the manner set out in paragraph 6.5.

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6.4. In terms of Section 75 of the Companies Act, a Director may disclose any Personal Financial Interest in advance, by submitting a Declaration of Interests Form to the Board of Transnet, setting out the nature and extent of the interest, to be used generally until changed or withdrawn by further written notice from that Director.

6.5. If a Director of Transnet, has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board of Transnet, or knows that a Related person has a Personal Financial Interest in the matter, the Director,

6.5.1. must disclose the interest and its general nature in writing before the matter is considered at the meeting;

6.5.2. must disclose to the meeting any material information relating to the matter, and known to the Director;

6.5.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by other Directors;

6.5.4. if present at the meeting, must recuse himself/herself from the meeting when the matter is being decided upon, after making any disclosure contemplated in paragraphs 6.5.2 or 6.5.3;

6.5.5. must not take part in the consideration of the matter, except to the extent contemplated in paragraphs 6.5.2 or 6.5.3;

6.5.6. while absent from the meeting in terms of this paragraph:

6.5.7. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum of the meeting; and

6.5.9. must not execute any document on behalf of Transnet in relation to the matter unless specifically requested or directed to do so by the Board of Transnet.

6.6. In terms of section 76(4)(a)(ii) of the Companies Act, a Director will have satisfied his/her obligations to act in the best interests of the Company (among other things) if (i) the Director had no Personal Financial Interest in the subject matter of the decision, and had no reasonable basis to know that any Related person had a Personal Financial Interest in the matter, or (ii) the Director complied with the requirements of Section 75 of the Companies Act with respect to any

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interest.

6.7. The focus is on the individual Directors to determine whether they are free from apparent or actual conflicts."

6.8. *Transnet Policy. In addition to the above, a Director must:*

6.8.1 *declare an interest in any business entity (whether as a shareholder, member, director, adviser, or in any other capacity) that:*

6.8.1.1. *have significant contracts with Transnet. In this regard, 'significant contracts' means contracts which account for at least 10% (ten percent) of such business entity's consolidated gross revenue in any one financial year; or*

6.8.1.2 *is a competitor of Transnet; or*

6.8.1.3 *is party to an acquisition of Transnet and/or its subsidiaries; its assets or businesses, or any part thereof;*

6.8.1.4 *is party to a joint venture or other business venture with Transnet or any of its subsidiaries;*

6.8.1.5 *renders for advisory or other professional services related to the transaction as referred to in paragraphs 6.8.1.3 and 6.8.1.4 above;*

6.8.1.6 *is party to any transaction that needs to be approved at Board level or by any of the committees of the Board of Transnet;*

6.8.2 *disclose:*

6.8.2.1 *any direct or indirect interest in contracts or proposed contracts, which have been or will be entered into by Transnet and must set out full particulars of that interest;*

6.8.2.2. *All Conflicts of Interest in accordance with this policy.*

6.8.3. *The Board will be entitled, at any time, to determine that a particular interest of any Director or by a person related or inter-related to him constitutes a Conflict of Interest, and to recommend an appropriate way to manage such conflict, even if such a transaction falls outside the transactions set out above.*

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6.8.4. If a Director of the Company acquires, or Knows that a Related Person has acquired, a Personal Financial Interest in an agreement or other matter in which the Company has a Material Interest, after the agreement or other matter has been approved by the Company, the Director shall promptly disclose to the Board, the nature and extent of that interest, and the Material circumstances relating to the Director or Related Person's acquisition of that interest, as the case may be.

6.8.5. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

6.8.6. A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Related Person of a Director if:

6.8.6.1. was approved following the disclosure of the Personal Financial Interest in the manner contemplated in Section 7.5 and clause 6.8; or

6.8.6.2. Despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by court.

6.8.7. A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the Board, or Shareholder as the case may be, despite the failure of the Director to satisfy the requirements of this clause."

8. Declaration of Interest Policy, the policy states in section 7. Declaration of a Conflict of Interest, on page nine:

"7.1. Declaration of Interest in Contracts

7.1.1. Applicable to: All Directors who have an interest, either directly or indirectly, or know that a related person has an interest in:

7.1.1.1. any new or existing contract with an entity external to Transnet which may

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conduct business with Transnet;

7.1.1.2. acquiring Transnet and/or its subsidiaries, its assets or businesses, or any part thereof;

7.1.1.3. any joint venture or other business venture with Transnet or any of its subsidiaries;

7.1.1.4. tendering for the supply of goods or services to Transnet or tendering for advisory or other professional services related to the transactions referred to above, Collectively, a "Contractual Interest"

7.1.2. To be completed: Annually by Directors and as when a Contractual Interest is identified.

7.1.3. To be submitted: to the Group Company Secretary

7.2 Annual declarations/Related party disclosures

7.2.1. Applicable to: All Directors

7.2.2. To be completed: Annually and as and when a Conflict of Interest arises, and/or when directorship or financial interests of Directors change within the financial year, and/or when directorship or financial interests of persons Related to Directors change within the financial year.

7.2.3. To be submitted: to the Group Company Secretary.

Even if there are no conflicts of interest the prescribed Annexure must be completed i.e. a Nil Declaration."

7.3 Declaration of Interest at meetings

7.3.1. Applicable to: All members of/attendees at Key meetings and all Directors who have a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board of Transnet.

7.3.2. If a Director has a Conflict of Interest in respect of a matter to be considered at a meeting, or knows that a Related person has a Personal Financial Interest in the matter, the Director must comply with the procedures more fully set out in

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paragraph 6.5 above. Such a Director must not execute any document on behalf of Transnet in relation to the matter unless specifically requested or directed to do so by the Board.

7.3.3. To be completed: At each meeting.

7.3.4. To be submitted: to the applicable Committee Secretary.

9. Companies Act, section 1. Definitions, state:

'director' means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated;

'related party', when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c);

'relationship' includes the connections subsisting between any two or more persons who are related or inter-related, as determined in accordance with section 2; and

'inter-related', when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1), and one of them is related to the third in any such manner, and so forth in an unbroken series".

10. Companies Act, section 75. Director's personal financial interests, states:

"(1) In this section-

(a) 'director' includes-

(i) an alternate director;

(ii) a prescribed officer; and

(iii) a person who is a member of a committee of the board of a company, irrespective of whether the person is also a member of the company's board; and

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(b) 'related person', when used in reference to a director, has the meaning set out in section 1, but also includes a second company of which the director or a related person is also a director, or a close corporation of which the director or a related person is a member.

(2) This section does not apply-

(a) to a director of a company-

(i) in respect of a decision that may generally affect

(aa) all of the directors of the company in their capacity as directors; or

(bb) a class of persons, despite the fact that the director is one member of that class of persons, unless the only members of the class are the director or persons related or inter-related to the director; or

(ii) in respect of a proposal to remove that director from office as contemplated in section 71; or

(b) to a company or its director or one person-

(i) holds all of the beneficial interests of all of the issued securities of the company;

and

(ii) is the only director of that company.

(3) If a person is the only director of a company, but does not hold all of the beneficial interests of all of the issued securities of the company, that person may not-

(a) approve or enter into any agreement in which the person or a related person has a personal financial interest; or

(b) as a director, determine any other matter in which the person or a related person has a personal financial interest, unless the agreement or determination is approved by an ordinary resolution of the shareholders after the director has

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disclosed the nature and extent of that interest to the shareholders.

(4) At any time, a director may disclose any personal financial interest in advance, by delivering to the board, or shareholders in the case of a company contemplated in subsection (3), a notice in writing setting out the nature and extent of that interest, to be used generally for the purposes of this section until changed or withdrawn by further written notice from that director.

(5) If a director of a company, other than a company contemplated in subsection (2) (b) or (3), has a personal financial interest in respect of a matter to be considered at a meeting of the board, or knows that a related person has a personal financial interest in the matter, the director-

"(a) must disclose the interest and its general nature before the matter is considered at the meeting;

"(b) must disclose to the meeting any material information relating to the matter and known to the director;

"(c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;

"(d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c);

"(e) must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c);

"(f) while absent from the meeting in terms of this subsection-

(i) is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors are present to constitute the meeting; and

(ii) is not to be regarded as being present at the meeting for the purpose of

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determining whether a resolution has sufficient support to be adopted; and

(g) must not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the board.

(6) If a director of a company acquires a personal financial interest in an agreement or other matter in which the company has a material interest, or knows that a related person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the company, the director must promptly disclose to the board, or to the shareholders in the case of a company contemplated in subsection (3), the nature and extent of that interest and the material circumstances relating to the director or related person's acquisition of that interest.

(7) A decision by the board, or a transaction or agreement approved by the board, or by a company as contemplated in subsection (3), is valid despite any personal financial interest of a director or person related to the director, only if-

(a) it was approved following disclosure of that interest in the manner contemplated in this section; or

(b) despite having been approved without disclosure of that interest, it-

(i) has subsequently been ratified by an ordinary resolution of the shareholders following disclosure of that interest; or

(ii) has been declared to be valid by a court in terms of subsection (8)."

"(8) A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the board, or shareholders, as the case may be, despite the failure of the director to satisfy the disclosure requirements of this section."

11. The Companies Act, section 76. Standards of directors conduct, states:

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*"(1) In this section, 'director' includes an alternate director, and-*

*(a) a prescribed officer; or*

*(b) a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board.*

*(2) A director of a company must-*

*(a) not use the position of director, or any information obtained while acting in the capacity of a director-*

*(i) to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or*

*(ii) to knowingly cause harm to the company, or a subsidiary of the company; and*

*(b) communicate to the board, at the earliest practicable opportunity any information that comes to the director's attention, unless the director-*

*(i) reasonably believes that the information is-*

*(aa) immaterial to the company; or*

*(bb) generally available to the public, or known to the other directors; or*

*(ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality.*

*(3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director-*

*(a) in good faith and for a proper purpose;*

*(b) in the best interests of the company; and*

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(c) with the degree of care, skill and diligence that may reasonably be expected of a person-

(i) carrying out the same functions in relation to the company as those carried out by that director, and

(ii) having the general knowledge, skill and experience of that director.

(4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of director, a particular director of a company-

(a) will have satisfied the obligations of subsection (3)(b) and (c) if-

(i) the director has taken reasonably diligent steps to become informed about the matter;

(ii) either-

(aa) the director had no material personal financial interest in the subject matter of the decision and had no reasonable basis to know that any related person had a personal financial interest in the matter; or

(bb) the director complied with the requirements of section 75 with respect to any interest contemplated in subparagraph (aa); and

(iii) the director made a decision, or supported the decision of a committee or the board, with regard to that matter and the director had a rational basis for believing and did believe that the decision was in the best interests of the company; and

(b) is entitled to rely on-

(i) the performance by any of the persons-

(aa) referred to in subsection (5); or

(bb) to whom the board may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law; and

(ii) any information, opinions, recommendations, reports or statements, including financial statements and other financial data, prepared or presented by any of the

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persons specified in subsection (5).

(5) To the extent contemplated in subsection (4) (b), a director is entitled to rely on-

(a) one or more employees of the company whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(b) legal counsel, accountants, or other professional persons retained by the company, the board or a committee as to matters involving skills or expertise that the director reasonably believes are matters-

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence; or

(c) a committee of the board of which the director is not a member, unless the director has reason to believe that the actions of the committee do not merit confidence.

12. King III Report on Corporate Governance, 2009 ("the King Code"), chapter 2. Board and Directors on page 61 it states:

"24. Any director who is appointed to the board as the representative of a party with a substantial interest in the company, such as a major shareholder or a substantial creditor, should recognize the potential for conflict. However, that director must understand that the duty to act in the best interests of the company remains paramount.

25. Certain conflicts of interest are fundamental and should be avoided. Other conflicts (whether real or perceived) should be disclosed in good time and in full detail to the board and then appropriately managed."

13. Code of Ethics, section: Scope on page 2, states:

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"2. The Code of Ethics will apply to all Transnet employees, including permanent and non-permanent employees, non-executive directors as well as service providers, suppliers and trade partners of Transnet;"

14. Code of Ethics, section: Ethical Behaviour on page 6, states:

"6.2. Trusting each other and being professional in conduct both within and outside the work environment such that the conduct will not reflect negatively upon Transnet's image and reputation;

6.3. Refraining from using a position of authority and/or facilities provided by Transnet to further your own interests or that of friends and relatives;

6.4. Desisting from allowing personal interests to influence business decisions or tasks and disclosing any actual or potential conflicts of interests;

6.5. Honouring the content and spirit of all business transactions and not abusing or harming Transnet's reputation or assets or interests;

6.6. Being honest and transparent in all actions and promoting a corporate image of integrity, honesty and stringent business ethics;

6.10. Respecting and maintaining the confidentiality of sensitive information gained through association with Transnet."

15. Code of Ethics, section: Confidential Information and Trade Secrets on page 8, states:

"9. Employees and Non-Executive Directors:

9.1. Must not disclose or use any information of Transnet (or a third party) obtained through carrying out of the employee's duties for any purpose other than to fulfill his/her Transnet duties;

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10. Will have access to information related to Transnet's business strategies and contractual relationships with third parties. This information must be regarded as trade secrets, which include the following:

10.1. Intellectual property, know-how, processes and techniques, technical detail, methods of operating, cost and source of material, pricing and purchasing policies, systems design and development information;

10.2. Names of customers and financial agreements between Transnet and suppliers of goods and services; information, hardware and software products;

10.3. The contractual and financial arrangements between Transnet and its customers and business associates;

10.4. The design and function of any software and/or hardware used or supplied by Transnet;

10.5. Details of Transnet financial structure and operating results;

10.6. Details of Transnet's business operations, strategic planning and positioning, and policy considerations; and

10.7. Other matters which relate to Transnet's business in respect of which information is not readily available in the ordinary course of business to a competitor or external party."

16. Code of Ethics, section: Relationship with Trade Partners on page 10, states:

"16. If such a relationship may influence or create the perception of influencing their decisions in the performance of their duties on behalf of Transnet, employees should not invest in, or acquire a financial interest directly or indirectly, in such an

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entity. All interests in businesses or entities must be declared in line with the Transnet Declaration of Interest and Related Party Disclosures Policy."

17. Code of Ethics, section: Non-Executive Directorship on page 11, states:

"20. Non-Executive Directors who have been invited to hold outsize directorship or membership should ensure that such invite is brought to the attention of the Company Secretariat for Declaration of Interest purposes."

5.2

#### FINDINGS:

**MR SHARMA'S EMAIL RESPONSE TO MR MKWANAZI (STYLED) "RE: MAIL & GUARDIAN ARTICLE JULY 4, 2014" DATED 10 JULY 2014 AND MR SHARMA'S EMAIL COMPLAINT TO THE OMBUDSMAN IN RESPECT OF THE SAID MEDIA REPORT**

1. From our review of Mr Sharma's email response to Mr Mkwanazi styled "Re: Mail & Guardian article July 4, 2014", dated 10 July 2014, the following was noted as mentioned by Mr Sharma:

- a) It is the responsibility of the Chairman of the Board ("the designation") to recommend the appointment of "Committee Chairs to the Board".
- b) He identified an opportunity with VR Laser Services and set out to acquire it. He "initiated" discussions and proceeded to "negotiate" with the "owners". His first meeting with VR Laser Services was in March 2013, after which formal discussions followed in May 2013 and the "deal" was subsequently finalised in December 2013 (Mr Sharma did not provide details relevant to individuals he dealt or negotiated with in this regard).
- c) He approached "Mr Essa" (Mr Salim Aziz Essa, "Mr Essa" as an additional investor as a result of the final negotiated price and "not wanting to over-leverage the transaction". As Mr Sharma was not in a position to contribute due to the required "capital calls", 75% of VR Laser Services was subsequently bought by Mr Essa and the balance (25%) remained with an

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existing shareholder.

- d) VR Laser Services has for the past 2 years, and currently still is, "running at a loss", which required considerable contributions from the shareholders. As such, the mentioned minority shareholder "allegedly" sold his stake to "Craysure Investments" (entity was identified as "Craysure Investments (Pty) Ltd, "Craysure Investments").
- e) Due to his "limited budget", he "remains" with "a property company" and does not participate in the "operating business".
- f) VR Laser Services' last invoice to Transnet was in 2011 and does not currently do any business with Transnet. Prior to 2011, VR Laser Services was in business with Transnet for 5 years to a value of R200,000.00 per year.
- g) He has been, and currently still is, "friends" with the "Guptas" ("the Gupta family"). Whether he does business with the "Guptas" or not is a "personal matter".
- h) There is no conflict between his "private business affairs" and his roles and responsibility to Transnet.

2 From our review of Mr Sharma's email complaint to Ombudsman, in respect of the said media report, the following was noted as mentioned by Mr Sharma in addition to the above:

- a) The former Transnet BADC Chairman, Mr Don Mkhwanazi, is a relative of Mr Mkhwanazi.
- b) Subsequent to the departure of Mr Don Mkhwanazi, Mr Mkhwanazi recommended the appointment of Mr Sharma as the Transnet BADC Chairman.
- c) The BADC provides "oversight on the process followed by executives and does not decide on the assignment of tender awards".
- d) The BADC, under his Chairmanship, took a decision that information relating to the tender should only be disclosed to Officials engaged in adjudicating the tender and, no information of any substance was shared with the Committee.
- e) He "has it on good authority" that a "board member(s)" had an influence on the

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	<p>publication of the "defamatory article".</p> <p>f) He was not aware of the minority shareholder's "alleged" sale to "Craysure Investments"; (Note: that this is in direct contradiction of what was mentioned in his reply to the Chairman of the BOD.</p> <p>g) In addition to the "Guptas", he also has an "association" with "Duduzane Zuma".</p> <p>h) There is no conflict between his dealings with VR Laser Services, VR Laser Property and Transnet as neither company does business with Transnet.</p>
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5.3	<p><b>FINDINGS:</b></p> <p><b>THE MAIL &amp; GUARDIAN'S EMAIL RESPONSE IN RESPECT OF MR SHARMA'S COMPLAINT, INCLUDING ATTACHED APPENDICES, TO THE OMBUDSMAN</b></p>
	<p>1. From our review of the Mail &amp; Guardian's email response in respect of Mr Sharma's complaint, including attached appendices, to the Ombudsman, the following was noted:</p> <p>a) Mr Sharma's allegation that a board member(s) had an influence on the publication of the defamatory article is denied. The story is based "entirely on documentary evidence and on the record corroboration by sources".</p> <p>b) The Mail &amp; Guardian verified when and how Mr Sharma purchased "VR Laser" which included speaking to the former majority owner, "Mr van Reenen", who sold his share of the company to Mr Sharma; and to the minority empowerment shareholder "Mr Jiyane", who initially kept his stake, both then agreed to sell it to Craysure Investments, the company associated with Mr Gupta and Mr Zuma.</p> <p>c) He (Mr Sharma), "Mr van Reenen" and "Mr Jiyane" stated that the purchase agreement for the purchase of "VR Laser" was concluded in December 2013. In addition, various elements of the purchase agreement took several months post-December to tie up. "VRLS Properties" share register shows that "Issar Capital" acquired its 100% shareholding in the company on 6 March 2014 (attached hereto as <i>Appendix 4.3</i>).</p>

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- d) Transnet finalised the locomotive tender award on 17 March 2014.
- e) All the major bidders for the Transnet locomotive tender actively considered the company (VR Laser) as a potential subcontractor even as Mr Sharma acquired part of it, and before the tender process he supervised was complete. Neither Mr Sharma in his complaint, nor any other relevant party, has denied these "highly significant visits by all the eventual winning bidders" that took place as "Sharma was concluding negotiations for the acquisition of 'VR Laser'".
- f) "Mr Jiyane" also revealed that all four foreign companies that would later win a slice of Transnet's new locomotive tender had visited VR Laser's factory between December 2013 and January, to evaluate them as potential local suppliers" See 14 on pg 11 - 1
- g) Mr Sharma approached "VR Laser" first and later included Mr Essa. Notwithstanding the reasons he (Mr Sharma) arrived at for including Mr Essa, "it is clear that Mr Sharma's intent to buy "VR Laser" was unambiguous at the outset".
- h) Mr Essa has previously been profiled as one of the 'leaders' of Sharma's investment company, "Issar Capital", which owns "VRLS Properties".
- i) "Sharma and Essa are co-directors in another business, solar panel manufacturing company, "Daqo South Africa", since November 2012. They are also co-directors in a 100% company, "National Agricultural Development Project" since December 2012. The company's share register shows that Sharma and Essa each acquired a shareholding in National Agricultural Development Project from the Gupta family owned companies on the same day in November last year".
- j) Both Mr Sharma and Mr Essa informed the "M&G" that Mr Sharma's property company "VRLS Property" received rent from Mr Essa's "VR Laser" - "thus, Mr Sharma derives direct material benefit from "VR Laser's" business".
- k) The BADC chaired by Mr Sharma had overall supervision of all-Transnet-group tenders above a certain threshold amount, which included the 1064 locomotive contract.
- l) The article demonstrates the business relationship since late 2013 between

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	<p>the Gupta's and Mr Sharma in two instances namely, Craysure Investments' acquisition of a 24,9% stake in "VR Laser" after Messrs Sharma and Essa had concluded purchase negotiations with its previous owners, and the transfer of shares from the Gupta family-linked companies to Sharma and Essa-owned companies in "National Agricultural Development Project".</p> <p>m) Mr Sharma stated that neither "VR Laser" nor "VRLS Properties" "has done or is doing or contemplating doing business with Transnet".</p> <p>n) Transnet confirmed that "VR Laser" "has performed services" for Transnet Engineering since 2006.</p>
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5.4	<p><b>FINDINGS:</b></p> <p><b>INTERVIEWS AND CONSULTATIONS WITH TRANSNET STAFF REGARDING MR SHARMA'S POSITION IN TRANSNET</b></p> <p>1. Ms Ceba confirmed that Mr Sharma is a Non-Executive Director on the BOD of Transnet as well as the Chairman of the BADC of Transnet.</p>
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5.5	<p><b>FINDINGS:</b></p> <p><b>INTERVIEWS AND CONSULTATIONS WITH RELEVANT BOARD MEMBERS AND BADC MEMBERS REGARDING THE BREACH IN CONFIDENTIALITY AND HOW THE POSSIBLE LEAK OCCURRED</b></p> <p>We cannot investigate or conclude on this matter as Mr Sharma did not want to provide us with specific information that would make further investigation possible.</p>
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5.6	<p><b>FINDINGS:</b></p> <p><b>MR SHARMA'S ALLEGED ACQUISITION OF A SHARE IN VR LASER SERVICES</b></p> <p>1. From Mr Sharma's email correspondence with Mr Mkwana and the Ombudsman, Mr Sharma confirmed his relationships with Mr Essa (with whom he also co-owns a property, refer <i>Appendix 9.1</i>), the Gupta family and Mr Zuma. General Google searches and Mr Sharma's February 2013 and April 2014</p>
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declarations (refer *Appendix 5.2 and 5.3*) also confirmed his spouse as Ms Turina Patel.

2. Our probity search results revealed that Mr Sharma has interests in the form of directorships (including shareholding in certain instances) in the following entities, which were not declared, as part of his annual February 2013 declaration, his April 2014 declaration or during any BADC meetings (refer tables 1 and 2 below for a breakdown relevant to Messrs Sharma and Essa's active directorships). It should be noted that Mr Sharma did however declare his interests in other entities (refer *Appendix 5.2 and 5.3* for the entities declared).

- a) 79 NDC Swellendam (Pty) Ltd appointed on 12/08/2013;
- b) Applied re Investments (Pty) Ltd appointed on 18/05/2006. It should be noted that Mr Sharma also neglected to declare his spouse's interest in this entity as she is listed as an active director;
- c) Meer Sharma and Associates CC. date of appointment is unknown (it should be noted that the status of this entity is listed as "deregistration final");
- d) Mufase Investments (Pty) Ltd appointed on 10/05/2006 (it should be noted that the status of this entity is listed as "deregistration final");
- e) National Agricultural Development Project (Pty) Ltd ("NADP"), appointed on 07/11/2013. Mr Sharma also did not declare Mr Essa's active directorship in this entity and
- f) VRLS Properties (Pty) Ltd ("VRLS Properties"), appointed on 09/12/2013

3. Although Mr Sharma is not listed as a director of the entity styled "Elgasolve (Pty) Ltd" ("Elgasolve"), he declared a 50% shareholding in his February 2013 declaration. However, Mr Sharma did not declare any further interests in this entity during his April 2014 declaration or any BADC meetings. Mr Sharma also did not declare Mr Essa's interest in this entity.

4. It is unknown to us when Mr Sharma became a shareholder in Elgasolve as we did not have sight of this entity's share register.

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Table 1: Summary of probity search results relevant to Mr Sharma

#	Mr Sharma's active directorship(s) & dates of appointment	Findings / comments
1	79 NDC Swellendam (Pty) Ltd, appointed on 12/08/2013	<ul style="list-style-type: none"> <li>Mr Sharma did not declare his interest in this entity.</li> <li>79 NDC Swellendam (Pty) Ltd and Mr Essa share the same address details.</li> </ul>
2	Appledore Investments (Pty) Ltd, appointed on 18/05/2006	<ul style="list-style-type: none"> <li>Mr Sharma did not declare his interest in this entity.</li> <li>One of Mr Sharma's co-active directors is his spouse, Ms Tanuja Patel, who was appointed on the same date as Mr Sharma. Mr Sharma did not declare his spouse's interest in this entity.</li> <li>Appledore Investments (Pty) Ltd and Mufese Investments (Pty) Ltd share the same auditors and address details.</li> </ul>
3	Daqo South Africa (Pty) Ltd, appointed on 07/11/2012	<ul style="list-style-type: none"> <li>Mr Sharma declared his interest in this entity (initially limited to a directorship after which a 28% shareholding was declared) on both 28/02/2013 and 24/04/2014 respectively.</li> <li>Three of Mr Sharma's co-active directors in this entity are styled "Dafeng Shi", "Feiyu Yao Dafeng" and "Xiang XU", all of whom were appointed on the same date as Mr Sharma.</li> <li>Mr Essa is also listed as an active director of this entity and was appointed on the same date as Mr Sharma. Mr Sharma did not declare Mr Essa's interest in this entity.</li> <li>Daqo South Africa (Pty) Ltd and GMT Concepts (Pty) Ltd share the same address details.</li> </ul>
4	GMT Concepts (Pty) Ltd, appointed on 12/11/2009	<ul style="list-style-type: none"> <li>Mr Sharma declared his interest in this entity (20% shareholding) on both 28/02/2013 and 24/04/2014 respectively.</li> <li>Mr Sharma's two co-active directors are "Yoke Fong Tan" and "Peck Hia Tan", both of which were appointed on the same date as Mr Sharma.</li> <li>Previously listed address details of GMT Concepts (Pty) Ltd are similar to the address details of Issar Investment Holdings (Pty) Ltd and Issar Capital (Pty) Ltd ("Issar Capital").</li> <li>GMT Concepts (Pty) Ltd and Daqo South Africa (Pty) Ltd share the same address details.</li> </ul>

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#	Mr Sharma's active directorship(s) & dates of appointment	Findings/comments
5	Issar Capital (Pty) Ltd, appointed on 17/12/2010	<ul style="list-style-type: none"> <li>Mr Sharma declared his interest in this entity (100% shareholding) on both 28/02/2013 and 24/04/2014 respectively.</li> <li>Issar Capital and Issar Investment Holdings (Pty) Ltd share the same address details and current auditors.</li> <li>Address details of Issar Capital is similar to previously listed address details of GMT Concepts (Pty) Ltd.</li> </ul>
6	Issar Investment Holdings (Pty) Ltd, appointed on 14/01/2011	<ul style="list-style-type: none"> <li>Mr Sharma declared his interest in this entity (100% shareholding) on both 28/02/2013 and 24/04/2014 respectively.</li> <li>Issar Investment Holdings (Pty) Ltd and Issar Capital share the same address details and current auditors.</li> <li>Address details of Issar Investment Holdings (Pty) Ltd is similar to previously listed address details of GMT Concepts (Pty) Ltd.</li> </ul>
7	Meer Sharma and Associates CC, date of appointment was not reflected in our probity search results	<ul style="list-style-type: none"> <li>Mr Sharma did not declare his interest in this entity.</li> </ul>
8	Mufase Investments (Pty) Ltd, appointed on 10/05/2006	<ul style="list-style-type: none"> <li>Mr Sharma did not declare his interest in this entity.</li> <li>Mufase Investments (Pty) Ltd and Appiedore Investments (Pty) Ltd share the same auditors and address details.</li> </ul>
9	National Agricultural Development Project (Pty) Ltd, appointed on 07/11/2013	<ul style="list-style-type: none"> <li>Mr Sharma did not declare his interest in this entity.</li> <li>Mr Sharma's co-active director is Mr Essa. Mr Sharma did not declare Mr Essa's interest in this entity.</li> <li>NADP and themba (which is also an active director of VR Laser Services) share the same address details.</li> <li>According to the share register of NADP, Elgasolve owns 80% of the shares in this entity and Issar Capital owns the remaining 20% of the shares in this entity.</li> </ul>

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#	Mr Sharma's active directorship(s) & dates of appointment	Findings/comments
10	Nulane Investments 204 (Pty) Ltd, appointed on 17/09/2008	<ul style="list-style-type: none"> <li>Mr Sharma declared his interest in this entity (100% shareholding) on both 28/02/2013 and 24/04/2014 respectively.</li> <li>Nulane Investments 204 (Pty) Ltd its current auditors and Mr Essa share the same address details.</li> </ul>
11	Transnet SOC Ltd, appointed on 13/12/2010	N/A
12	VRLS Properties (Pty) Ltd, appointed on 09/12/2013	<ul style="list-style-type: none"> <li>Mr Sharma did not declare his interest in this entity.</li> <li>Mr Sharma's co-active director in VRLS Properties is Ithemba (appointed on 1 March 2014, which provides secretarial work to various companies), which is also an active director of VR Laser Services.</li> <li>None of the previous directors of this entity (Jacob Hayser Greeff and Mr Bloxham) were also previous directors of VR Laser Services and VRLS Investments (Pty) Ltd. Mr Van Reenen, a former director of this entity is also listed as a previous director of VR Laser Services and an active director of VRLS Investments (Pty) Ltd.</li> <li>Mr Jiyane, a former director of this entity, also holds an active directorship in VR Laser Services.</li> <li>VRLS Properties and VR Laser Services share the same address details.</li> </ul>

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**Table 2: Summary of probity search results relevant to Mr Essa's directorships held in entities relevant to this investigation**

#	Mr Essa's active directorship(s) & dates of appointment	Findings / comments
1	Daqo South Africa (Pty) Ltd, appointed on 07/11/2012	<ul style="list-style-type: none"> <li>Mr Sharma declared his interest in this entity (initially limited to a directorship after which a 28% shareholding was declared) on 07/11/2012 and 27/04/2013 respectively.</li> <li>Three of Mr Sharma's co-active directors in this entity are styled "Dafeng Shi", "Feiyu Yao Dafeng" and "Xiang Xu", all of whom were appointed on the same date as Mr Sharma.</li> <li>Mr Essa is also listed as an active director of this entity and was appointed on the same date as Mr Sharma. Mr Sharma did not declare Mr Essa's interest in this entity.</li> <li>Daqo South Africa (Pty) Ltd and GM Concepts (Pty) Ltd share the same address details.</li> </ul>
2	Elgasolve (Pty) Ltd, appointed on 02/12/2013	<ul style="list-style-type: none"> <li>Although Mr Sharma is not listed as a director of Elgasolve, he declared a 50% shareholding in this entity on 28 February 2013. No further declarations in relation to this entity, including during BADC meetings, were made by Mr Sharma.</li> <li>Mr Sharma also did not declare Mr Essa's interest in this entity.</li> </ul>
3	National Agricultural Development Project (Pty) Ltd, appointed on 07/11/2013	<ul style="list-style-type: none"> <li>Mr Essa's co-active director is Mr Sharma (Mr Sharma did not declare his or Mr Essa's interest in this entity).</li> <li>NADP and Ithemba (which is also an active director of VR Laser Services) share the same address details.</li> </ul>

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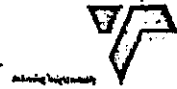
#	Mr Essa's active directorship(s) & dates of appointment	Findings/comments
4	VR Laser Services (Pty) Ltd, appointed on 14/01/2014	<ul style="list-style-type: none"> <li>Mr Sharma did not declare an interest in this entity, including his own or Mr Essa's (refer Diagram 1 on page 39 for details pertaining to such interest)</li> <li>According to the share register relating to VR Laser Services, Elgasolve owns 74.9% of the shares in this entity and Craysure Investments (Pty) Ltd owns the remaining 25.1% shares in this entity.</li> <li>From our analyses of the Microsoft Excel spreadsheet showing all payments made to VR Laser Services, Transnet's most recent procurement from VR Laser Services occurred during the period February 2014 to April 2014 (to an amount of R3,552.25 excluding VAT).</li> </ul>

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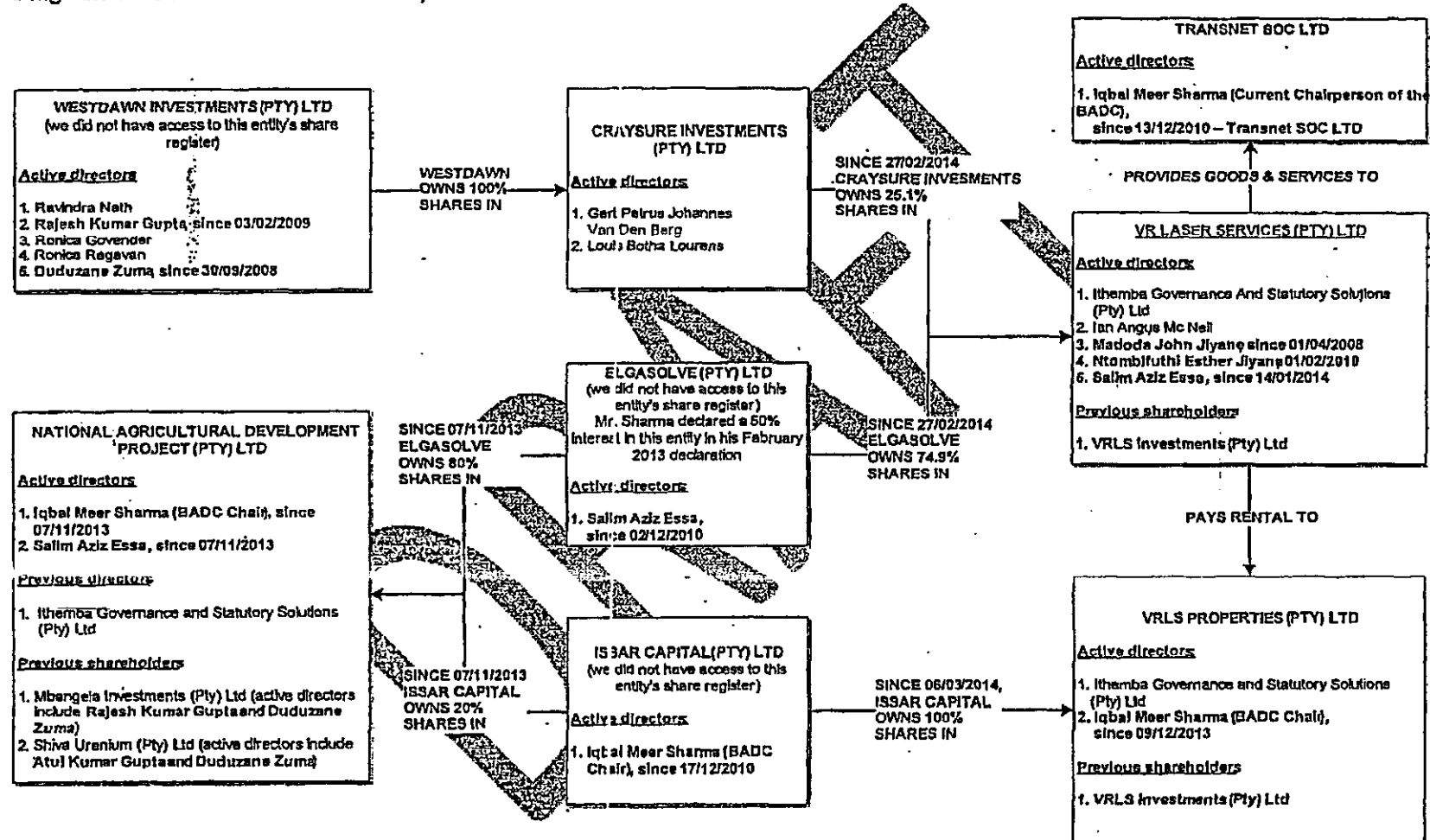
5. In addition to the lack of appropriate declarations of interest by Mr Sharma as listed above, the following should be noted in respect of Messrs Sharma, Essa, Zuma and the Gupta family's interests in VR Laser Services (refer diagram 1 below for a breakdown relevant to these relationships):

- a) Messrs Sharma and Essa are active directors of NADP, an entity in which Elgasolve and Issar Capital hold an 80% and 20% shareholding respectively.
- b) Mr. Essa is the sole director of Elgasolve and Mr. Sharma declared a shareholding of 50% in this entity on 28 February 2013.
- c) Elgasolve in turn holds a 74.9% shareholding in VR Laser Services.
- d) Issar Capital in turn holds a 100% share in VRIS Properties, the entity from which VR Laser Services rents land.
- e) As such, Mr Sharma has interests in VR Laser Services through his involvement in NADP, Elgasolve and Issar Capital respectively.
- f) Mr Zuma and members of the Gupta family are listed as active directors of Mbangela Investments (Pty) Ltd and Shiva Uranium (Pty) Ltd respectively, entities which previously held shares in NADP.
- g) Mr Zuma and members of the Gupta family are further listed as active directors of Westdown Investments (Pty) Ltd, an entity with 100% shareholding in Craysure Investments. Craysure Investments in turn has a 25.1% shareholding in VR Laser Services.
- h) Despite numerous requests to date (27 November 2014) we have not received the share registers of Issar Capital from Fin5 Incorporated and Westdown Investments (Pty) Ltd from Itemba Governance and Statutory Solutions.

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Diagram 1: Illustration of relationships relevant to VR Laser Services



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	<p>6. The following should also be noted with respect to Mr Sharma's email correspondence to Mr Mkwanzazi, dated 10 July 2014, and the Press Ombudsman, dated 4 July 2014 in relation to the interests illustrated above:</p> <p>a) Mr Sharma stated that VR Laser Services' last invoice to Transnet was in 2011 for a "paltry" amount. This is however not correct as Transnet's most recent procurement from VR Laser Services occurred in the period February 2014 to April 2014.</p> <p>b) Although Mr Sharma stated that VR Laser Services "was and currently still is running at a loss", for which "considerable contributions from the shareholders" were required, and that he decided not to "participate in the company" due to the "capital calls", Mr Sharma does in fact have an interest in VR Laser Services. This interest, as discussed above, is evident through his involvement in NABE, Elgasolve and Issar Capital respectively.</p>
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<p>5.7</p>	<p><b>FINDINGS:</b></p> <p><b>MESSRS GUPTA AND ZUMA'S ALLEGED ACQUISITION OF AN INTEREST IN "VR LASER SERVICES"</b></p> <p>1. Refer to findings above in respect of "Mr Sharma's alleged acquisition of a share in VR Laser Services" and Messrs Gupta and Zuma's alleged acquisition of an interest in VR Laser Services".</p> <p>Mr Jiyane confirmed that Craysure Investments is in the process of purchasing his shares in VR Laser Services. He further confirmed that Craysure Investments is a wholly owned subsidiary of Westdawn Investments (Pty) Ltd.</p> <p>3. Westdawn Investments (Pty) Ltd is owned by Mr Zuma and the Gupta family.</p>
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5.3	<p style="text-align: center;"><b>FINDINGS:</b></p> <p style="text-align: center;"><b>THE ROLE PLAYED BY OTHER INDIVIDUALS / ENTITIES, INCLUDING RELATED PROBITY SEARCH RESULTS AND SHAREHOLDING</b></p>
	<p>1. Refer findings above in respect of "Mr Sharma's alleged acquisition of a share in VR Laser Services" and "Messrs Gupta and Zuma's alleged acquisition of an interest in VR Laser Services".</p>

5.1	<p style="text-align: center;"><b>FINDINGS:</b></p> <p style="text-align: center;"><b>INTERVIEWS AND CONSULTATIONS WITH SHAREHOLDERS IN "VR LASER SERVICES"</b></p>
	<p>1. During a telephone interview, Mr Van Reenen stated the following:</p> <ul style="list-style-type: none"> <li>a) VRLS Investments (Pty) Ltd previously owned 74.9% of VR Lasers Services and this company was owned by Mr Bloxham and Mr Van Reenen. The remaining 25.1% was owned by Mr Jiyane.</li> <li>b) Mr Jiyane was the one who initially had contact with Mr Sharma around June / July 2013.</li> <li>c) He subsequently met Mr Sharma around three to four times during the course of 2013.</li> <li>d) They managed to reach an agreement of sale and the deal was done on 9 December 2013.</li> <li>e) Mr Essa only became involved in the deal when they were about to sign the purchase agreement.</li> <li>f) From the outset Mr Sharma disclosed to him that he is on the Board of Transnet.</li> <li>g) He stated that Mr Essa purchased VR Laser Services and Mr Sharma purchased VRLS Properties.</li> <li>h) He stated that, at the time when negotiations began, the business was not running at a profit and lost around R8 million in the 6 months leading up to December.</li> <li>i) He confirmed that he was aware that the winning bidders "came around", but</li> </ul>

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that he has no further knowledge of the visits as Mr Jiyane hosted them.

j) He stated that he is aware of Mr Jiyane being in negotiations to sell his shares.

2. During a telephone interview, Mr Jiyane stated the following:

- a) The decision was taken to sell VR Laser Services around 2012.
- b) He was involved with the initial sale process which started around June / July 2013.
- c) He was first introduced to Mr Essa and Mr Essa in turn introduced him to Mr Sharma. This all occurred in 2013.
- d) Mr Essa is currently the majority shareholder in VR Laser Services. Mr Essa purchased these shares through Elgasolve.
- e) VR Laser Services "hosts" a number of Original Equipment Manufacturers ("OEM's") on various projects to demonstrate manufacturing capabilities. VR Laser Services manufactures various components as well as fabricated assemblies for various OEM's.
- f) The two Chinese companies approached VR Laser Services around November or December 2013. They wanted to have a look at VR Laser Services' capacities and capabilities. He was approached by their BEE partner (did not recall the name) and was thereafter introduced to the Chinese partners.
- g) The two Chinese companies who visited in 2013 were "CSR" and "CNR". They approached VR Laser Services because they were manufacturing the "95 locomotives" in terms of the previous Transnet contract.
- h) The third company was "General Electric". He met them earlier last year or towards the end of 2012. VR Laser Services just discussed generally what the company does etc. cutting steel.
- i) "Esther Jiyane" is his wife and all his shares in VR Laser Services are held in her name.
- j) The share register is correct in saying that there are new shareholders. However, the shares are not sold as yet as there are certain milestones that need to be met before the sale can be completed.

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	<p>k) His shares are being sold to Craysure Investments. He only dealt with an individual by the name of "J.P Arora" from Craysure Investments.</p> <p>l) He is aware that Craysure Investments is wholly owned by Westdown Investments (Pty) Ltd.</p> <p>m) He stated that Ithemba is the new company secretary for VR Laser Services.</p> <p>n) When we tried to pose follow up questions to Mr Jiyane, we received a reply via his lawyer that he is no longer prepared to be interviewed.</p> <p>3. During a telephone interview, Mr Bloxham mentioned the following:</p> <p>a) He only negotiated with Mr Sharma for the sale of VR Laser Services.</p> <p>b) During June/ July 2013, negotiations were at a halt due to disagreement on the sale price. However, in September 2013, Mr Sharma approached him and Mr Van Reenen again and came with a better offer.</p>
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5.10	<p><b>FINDINGS:</b></p> <p><b>INTERVIEWS AND CONSULTATIONS WITH EMPLOYEES OF VR LASER SERVICES REGARDING SITE VISITS PERFORMED BY BIDDERS</b></p>
	<p>1. During a telephone interview, Mr McNeil mentioned the following:</p> <p>a) He had no knowledge of who held shares in VR Laser Services.</p> <p>b) He had no knowledge of the visits that were conducted by the winning bidders.</p> <p>2. During a telephone interview, Mr Botha mentioned the following:</p> <p>a) He knows that there are new owners of VR Laser Services, but does not have any further information about them.</p> <p>b) He is not aware of any site visits made by the winning bidders.</p>

5.11	<p><b>FINDINGS:</b></p> <p><b>INTERVIEWS AND CONSULTATIONS WITH BIDDERS REGARDING SITE VISITS PERFORMED AT "VR LASER SERVICES"</b></p>
	<p><b>Bombardier Transportation</b></p>

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1. In an email dated 15 September 2014 (attached hereto as *Appendix 10.1*), Mr Makhubela of Bombardier Transportation stated the following: "They never visited the premises of VR Laser Services."

#### CSR E-LoCo Supply (Pty) Ltd

1. In an email dated 16 October 2014 (attached hereto as *Appendix 10.2*), Mr Wang of CSR E-LoCo Supply stated the following:
  - a) They visited VR Laser Services in October 2013;
  - b) The purpose of the visit was to identify opportunities to improve the localisation of locomotives being manufactured for Transnet;
  - c) They do not know the details of the owners of VR Laser Services;
  - d) They had no contact with Mr Sharma and are not aware of his business associates;
  - e) CSR E-LoCo Supply concluded that they would not do business with VR Laser Services as they did not meet their manufacturing specifications;
  - f) They performed numerous site visits on a number of local suppliers, these site visits commenced when CSR E-LoCo Supply was awarded the tender to manufacture the 95 locomotives; and
  - g) VR Laser Services visited CSR E-LoCo Supply in China during April 2014. However, to date (27 November 2014) CSR E-LoCo Supply has not appointed VR Laser Services' as one of their sub-contractors.

#### General Electric

1. In an email dated 15 October 2013 (attached hereto as *Appendix 10.3*), Mr Zeenith Ebrahim of General Electric stated the following:
  - a) They never visited the premises of VR Laser Services;
  - b) The Transnet Board of Directors visited General Electric in the United States of America during October 2014. Mr Sharma was part of the delegation from Transnet who visited them. There was no mention of VR Laser Services during this visit; and
  - c) There had been no communications between General Electric and VR Laser Services.

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**CNR Import & Export Corporation Ltd**

1. We have requested, but not yet received any feedback from CNR Import & Export Corporate regarding the alleged site visits by them to VR Laser Services.

5.12	<p><b>FINDINGS:</b></p> <p><b>THE PROCESS FOLLOWED BY THE BADC IN AWARDING THE LOCOMOTIVE CONTRACT TO THE FOUR WINNING BIDDERS</b></p>
	<ol style="list-style-type: none"> <li>1. According to Mr Thamsanqa Jiyane, the BADC's involvement with regards to the two tenders (the Diesel and Electrical locomotive tenders) collectively referred to as the 1064 tender was as follows:             <ol style="list-style-type: none"> <li>a) Management obtained approval from the BOD and BADC, in accordance with the delegations of authority of Transnet to go out on tender to acquire 1064 locomotives;</li> <li>b) The BADC then reviewed and approved a summary of the evaluation criteria for the 1064 tender;</li> <li>c) The BADC was required to approve the recommendations made by Management as to which tenderers should be awarded the contract; and</li> <li>d) The BADC "did not even know the names of the tenderers as they were referred to as 'A', 'B', etc. in the management presentations made to the BADC" relating to the results of the evaluations by management of the 1064 tender.</li> </ol> </li> <li>2. The BADC approved the TFR Locomotive Procurement Strategy on 3 August 2012. Mr Sharma was present at this meeting in his capacity as member of the BADC.</li> <li>3. The two tenders collectively referred to as the 1064 tender was first advertised on 13 July 2012 according to Ms Lindiwe Mdletshe, Commodities Manager at Transnet and the Sunday Times' advertisement dated the same date.</li> <li>4. The submission close date for the 1064 tender was 30 April 2013 according to the</li> </ol>

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Tender Opening Forms for tender numbers TFRAC-HO-8608 Electrical and TFRAC-HO-8609 Diesel.

5. According to the Tender Opening Form for tender number TFRAC-HO-8608 Electrical dated 30 April 2013, the following tenderers submitted tenders for the Electrical tender:

- a) Bombadier Transportations, "T1" according to the evaluation documentation;
- b) CSR E-LoCo Supply Proprietary Limited, "T2" according to the evaluation documentation;
- c) Alstom (consortium consisting of Woman Rail Consulting and Engineering (Pty) Ltd and New Africa Rail), "T3" according to the evaluation documentation;
- d) Bongiveli, "T4" according to the evaluation documentation;
- e) Siemens, "T5" according to the evaluation documentation;
- f) CNR Import & Export Corporation Ltd (consortium consisting of CNR Import and Export, Global Railway Africa and Cadiz Corporate Solutions & Endinamix (Pty) Ltd), "T6" according to the evaluation documentation; and
- g) Mitsu/Toshiba (Mars), "T7" according to the evaluation documentation.

6. According to the Tender Opening Form for tender number TFRAC-HO-8609 Diesel dated 30 April 2013, the following tenderers submitted tenders for the Diesel tender:

- a) CNR Import & Corporation LTD (consortium consisting of Global Railway Africa/Cadiz Corporate Solutions & Endinamix (Pty) Ltd), "T1" according to the evaluation documentation;
- b) CSR E-LoCo Consortium (consortium consisting of CSR Qishuyan Co. Ltd and Pin Ezy Investments), "T2" according to the evaluation documentation;
- c) EMD Africa, "T3" according to the evaluation documentation; and
- d) G E South Africa "T4" according to the evaluation documentation.

7. Management started evaluating the 1064 tender on 8 May 2013 according to the first register of evaluators for the TFRAC-HO-8608 Electrical and TFRAC-HO-



8609 Diesel tenders.

8. According to a memorandum submitted by Mr Molefe ("Management") to the BADC dated 17 January 2014 with the subject: "Request for approval to negotiate and award of business to the short listed tenderers for the supply of 599 (COCO) new dual voltage locomotives for the general freight business (GFB)", the tenderers scored as follows during the evaluation of the Electrical locomotive tender:

	WHAT IS BEING MEASURED	WEIGHT	T1	T2	T3	T5	T7
1	BBBEE SCORE CARD	10.00	8.00	6.00	4.00	8.00	6.00
2	SD	20.00	15.50	16.35	15.12	16.67	15.89
3	Further Recognition Criteria (Current)	5.00	0.88	0.47	0.18	1.66	2.16
4	Further Recognition Criteria (Future)	5.00	0.94	2.11	1.26	2.45	1.82
5	Price (Total Cost of Ownership (TCO) excl. unscheduled and excl. scheduled maintenance and excl. bonus point allocation)	60.00	40.65	36.60	11.85	15.83	26.78
	<b>TOTAL SCORE</b>	<b>100</b>	<b>65.96</b>	<b>61.33</b>	<b>32.41</b>	<b>44.60</b>	<b>52.64</b>

9. Tenderers T4 and T6 did not meet the technical requirements for further evaluation and therefore their scores are not included in the table above.

10. According to this memorandum, management recommended that tenderers T1 (Bombadier Transportations) and T2 (CSR E-Loco Supply Proprietary Limited) be awarded the contract to supply the Electrical locomotives.

11. This recommendation by management was approved by the BADC on 24 January 2014.

12. According to a memorandum submitted by Mr Molefe ("Management") to the BADC dated 17 January 2014 with the subject: "Request for Approval to Negotiate and Award of Business to the Short Listed Tenderers for the Supply of 465 New Diesel Locomotives for the General Freight Business (GFB)", the tenderers scored

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as follows during the evaluation of the Diesel locomotive tender:

	WHAT IS BEING MEASURED	WEIGHT	T1	T2	T3	T4
1	BBBEE SCORE CARD	10.00	6.00	0.00	10.00	9.00
2	SD	20.00	13.23	16.12	14.36	13.34
3	Further Recognition Criteria (Current)	5.00	0.60	0.36	1.90	1.31
4	Further Recognition Criteria (Future)	5.00	1.44	0.99	1.32	1.98
5	Price (Total Cost of Ownership (TCO) excl. unscheduled and ex-scheduled maintenance and excl. bonus point allocation)	60.00	17.48	16.65	13.35	37.13
	<b>TOTAL SCORE</b>	<b>100</b>	<b>38.75</b>	<b>34.12</b>	<b>40.93</b>	<b>62.76</b>

13. This memorandum then further states:

- a) The above results were recommended by the Cross-Functional Evaluation Team ("CFET") to the subcommittee. However, the subcommittee raised concerns regarding the pricing of the bids received. The price for the second highest tenderer was more than 10% higher than that of the lowest technically acceptable price.
- b) This was a concern to the subcommittee, due to the commercial exposure for Transnet and also National Treasury concern of not paying excessive premiums as outlined in the PPPFA guidelines of premiums not being more than 11% by the use of the 90/10 evaluation criteria.
- c) The CFET was requested to investigate the reasons for the above concerns and following further clarifications from tenderers, concluded that the base price of locomotives were too high.
- d) The Group Chief Executive ("GCE") approved a decision that all the tenderers must be requested to submit a best and final commercial offer to see if the above concerns will be mitigated.
- e) The decision was made after consultation with the Chairman of the BOD; Chairman of the BADC and TIA.
- f) The request for the best and final commercial offer provided a better outcome as all the tenderers submitted better prices and the price differences were less than 13% before negotiations and the CFET was confident that the price after



negotiations will be within the allowed premium.

g) The final results of the evaluations after the best and final offers are summarised in the table below:

	WHAT IS BEING MEASURED	WEIGHT	T1	T2	T3	T4
1	BBBEE SCORE CARD	10.00	6.00	0.00	10.00	9.00
2	SD	20.00	13.23	16.12	14.36	13.34
3	Further Recognition Criteria (Current)	5.00	0.60	0.36	1.90	1.31
4	Further Recognition Criteria (Future)	5.00	1.44	0.99	1.32	1.98
5	Price (Total Cost of Ownership (TCO) excl. unscheduled and excl. scheduled maintenance and excl. bonus points/location)	60.00	20.48	19.65	13.35	37.13
	<b>TOTAL SCORE:</b>	<b>100</b>	<b>41.75</b>	<b>37.12</b>	<b>40.93</b>	<b>62.76</b>

14. According to this memorandum, management recommended that tenderers T1 (CNR Import & Corporation) and T4 (G E South Africa) be awarded the contract to supply the Diesel locomotives.

15. This recommendation by management was approved by the BADC on 24 January 2014.

16. Letters of Intent were sent on 28 January 2014 to the following entities:

- a) Bombardier Transportation SA (Pty) Ltd;
- b) CSR;
- c) CNR Consortium; and
- d) GE South Africa Technologies (Pty) Ltd.

**5.13 FINDINGS:**  
**THE ROLE MR SHARMA PLAYED IN AWARDING OF THE LOCOMOTIVE CONTRACT TO THE FOUR WINNING BIDDERS**

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1. Mr Sharma was a member of the BADC from the BADC's first meeting held on 23 February 2011.
2. Mr. Sharma was appointed by the BOD as the Chairman of the BADC on 29 August 2012.
3. As noted above, the BADC approved the TFR Locomotive Procurement Strategy on 3 August 2011. Mr Sharma was present at this meeting in his capacity as member of the BADC and therefore Mr Sharma had full knowledge of Transnet's intention to acquire a fleet in excess of R50bn.
4. The GCE approved a decision that all the tenderers for the Diesel tender must be requested to submit a best and final commercial offer after consultation with the Chairman of the Board (Mr Mkwanazi), the Chairman of the BADC (Mr Sharma) and TIA. This resulted in G E South Africa being awarded part of the Diesel contract instead of EMD Africa.

5.14	<b>FINDINGS:</b>
	<b>THE MANDATE OF THE BADC RELATING TO THE LOCOMOTIVE CONTRACT</b>
	<p>The BADC mandate presented by the Chairperson on 21 November 2013: The BADC or "the Committee" is constituted as a Committee of Transnet SOC Ltd in respect of all other duties assigned to it by the Transnet BOD. This mandate has been updated to reflect the new Companies Act, No. 71 of 2008 as well as the King III code of governance principles and King Report on Governance for South Africa (King III).</p> <p><b>PURPOSE</b></p> <ol style="list-style-type: none"> <li>a) To advance and maintain the Company's acquisition and disposals policies.</li> <li>b) To approve procurement transactions within the Committee's delegated authority.</li> <li>c) To monitor trends in supplier development spent and progress on plan.</li> </ol>

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- d) To consider strategic acquisitions and disposals and make recommendations to the Board.
- e) To consider, for recommendation to the Board, potential private sector participation models.
- f) To review quarterly capital expenditure reports, and monitor execution of approved projects.
- g) To monitor the implementation of strategic acquisitions against the approved plans.
- h) To approve procurement strategies on proposed acquisitions.

#### COMPOSITION

- a) At least four Directors of the Company shall be members of this Committee, the majority of whom must be independent non-executive directors. The Chairman of the Board shall be a member of this Committee.
- b) The members of the Committee as a whole must have sufficient qualifications and experience to fulfil their duties.
- c) The Secretary shall be the Group Company secretary or her designate.
- d) The remuneration of the Chairman and Committee members will be determined by the Remuneration, Social and Ethics Committee and recommended by the Board for approval by the Shareholder Minister in accordance with the approved fee structure.
- e) The following shall attend by invitation:
  - The Group Chief Executive or a duly mandated designate;
  - The Group Chief Financial Officer or a duly mandated designate; and
  - The Group Executive: Group Legal Services.
  - Such other persons determined by the Committee, who may include, where deemed necessary by the Committee, members of senior management and independent acquisition and disposal experts.
- f) The other Non-Executive Directors may attend the Committee's meetings.

#### ROLES AND RESPONSIBILITIES

- a) The Committee has an independent role, operating as an overseer and a

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maker of recommendations to the Board for its consideration and final approval.

- b) The Committee does not assume the functions of management, which remain the responsibility of the executive directors, officers and other members of senior management.

#### AUTHORITY

- a) The Committee has authority to-
- Have access to any information it needs to fulfil its responsibilities.
  - Seek independent advice through the Group Company Secretary's Office, at the Company's expense.
  - Have direct access to any executive of the Company or its subsidiaries.
  - Make amendments to the mandate, subject to approval by the Board.
- b) The Committee may form, and delegate authority to, steering committees composed of designated members of the Committee.
- c) The Committee shall make the recommendations to the Board that it deems appropriate on any area within the ambit of its terms of reference where action or improvements are required.
- d) Direct access to the Chairman of the Board, Group Chief Executive and members of the Group Executive Committee.

#### TERMS OF REFERENCE

- a) The Committee shall-
- Oversee the review of and recommend for approval by the Board policies relevant to the Committee's Mandate.
  - Approve procedure manuals that are legally compliant (where applicable) and provide for an appropriate procurement and provisioning system which is fair, equitable, transparent, cost-effective.
  - Approve tenders and contracts up to the maximum of investment decision/budget. This includes acquisition and disposals of movable and immovable property, capital investments operational expenditure, provision and acquisition of services approval for establishing

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infrastructure, maintenance, refurbishment, and purchasing fuel, and excludes guarantees, indemnities and securities.

- Monitor trends in supplier development spend and progress on plan (including support of government's economic policies, Competitive Supplier Development Programme, local supplier development and BBBEE (preferential procurement and enterprise development).
- Consider strategic acquisitions and disposals and make recommendations to the Board.
- Consider, for recommendation to the Board, potential private sector participation models.
- The Committee may approve, where so delegated by the Board of Directors, following in accordance with the Company's Delegation of Authority Framework.

Table 3: Capex Delegations

Reference to DPA	Specific Delegation	Board Acquisitions and Disposals Committee's Delegation
5.1.1	Capex included in annual Corporate Plan and budget of the Company: To commence with a project	Approval of all transactions between R1000m and R2000m
5.1.2	Capex not included in annual Corporate Plan and budget of the Company: To commence with a project	Approval of all transactions between R500m and R1000m
5.1.3	Increase in Estimated Total Cost (ETC) of Existing/approved projects	Approval of all transactions between R1000m and R1400m
5.1.4	Asset Write-off/Scrapping: Moveable Assets	Approval of all transactions between R250m and R700m
5.1.5	Asset Write-off/Scrapping/Demolition of Immovable Assets (excluding land) e.g. buildings, structures	Approval of all transactions between R250m and R300m

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5.1.6	Disposal of moveable assets (excluding sale of scrap)	Approval of all transactions between R250m and R700m
5.1.8	Alienation/acquisition of immovable property (and and servitude)	Approval of all transactions between R350m and R500m

5.15	<p style="text-align: center;"><b>FINDINGS:</b></p> <p style="text-align: center;"><b>TRANSNET VENDOR LISTS COMPARED TO ENTITIES IDENTIFIED DURING THE COURSE OF THE INVESTIGATION</b></p>
	<p>1. As previously mentioned, VR Laser Services is listed as an active vendor of Transnet, of which the most recent procurement occurred in the period February 2014 to April 2014. (VR Laser Services tax invoice dated 5 March 2014, to a total value of R 4,049.57, attached hereto as <b>Appendix 11.1</b>)</p>

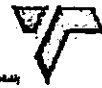
5.16	<p style="text-align: center;"><b>FINDINGS:</b></p> <p style="text-align: center;"><b>FORENSIC IMAGING AND ANALYSIS OF TRANSNET DEVICES ALLOCATED TO MR SHARMA</b></p>
	<p>During consultations with Ms Ceba, it was confirmed that Mr Sharma does not have a Transnet owned laptop/desktop computer or email address. However, Mr Sharma was allocated a Transnet owned iPad which was stolen last year. The replacement iPad is currently in the possession of Transnet and as such, no forensic imaging was performed during the course of this investigation as we were advised that Mr Sharma did not have access to the replacement iPad.</p>

5.17	<p style="text-align: center;"><b>FINDINGS:</b></p> <p style="text-align: center;"><b>INTERVIEWS AND CONSULTATIONS WITH THE MAIL &amp; GUARDIAN</b></p>
	<p>2. A discussion with the Mail &amp; Guardian was held on 18 August 2014 and we were provided with the Mail &amp; Guardian's response to the Ombudsman relating to Mr Sharma's complaint. The contents of this response, including attached share</p>

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registers were included throughout this report.

5.18	<p style="text-align: center;"><b>FINDINGS:</b></p> <p style="text-align: center;"><b>INTERVIEWS AND CONSULTATIONS WITH MR SHARMA</b></p>
	<p>a) In an interview conducted with Mr Sharma on 19 November 2014 he informed us of the following:</p> <p><b>Declarations:</b></p> <p>b) He is currently not a shareholder of Elsasolve and also was not a shareholder of Elsasolve when he made his declarations in 2013 and 2014. He only declared the interest in his February 2013 declaration as he was under the impression that he was a shareholder.</p> <p>c) He did not declare his interests in Appadore Investments (Pty) Ltd and Mufase Investments (Pty) Ltd in his February 2013 and April 2014 declarations because he thought he was no longer a director of these entities. According to him he resigned as a director of these entities two or three years ago.</p> <p>d) He did not declare his interest in Meer Sharma and Associates CC as this entity should have been deregistered.</p> <p>e) He failed to declare his interests in NADP and VRLS Properties as he was not aware that he was a director of these entities, he thought he was only a shareholder of VRLS Properties. According to Mr Sharma it sometimes happens that he signs documents put in front of him without him reading what it is that he is signing. Mr Sharma did not provide us with an answer as to why he did not declare his shareholding in VRLS Properties.</p> <p>f) Mr Sharma stated that he should have declared his interests in NADP and VRLS Properties in his April 2014 declaration. Not declaring this was an oversight by him. In addition, he informed us that there are no conflicts that he failed to declare in his February 2013 or April 2014 declarations.</p> <p>g) Mr Sharma's understanding of what he is required to declare is any interests of him or his family that is in conflict with Transnet.</p>

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**Purchase of VR Laser Services:**

- h) Mr Sharma saw an opportunity in VR Laser Services within the defense business. In his travels he met various people who kept asking about defense vehicles (armed vehicles) and one individual in Saudi Arabia from G4Security wanted armed vehicles for cash in transit purposes.
- i) Mr Sharma conducted internet searches looking for entities that would be able to provide these services. This is how he happened to stumble upon VR Laser Services.
- j) "Salim" (Mr Essa) knew someone at VR Laser Services and introduced Mr Sharma to "Benny" (Mr Jiyane). Mr Sharma and "Benny" chatted in March 2013. "Benny" wanted to buy out his other shareholders and keep his interest (24% or 25%) in the business. Mr Sharma and his advisors then met with John van Reenen who gave them four financial statements to look at for pricing and they concluded the transaction in December 2013. According to Mr Sharma negotiations never broke down, the halt was just part of the normal negotiation process.
- k) During October 2013 he involved "Salim". VR Laser Services had potential (with pedigree as it is a 70 year old business) but it was going through a slump. Mr Sharma's idea was to use VR Laser Services as an OEM to make armed ambulances and cash in transit vehicles. The company had losses with no future plans but he saw that he could trim a lot of fat off the expenses. "Salim" was only loosely aware of what was going on and his involvement was going to be limited. However once Mr Sharma realized that it was going to take up to two years to break even with VR Laser Services he knew he did not have enough liquidity. Mr Sharma then handed VR Laser Service to "Salim". The transaction was split in two: "Salim" took the business and he took the property.
- l) During January 2014 Mr Sharma had a fallout with "Benny" as a result of undisclosed matters relating to the income and expenses of VR Laser Services. After this Mr Sharma had no dealings or communication with "Benny". He later read in the newspaper that Westdown bought Benny's share. Mr Sharma does not know how Westdown got introduced to "Benny" as he did

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not introduce "Benny" to Westdown. Mr Sharma confirmed that Westdown is owned by Mr Zuma and Mr Gupta and that he knows them well.

- m) In return for giving "Salim" VR Laser Services, Mr Sharma obtained "Salim's" share in "DAQO".
- n) The purchase of VR Laser Services coinciding with the locomotive contract was pure coincidence.

Leak of information:

- o) Mr Sharma is aware of the Chairman of the Board having a direct interest in a company ("Steffanutti Stocks") who is dealing directly with Transnet and which is making lots of money from Transnet. Mr Sharma believes this is inappropriate even though the Chairman of the Board declared it to Transnet.
- p) Mr Sharma cannot give further information on who on the board leaked information, because he is reserving his right to take further action as he thinks the chairperson's conduct has not been appropriate. In this regard, he stated:
  - Within hours of the M&G article, the chairperson called a meeting to deal with the matter. The chairperson insisted on having a meeting without Mr Sharma being able to attend due to being out of the country;
  - The chairperson of the board has an agenda against him (Mr Sharma);
  - He (Mr Sharma) was called by the company secretary who informed him that the meeting would be rescheduled, however a full board meeting was called and the matter was dealt with differently than as with other matters;
  - In the board meeting he (the chairman of the board) proposed an investigation even after the Chief Executive had (after the article) sent out an internal email saying that they found no substance in the article and there is no need to further investigate;
  - During this meeting the chairman of the board said the audit committee will lead the investigation. This means they (the audit committee) would have determined the terms of reference and they would be the committee to deal with this. (Then a separate committee was established to deal with this matter;

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*Alford*

- I (Mr Sharma) question the intent of the chairman of the board, because he appointed a separate committee which is not normal practice;
- I (Mr Sharma) had sight of the preliminary findings report submitted by PwC to Transnet. When I (Mr Sharma) did not get it from PwC, I (Mr Sharma) got it from the company secretary on 18 November 2014;
- I (Mr Sharma) believe it is retribution for taking action in the past against another board member that is related to the chairperson of the board;
- The chairperson of the board is making executive decisions when he is a non-executive; and
- The audit committee did not oversee the investigation and it was not handled with transparency and objectivity.

6. **SUMMARY**

1. Based on the findings emanating from our procedures performed, the following conclusions were reached:
2. Declarations of Interest
  - a) Mr Sharma declared the following entities, including his shareholding, in his February 2013 declaration:
    - i. Nulane Investments 204 (Pty) Ltd (100% shareholding);
    - ii. Issar Investment Holdings (F y) Ltd (100% shareholding);
    - iii. Issar Capital (100% shareholding);
    - iv. GMT Concepts (Pty) Ltd (20 % shareholding);
    - v. DAQO South Africa (Pty) Ltd (did not declare a shareholding); and
    - vi. Elgasolve (50% shareholding).
  - b) According to our entity searches, Mr Sharma was a director in the following

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entities during February 2013: -

- i. Nulane Investments 204 (Pty) Ltd (appointed as a director on 2008/09/17);
- ii. Issar Investment Holdings (Pty) Ltd (appointed as a director on 2011/01/14);
- iii. Issar Capital (appointed as a director on 2010/12/17);
- iv. GMT Concepts (Pty) Ltd (appointed as a director on 2009/11/12);
- v. DAQO South Africa (Pty) Ltd (appointed as a director on 2012/11/07);
- vi. Appledore Investments (Pty) Ltd (appointed as a director on 2006/05/18);
- vii. Mufase Investments (Pty) Ltd (appointed as a director on 2006/05/10);
- viii. Transnet (appointed as a director on 2010/12/13); and
- ix. Meer Sharma and Associates CC (appointment date not available but Mr Sharma is the sole member of this entity and it has been active since 2 December 1994. Our probity searches indicate that this entity has been deregistered, however no date of deregistration is provided. In addition Mr Sharma is still shown as an active member.

c. In his February 2013 declaration, Mr Sharma failed to declare his interests in the following entities:

- i. Appledore Investments (Pty) Ltd;
- ii. Mufase Investments (Pty) Ltd; and
- iii. Meer Sharma and Associates CC (current status of entity is "deregistration final", however no date of when this entity was deregistered could be obtained).

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- d) Probity searches do not show Mr Sharma being a director in Elgasolve at any point in time.
- e) We are not in possession of the share register for Elgasolve in order to ascertain Mr Sharma's possible shareholding in this entity.
- f) Mr Sharma declared the following entities with his shareholding in his April 2014 declaration:
- i. Nulane Investments 204 (Pty) Ltd (100% shareholding);
  - ii. Issar Investment Holdings (Pty) Ltd (100% shareholding);
  - iii. Issar Capital (100% shareholding);
  - iv. GMT Concepts (Pty) Ltd (20% shareholding); and
  - v. DAQO South Africa (Pty) Ltd (28% shareholding).
- g) Elgasolve was not declared in Mr Sharma's April 2014 declaration.
- h) According to our entity searches, Mr Sharma was a director in the following entities during April 2014:
- i. Nulane Investments 204 (Pty) Ltd (appointed as a director on 2008/09/17);
  - ii. Issar Investment Holdings (Pty) Ltd (appointed as a director on 2011/01/14);
  - iii. Issar Capital (appointed as a director on 2010/12/17);
  - iv. GMT Concepts (Pty) Ltd (appointed as a director on 2009/11/12);
  - v. DAQO South Africa (Pty) Ltd (appointed as a director on 2012/11/07);

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vi. Appledore Investments (Pty) Ltd (appointed as a director on 2006/05/18);

vii. Mufase Investments (Pty) Ltd (appointed as a director on 2006/05/10);

viii. Transnet (appointed as a director on 2010/12/13);

ix. Meer Sharma and Associates CC (appointment date not available, but Mr Sharma is the sole member of this entity and it has been active since 2 December 1994). In addition, our probity searches indicate that this entity has been deregistered however no date of deregistration is provided;

x. NADP (appointed as a director on 2013/11/07);

xi. 79 NDC Swellendam (Pty) Ltd (appointed as a director on 2013/08/12); and

xii. VRLS Properties (appointed as a director on 2013/12/19).

i) In April 2014 Mr Sharma failed to declare his interests in the following entities:

i. Appledore Investments (Pty) Ltd;

ii. Mufase Investments (Pty) Ltd;

iii. Meer Sharma and Associates CC (current status of entity is "deregistration final", however no date of when this entity was deregistered could be obtained);

iv. NADP; and

v. VRLS Properties.

j) In terms of Transnet's Declaration of Interest Policy, a director has a duty to disclose any interests of *\*Related and Inter-Related person(s)*.

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- k) Mr Sharma failed to declare his wife's, Ms Tarina Patel, interest in Appledore Investments (Pty) Ltd.
- l) NADP is jointly owned by Issar Capital and Elgasolve.
- m) Mr Sharma is the sole director of Issar Capital and Mr Essa is the sole director of Elgasolve. Mr Sharma did not declare his business interest with Mr Essa to Transnet.
- n) Furthermore, Mr Essa is one of the directors of VR Laser Services. VR Laser Services' most recent procurement with Transnet occurred in the period February 2014 to April 2014.
- o) According to the share register of VR Laser Services, Elgasolve owns 74.9% of VR Laser Services.
- p) According to Mr Sharma VR Laser Services leases the property which it conducts business from. This property is owned by VRLS Properties.
- q) VRLS Properties is 100% owned by Issar Capital. Mr Sharma is a co-director in VRLS Properties.
- r) Mr Sharma did not make any additional declarations of interests at any BADC meetings.

### 3. The Gupta family and Mr Zuma

- a) The share register for VR Laser Services shows that Elgasolve owns a 74.9% share in VR Laser Services and Craysure Investments owns the remaining 25.1% share in VR Laser Services.
- b) The share register for Craysure Investments shows that it is wholly owned by Westdawn Investments.

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c) Our entity search on Westdown Investments revealed that the following individuals are directors in this entity:

- i. Ravindra Nath (appointed as director on 2006/07/30)
- ii. Mr Gupta (appointed as a director on 2009/02/03)
- iii. Ronica Govender (appointed as a director on 2006/07/30)
- iv. Ronice Ragavan (appointed as a director on 2006/07/30)
- v. Mr Zuma (appointed as a director on 2008/09/30)

d) Mr Jiyane confirmed that he is in the process of selling his shares in VR Laser Services to Craysure Investments. However, the share register of VR Laser Services reflects Craysure Investments as being the new minority shareholder.

e) Mr Jiyane further confirmed that he is aware that Craysure Investments is owned by Westdown Investments.

f) According to the share register of NADP, Mbangela Investments (Pty) Ltd and Shiva Uranium (Pty) Ltd are both entities that held a majority share in NADP.

g) Mbangela Investments (Pty) Ltd and Shiva Uranium (Pty) Ltd are both companies in which the Gupta family as well as Mr Zuma have directorships.

h) Mr Sharma and Mr Essa are the current directors/owners of NADP.

#### 4. Negotiations pertaining to VR Laser Services

a) The directors of VR Laser Services mentioned the following:

- i. Mr Jiyane was the one who initially had contact with Mr Sharma.

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- ii. Mr Sharma subsequently met with Mr Van Reenen and Mr Bloxham around three to four times during the course of 2013.
- iii. Negotiations for the sale of VR Laser Services broke down around July 2013.
- iv. Mr Sharma returned, in September 2013, to Mr Van Reenen and Mr Bloxham with a new offer.
- v. They managed to reach an agreement of sale and the deal was done on December 2013.
- vi. According to Mr Van Reenen, Mr Essa only became involved in the deal when they were about to sign the purchase agreement.
- vii. According to Mr Van Reenen, Mr Sharma disclosed from the outset that he was on the Board of Transnet.
- viii. Mr Essa purchased VR Laser Services and Mr Sharma purchased VRLS Properties.
- ix. Mr Essa is currently the majority shareholder in VR Laser Services. Mr Essa purchased these shares through Eigasolve.

#### 5. Visits to VR Laser Services

- a) Mr [redacted] stated the following in respect of the visits made by the winning bidders to VR Laser Services:

- i. The two Chinese companies who visited VR Laser Services in 2013 were "CSR" and "CNR". They approached VR Laser Services around November or December 2013.

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- ii. CSR and CNR were manufacturing the "95 locomotives" in terms of the previous Transnet locomotive contract. They visited VR Laser Services because of this contract.
- iii. The purpose of the visit was to evaluate the capacities and capabilities of VR Laser Services'.
- iv. CSR and CNR were manufacturing the "95 locomotives" in terms of the previous Transnet locomotive contract.
- v. The third company was "General Electric". Mr Jiyane met them towards the end of 2012 or early 2013. "General Electric" never visited the premises of VR Laser Services.

#### 6. Response from Winning Bidders

- a) Bombardier transportation stated that they never visited VR Laser Services.
- b) CSR E-LoCo stated that they visited VR Laser Services in October 2013, however they did not appoint VR Laser Services to perform any work for them as they did not meet the manufacturing specifications.
- c) CSR E-LoCo further stated that they had no contact with Mr Sharma.
- d) General Electric stated that they never visited the premises of VR Laser Services.
- e) General Electric did, however, meet with Mr Sharma as he was part of a Transnet delegation who visited General Electric in the United States of America.
- f) We are still awaiting feedback from CNR.

#### 7. Mr Sharma's role in awarding of the 1064 contract

- a) Mr Sharma has been a member of the BADC since 23 February 2011;
- b) Mr Sharma was appointed as the Chairman of the BADC by the BOD on 29

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	<p>August 2012;</p> <ul style="list-style-type: none"> <li>c) The BADC was responsible for overseeing and making of recommendations to the BOD with regards to procurement transactions within the Committee's delegated authority;</li> <li>d) The BADC oversaw the tender process for the 1064 tender since before it was first advertised on 13 July 2012.</li> <li>e) The GCE approved a decision that all the bidders for the Diesel tender must be requested to submit a best and final commercial offer after consultation with Mr Mkwazazi, Mr Sharma and TIA. This resulted in G E South Africa being awarded part of the Diesel contract instead of EMD Africa.</li> <li>f) The BADC approved the recommendations made by management on 17 January 2014 to award the 1064 contract to the four winning bidders.</li> </ul>
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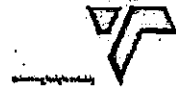
7.	WAY FORWARD
	<p>1. Based on the findings emanating from our procedures performed, we recommend the following next steps:</p> <ul style="list-style-type: none"> <li>a) The matter be referred to Transnet's counsel in order to obtain an opinion on the following:             <ul style="list-style-type: none"> <li>i. Any transgressions of any Transnet's policy;</li> <li>ii. Has any criminal offence been committed; be it statutory and/or common law; and</li> <li>iii. Obtain share registers for all of the related entities and conduct an analysis of said share registers.</li> </ul> </li> </ul>

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CLIENT SIGNATURE	
COMMENTS	
SIGNATURE	
CLOSE OUT DATE	

Status Key:

AS= Ahead of Schedule

OT= On Track

BS = Behind Schedule

**DRAFT**

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*Transnet*

Allegations against Mr Iqbal  
Sharma

Presented by:  
Lionel van Tonder  
Ettienne Lambrechts

**pwc**

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## *Agenda*

1. Mail and Guardian article dated 4 July 2014.
2. Regulatory framework and Transnet policies
3. Mr Sharma's email response to Mr Mkwanazi
4. Declarations made by Mr. Sharma
5. Messrs Sharma's, Gupta and Zuma's alleged acquisition of a share in VR Laser Services
6. Interviews with former VR laser Services shareholders
7. Interviews with winning bidders on their alleged site visits to VR Laser Services
8. Process followed by the BADC in awarding the locomotive contract to the four winning bidders
9. Interview with Mr Sharma
10. Summary of our findings
11. Way forward

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## *Mail and Guardian article dated 4 July 2014*

1. Mr Sharma a non-executive Director of Transnet and the Chairperson of the Board Acquisition Disposal Committee (BADC) evaluated tenders in respect of the acquisition of new locomotives for an amount of approximately R50 billion.
2. The successful bidders, all foreign entities, were required (in terms of their contracts with Transnet) to procure 60% of their components from the South African market.
3. It was alleged that Mr Sharma acquired a share in an entity styled "*VR Laser Services*".
4. It was also alleged that the said share was acquired shortly prior to the announcement of the winning bidders on the locomotive contract.
5. The winning bidders, prior to the awarding of the locomotive contract, performed a site visit at the premises of VR Laser Services to assess the possibility of subcontracting to VR Laser Services.

*Mail and Guardian article dated 4 July 2014*  
*(continues)*

6. The newspaper article also alleged that, shortly after Mr Sharma's share acquisition, an entity in which Messrs Rajesh Gupta ("Mr Gupta") and Duduzane Zuma ("Mr Zuma") have a share, acquired a share in VR Laser Services.

## *Regulatory framework and Transnet policies*

1. Constitution of the Republic of South Africa Act No. 108 of 1996 (“The Constitution”)
2. Companies Act No. 71 of 2008 (“Companies Act”). Page 18 of the report
3. Prevention and Combatting of Corrupt Activities Act No. 12 of 2004 (“POCA”)
4. October 2013 Transnet Supply Chain Policy. Page 8 of the report
5. Transnet Declaration of interest policy. Page 9 of the report
6. King III report. Page 24 of the report
7. Transnet Code of Ethics policy. Page 24 of the report

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## *Mr Sharma's email response to Mr Mkwanzazi*

1. He identified an opportunity with VR Laser Services and set out to acquire it.
2. He "initiated" discussions and proceeded to "negotiate" with the "owners". Did not mention names.
3. His first meeting with VR Laser Services was in March 2013, after which formal discussions followed in May 2013 and the "deal" was subsequently finalised in December 2013.
4. He approached "Mr Essa" (Mr Salim Aziz Essa, "Mr Essa") as an additional investor as a result of the final negotiated price and "not wanting to over leverage the transaction".
5. As Mr Sharma was not in a position to contribute due to the required "capital calls", 75% of VR Laser Services was subsequently bought by Mr Essa and the balance (25%) remained with an existing shareholder. Mr Sharma bought VRLS Property and VR Laser Services operates from this property.

***Mr Sharma's email response to Mr Mkwanzazi  
(continues)***

6. VR Laser Services has for the past 2 years, and currently still is, "running at a loss", which required considerable contributions from the shareholders. As such, the mentioned minority shareholder "allegedly" sold his stake to "Craysure Investments" (entity was identified as "Craysure Investments (Pty) Ltd, "Craysure Investments").
7. Due to his "limited budget", he "remains" with "a property company" and does not participate in the "operating business".
8. VR Laser Services' last invoice to Transnet was in 2011 and does not currently do any business with Transnet.
9. Prior to 2011, VR Laser Services was in business with Transnet for 5 years to a value of R 200,000.00 per year.

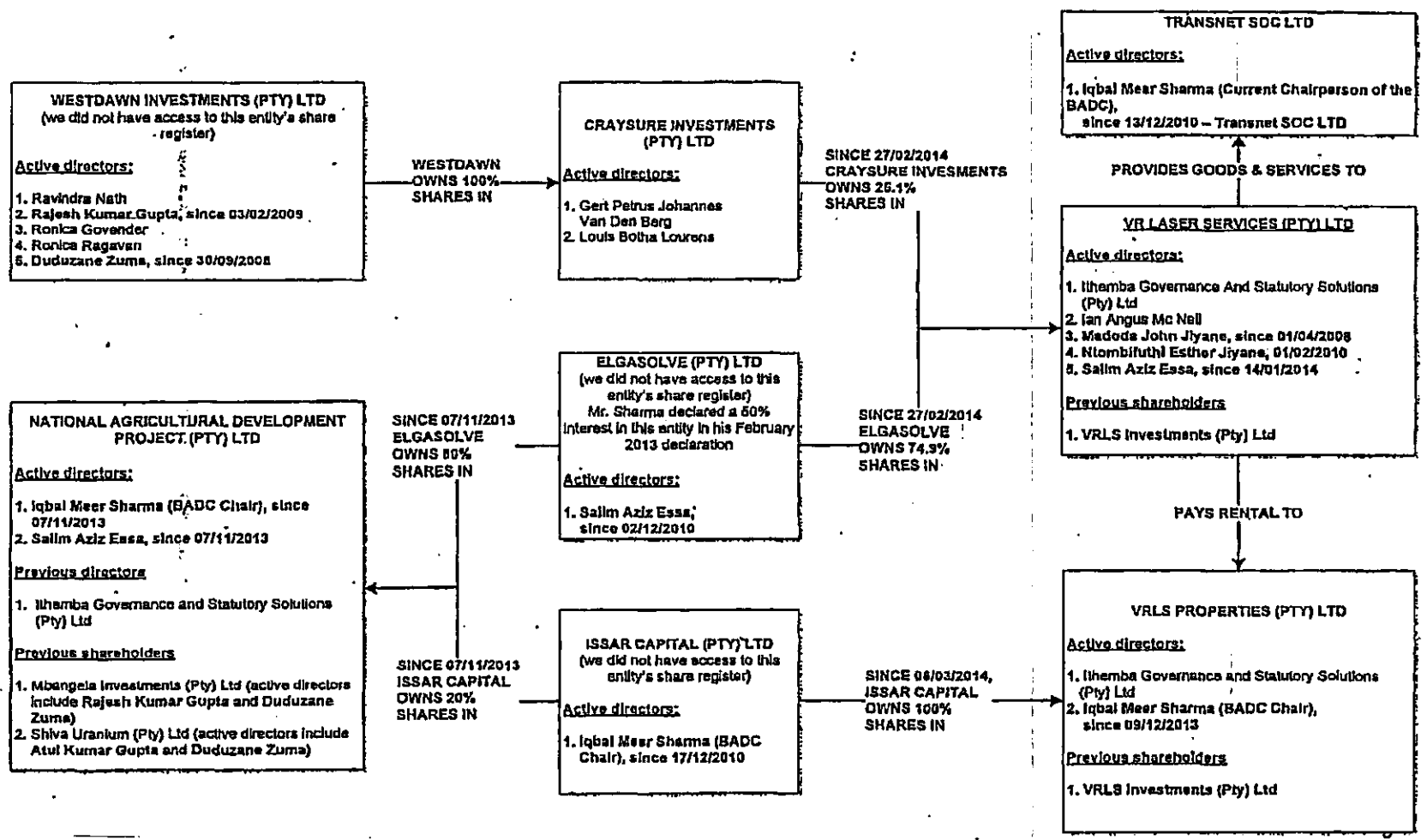
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***Mr Sharma's email response to Mr Mkiwanazi  
(continues)***

10. He has been, and currently still is, "friends" with the "Guptas" ("the Guptas"). Whether he does business with the "Guptas" or not is a "personal matter".
11. There is no conflict between his "private business affairs" and his roles and responsibility to Transnet.



# Messrs Sharma's, Gupta and Zuma's alleged acquisition of a share in VR Laser Services



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## *Interviews with former VR laser Services shareholders*

### *Mr. Van Reenen*

1. Mr. van Reenen stated that VRLS Investments (Pty) Ltd previously owned 74.9% of VR Lasers Services and this company was owned by Mr Bloxham and him.
2. The remaining 25.1% was owned by Mr Benny Jiyane (Mr Jiyane).
3. Mr Jiyane was the one who initially had contact with Mr Sharma around June / July 2013.
4. He subsequently met Mr Sharma around three to four times during the course of 2013. They managed to reach an agreement of sale and the deal was done on 9 December 2013.
5. Mr Essa only became involved in the deal when they were about to sign the purchase agreement.

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## *Interviews with former VR laser Services shareholders (Continues)*

6. From the outset Mr Sharma disclosed to him that he is on the Board of Transnet.
7. He stated that Mr Essa purchased VR Laser Services and Mr Sharma purchased VRLS Properties.
8. He stated that, at the time when negotiations began, the business was not running at a profit and lost around R8 million in the 6 months leading up to December.
9. He confirmed that he was aware that the winning bidders "came around", but that he has no further knowledge of the visits as Mr Jiyane hosted them.

### *Mr. Jiyane*

10. Mr Jiyane stated that the decision was taken to sell VR Laser Services around 2012.

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## ***Interviews with former VR laser Services shareholders (Continues)***

11. He was involved with the initial sale process which started around June / July 2013.
12. He was first introduced to Mr Essa and Mr Essa in turn introduced him to Mr Sharma. This all occurred in 2013.
13. Mr Essa is currently the majority shareholder in VR Laser Services. Mr Essa purchased these shares through Elgasolve.
14. VR Laser Services "hosts" a number of Original Equipment Manufacturers ("OEM's") on various projects to demonstrate manufacturing capabilities.
15. The two Chinese companies approached VR Laser Services around November or December 2013. They wanted to have a look at VR Laser Services' capacities and capabilities. He was approached by their BEE partner (did not recall the name) and was thereafter introduced to the Chinese partners.

## Interviews with former VR laser Services shareholders (Continues)

August  
2015

16. The two Chinese companies who visited in 2013 were "CSR" and "CNR". They approached VR Laser Services because they were manufacturing the "95 locomotives" in terms of the previous Transnet contract. CSR
17. The third company was "General Electric". He met them earlier last year or towards the end of 2012. VR Laser Services just discussed generally what the company does etc. cutting steel.
18. "Esther Jiyane" is his wife and all his shares in VR Laser Services are held in her name.
19. The share register is correct in saying that there are new shareholders. However, the shares are not sold as yet as there are certain milestones that need to be met before the sale can be completed.
20. His shares are being sold to Craysure Investments. He only dealt with an individual by the name of "J.P Arora" from Craysure Investments.

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## *Interviews with former VR laser Services shareholders (Continues)*

21. He is aware that Craysure Investments is wholly owned by Westdawn Investments (Pty) Ltd.
22. He stated that Ithemba is the new company secretary for VR Laser Services.
23. When we tried to ask some follow up questions, Mr Jiyane *via* his lawyer informed us that he is not prepared to be interviewed.

### *Mr. Bloxham*

24. Mr Bloxham stated that he only negotiated with Mr Sharma for the sale of VR Laser Services.
25. During June/ July 2013, negotiations were at a halt due to disagreement on the sale price. However, in September 2013, Mr Sharma approached him and Mr Van Reenen again and came with a better offer.

## ***Interviews with winning bidders on their alleged site visits to VR Laser Services***

1. To date we received a reply from GE, Bombardier and CSR.
2. No reply from CNR.
3. GE and Bombardier did not visit VR Laser Services.
4. CSR did visit the premises of VR Laser Services.
5. During April 2014, VR Laser Services visited the premises of CSR in China.
6. A Transnet delegation did however visit GE in the USA during October 2014.
7. All the above was confirmed by Mr. Jiyane.

## ***Process followed by the BADC in awarding the locomotive contract to the four winning bidders***

1. According to Mr Thamsanqa Jiyane (Not related to Mr Benny Jiyane from VR Laser Services) from Transnet, the BADC's involvement with regards to the two tenders (the Diesel and Electrical locomotive tenders) collectively referred to as the 1064 tender was as follows:
  - 1.1. Management obtained approval from the BOD and BADC, in accordance with the delegations of authority of Transnet, to go out on tender to acquire 1064 locomotives;
  - 1.2. The BADC then reviewed and approved a summary of the evaluation criteria for the 1064 tender;
  - 1.3. The BADC was required to approve the recommendations made by Management as to which tenderers should be awarded the contract;
  - 1.4. The BADC "did not even know the names of the tenderers as they were referred to as T1, T2 etc. in the management presentations made to the BADC" relating to the results of the evaluations by management of the 1064 tender;



***Process followed by the BADC in awarding the locomotive contract to the four winning bidders  
(Continues)***

- 1.5. The BADC approved the TFR Locomotive Procurement Strategy on 3 August 2011. Mr Sharma was present at this meeting in his capacity as member of the BADC;
- 1.6. The two tenders collectively referred to as the 1064 tender was first advertised on 13 July 2012 according to Ms Lindiwe Mdletshe, Commodities Manager at Transnet and the Sunday Times' advertisement dated the same date; and
- 1.7. The submission close date for the 1064 tender was 30 April 2013 according to the Tender Opening Forms for tender numbers TFRAC-HO-8608 Electrical and TFRAC-HO-8609 Diesel.

***Process followed by the BADC in awarding the locomotive contract to the four winning bidders (Continues)***

2. According to the Tender Opening Form for tender number TFRAC-HO-8608 Electrical dated 30 April 2013, the following tenderers submitted tenders for the Electrical tender:
  - 2.1. Bombardier Transportations;
  - 2.2. CSR E-Loco Supply Proprietary Limited;
  - 2.3. Alstom (consortium consisting of Woman Rail Consulting and Engineering (Pty) Ltd and New Africa Rail);
  - 2.4. Bongiveli;
  - 2.5. Siemens;
  - 2.6. CNR Import & Export Corporation Ltd (consortium consisting of CNR Import and Export;
  - 2.7. Global Railway Africa and Cadiz Corporate Solutions & Endinamax (Pty) Ltd); and
  - 2.8. Mitsui/Toshiba (Mars).

***Process followed by the BADC in awarding the locomotive contract to the four winning bidders (Continues)***

3. According to the Tender Opening Form for tender number TFRAC-HO-8609 Diesel dated 30 April 2013, the following tenderers submitted tenders for the Diesel tender:
  - 3.1. CNR Import & Corporation LTD (consortium consisting of Global Railway Africa/Cadiz Corporate Solutions & Endinamix (Pty) Ltd);
  - 3.2. CSR Loliwe Consortium (consortium consisting of CSR Qishuyan Co. Ltd and Pin Ezy Investments);
  - 3.3. EMD Africa; and
  - 3.4. GE South Africa.
4. Management recommended that the tenderers from Bombardier Transportations and CSR E-Loco Supply Proprietary Limited be awarded the contract to supply the Electrical locomotives.
5. This recommendation by management was approved by the BADC on 24 January 2014.

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***Process followed by the BADC in awarding the locomotive contract to the four winning bidders  
(Continues)***

6. On the Diesel locomotive contracts, best and final offers were requested and the final results of the evaluations after the best and final offers are that tenderers CNR Import & Corporation LTD and G E South Africa be awarded the contract to supply the Diesel locomotives.
7. This recommendation by management was approved by the BADC on 24 January 2014.
8. Letters of intent were sent on 28 January 2014 to the following entities:
  - 8.1. Bombardier Transportation SA (Pty) Ltd;
  - 8.2. CSR;
  - 8.3. CNR Consortium; and
  - 8.4. GE South Africa Technologies (Pty) Ltd.

## *Interview with Mr Sharma*

### *Re: The leaking of information:*

1. Mr Sharma reserved his rights pertaining to the alleged leaking of information. As a result he decided not to provide information on this.

### *Re: Declarations of interest:*

2. He is currently not a shareholder of Elgasolve and also was not a shareholder of Elgasolve when he made his declarations in 2013 and 2014. He only declared the interest in his February 2013 declaration as he was under the impression that he was a shareholder.
3. He did not declare his interests in Appledore Investments (Pty) Ltd and Mufase Investments (Pty) Ltd in his February 2013 and April 2014 declarations because he thought he was no longer a director of these entities. According to him he resigned as a director of these entities two or three years ago.

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## *Interview with Mr Sharma (Continues)*

4. He did not declare his interest in Meer Sharma and Associates CC as this entity should have been deregistered.
5. He failed to declare his interests in NADP and VRLS Properties as he was not aware that he was a director of these entities, he thought he was only a shareholder of VRLS Properties.
6. According to Mr Sharma it sometimes happens that he signs documents put in front of him without him reading what it is that he is signing.
7. Mr Sharma stated that he should have declared his interests in NADP and VRLS Properties in his April 2014 declaration. Not declaring this was an oversight by him.

## *Interview with Mr Sharma (Continues)*

8. In addition, he informed us that there are no conflicts that he failed to declare in his February 2013 or April 2014 declarations.
9. Mr Sharma's understanding of what he is required to declare is any interests of him or his family that is in conflict with Transnet.

### *Re: Purchase of VR Laser Services:*

10. Mr Sharma saw an opportunity in VR Laser Services within the defence business. In his travels he met various people who kept asking about defence vehicles (armed vehicles) and one individual in Saudi Arabia from G4Security wanted armed vehicles for cash in transit purposes.
11. Mr Sharma conducted internet searches looking for entities that would be able to provide these services. This is how he happened to stumble upon VR Laser Services.

## *Interview with Mr Sharma (Continues)*

### *Re: Purchase of VR Laser Services (continues):*

12. Mr Essa knew someone at VR Laser Services and introduced Mr Sharma to Mr Benny Jiyane. Mr Sharma and Mr Benny Jiyane met in March 2013. Mr Benny Jiyane wanted to buy out his other shareholders and keep his interest (24% or 25%) in the business.
13. Mr Sharma and his advisors then met with John van Reenen who gave them four financial statements to look at for pricing and they concluded the transaction in December 2013.
14. According to Mr Sharma negotiations never broke down, the halt was just part of the normal negotiation process.
15. During October 2013 he involved Mr Essa. VR Laser Services had potential (with pedigree as it is a 70 year old business) but it was going through a slump. Mr Sharma's idea was to use VR Laser Services as an OEM to make armed ambulances and cash in transit vehicles.



## *Interview with Mr Sharma (Continues)*

16. The company had losses with no future plan; but he saw that he could trim a lot of fat off the expenses. Mr Essa was only loosely aware of what was going on and his involvement was going to be limited.
17. However once Mr Sharma realised that it was going to take up to two years to break even with VR Laser Services he knew he did not have enough liquidity. Mr Sharma then handed VR Laser Service to Mr Essa. The transaction was split in two: Mr Essa took the business and he took the property.
18. During January 2014 Mr Sharma had a fallout with Mr Benny Jiyane as a result of undisclosed matters relating to the income and expenses of VR Laser Services. After this Mr Sharma had no dealings or communication with Mr Benny Jiyane.
19. He later read in the newspaper that Westdawn bought Mr Benny Jiyane's share.

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## ***Interview with Mr Sharma (Continues)***

20. Mr Sharma does not know how Westdawn got introduced to Mr Benny Jiyane as he did not introduce Mr Benny Jiyane to Westdawn. Mr Sharma confirmed that Westdawn is owned by Mr Zuma and Mr Gupta and that he knows them well.
21. The purchase of VR Laser Services coinciding with the locomotive contract was pure coincidence.

### ***Re: Objections raised by Mr Sharma:***

22. Mr Sharma criticized the procedures followed by Transnet in the commissioning of this investigation.
23. In his objection he criticized the Chairman of the Board.
24. Mr Sharma confirmed that the Company Secretary provided him with a copy of a PwC presentation on this investigation (contrary to our advice not too), prior to our interview with him.

## *Summary of our findings*

1. Mr Sharma declared the following entities, including his shareholding, in his February 2013 declaration:
  - 1.1. Nulane Investments 204 (Pty) Ltd (100% shareholding);
  - 1.2. Issar Investment Holdings (Pty) Ltd (100% shareholding);
  - 1.3. Issar Capital (100% shareholding);
  - 1.4. GMT Concepts (Pty) Ltd (20% shareholding);
  - 1.5. DAQO South Africa (Pty) Ltd (did not declare a shareholding); and
  - 1.6. Elgasolve (50% shareholding).
  
2. According to our entity searches, Mr Sharma was a director in the following entities during February 2013:
  - 2.1. Nulane Investments 204 (Pty) Ltd (appointed as a director on 2008/09/17); and
  - 2.2. Issar Investment Holdings (Pty) Ltd (appointed as a director on 2011/01/14).

## *Summary of our findings (Continues)*

3. Issar Capital (appointed as a director on 2010/12/17).
4. GMT Concepts (Pty) Ltd (appointed as a director on 2009/11/12).
5. DAQO South Africa (Pty) Ltd (appointed as a director on 2012/11/07).
6. Appledore Investments (Pty) Ltd (appointed as a director on 2006/05/18).
7. Mufase Investments (Pty) Ltd (appointed as a director on 2006/05/10).
8. Meer Sharma and Associates CC (appointment date not available but Mr Sharma is the sole director of this entity and it has been active since 2 December 1994).
9. In his February 2013 declaration, Mr Sharma failed to declare his interests in the following entities:
  - 9.1. Appledore Investments (Pty) Ltd;
  - 9.2. Mufase Investments (Pty) Ltd; and
  - 9.3. Meer Sharma and Associates CC.

## ***Summary of our findings (Continues)***

14. According to our entity searches, Mr Sharma was a director in the following entities during April 2014:
- 14.1. Nulane Investments 204 (Pty) Ltd (appointed as a director on 2008/09/17);
  - 14.2. Issar Investment Holdings (Pty) Ltd (appointed as a director on 2011/01/14);
  - 14.3. Issar Capital (appointed as a director on 2010/12/17);
  - 14.4. GMT Concepts (Pty) Ltd (appointed as a director on 2009/11/12);
  - 14.5. DAQO South Africa (Pty) Ltd (appointed as a director on 2012/11/07);
  - 14.6. Appledore Investments (Pty) Ltd (appointed as a director on 2006/05/18);
  - 14.7. Mufase Investments (Pty) Ltd (appointed as a director on 2006/05/10);
  - 14.8. Meer Sharma and Associates CC (appointment date not available but Mr Sharma is the sole director of this entity and it has been active since 2 December 1994);

## ***Summary of our findings (Continues)***

- 14.9. NADP (appointed as a director on 2013/11/07);
  - 14.10. 79 NDC Swellendam (Pty) Ltd (appointed as a director on 2013/08/12); and
  - 14.11. VRLS Properties (appointed as a director on 2013/12/09).
15. In April 2014 Mr Sharma failed to declare his interests in the following entities:
- 15.1. Appledore Investments (Pty) Ltd;
  - 15.2. Mufase Investments (Pty) Ltd;
  - 15.3. Meer Sharma and Associates CC;
  - 15.4. NADP; and
  - 15.5. VRLS Properties.
16. In terms of Transnet's Declaration of Interest Policy, a director has a duty to disclose any interests of "*Related and Inter-Related person(s)*".
17. Mr Sharma failed to declare his wife's, Ms Tarina Patel, interest in Appledore Investments (Pty) Ltd.

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## ***Summary of our findings (Continues)***

18. NADP is jointly owned by Issar Capital and Elgasolve.
19. Mr Sharma is the sole director of Issar Capital and Mr Essa is the sole director of Elgasolve. Mr Sharma did not declare his business interest with Mr Essa to Transnet
20. Furthermore, Mr Essa is one of the directors of VR Laser Services. VR Laser Services' most recent procurement with Transnet occurred in the period February 2014 to April 2014.
21. According to Mr Sharma VR Laser Services leases the property which it conducts business from. This property is owned by VRLS Properties.
22. VRLS Properties is 100% owned by Issar Capital. Mr Sharma is a co-director in VRLS Properties.
23. Mr Sharma did not make any additional declarations of interests at any BADC meetings.

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## *Summary of our findings (Continues)*

### *The Gupta family and Mr Zuma*

24. The share register for VR Laser Services shows that Elgasolve owns a 74.9% share in VR Laser Services and Craysure Investments owns the remaining 25.1% share in VR Laser Services.
25. The share register for Craysure Investments shows that it is wholly owned by Westdawn Investments.
26. Our entity search on Westdawn Investments revealed that the following individuals are directors in this entity:
  - 26.1. Ravindra Nath (appointed as director on 2006/07/30);
  - 26.2. Mr Gupta (appointed as a director on 2009/02/03);
  - 26.3. Ronica Govender (appointed as a director on 2006/07/30);
  - 26.4. Ronice Ragavan (appointed as a director on 2006/07/30); and
  - 26.5. Mr Zuma (appointed as a director on 2008/09/30).



## *Summary of our findings (Continues)*

27. Mr Jiyane confirmed that he is in the process of selling his shares in VR Laser Services to Craysure Investments. However, the share register of VR Laser Services reflects Craysure Investments as being the new minority shareholder.
28. Mr Jiyane further confirmed that he is aware that Craysure Investments is owned by Westdawn Investments.
29. According to the share register of NADP, Mbangela Investments (Pty) Ltd and Shiva Uranium (Pty) Ltd are both entities that held a majority share in NADP.
30. Mbangela Investments (Pty) Ltd and Shiva Uranium (Pty) Ltd are both companies in which the Gupta family as well as Mr Zuma have directorships.

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## *Summary of our findings (Continues)*

31. Mr Sharma and Mr Essa are the current directors/owners of NADP.

### *Negotiations*

32. The directors of VR Laser Services mentioned the following:

- 32.1. Mr Jiyane was the one who initially had contact with Mr Sharma;
- 32.2. Mr Sharma subsequently met with Mr Van Reenen and Mr Bloxham around three to four times during the course of 2013;
- 32.3. Negotiations for the sale of VR Laser Services broke down around July 2013;
- 32.4. Mr Sharma returned, in September 2013, to Mr Van Reenen and Mr Bloxham with a new offer;
- 32.5. They managed to reach an agreement of sale and the deal was done on 9 December 2013;

***Summary of our findings (Continues)***

- 32.6. According to Mr Van Reenen, Mr Essa only became involved in the deal when they were about to sign the purchase agreement;
- 32.7. According to Mr Van Reenen, Mr Sharma disclosed from the outset that he is on the Board of Transnet;
- 32.8. Mr Essa purchased VR Laser Services and Mr Sharma purchased VRLS Properties; and
- 32.9. Mr Essa is currently the majority shareholder in VR Laser Services.  
— Mr Essa purchased these shares through Elgasolve.

***Visits to VR Laser Services***

- 33. Mr Jiyane stated the following in respect of the visits made by the winning bidders to VR Laser Services:
  - 33.1. The two Chinese companies who visited VR Laser Services in 2013 were “CSR” and “CNR”. They approached VR Laser Services around November or December 2013;

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## *Summary of our findings (Continues)*

- 33.2. CSR and CNR were manufacturing the “95 locomotives” in terms of the previous Transnet locomotive contract. They visited VR Laser Services because of this contract;
- 33.3. The purpose of the visit was to evaluate the capacities and capabilities of VR Laser Services’;
- 33.4. CSR and CNR were manufacturing the “95 locomotives” in terms of the previous Transnet locomotive contract; and
- 33.5. The third company was “General Electric”. Mr Jiyane met them towards the end of 2012 or early 2013. “General Electric” never visited the premises of VR Laser Services.

### *Response from Winning Bidders*

- 34. Bombardier and GE stated that they never visited VR Laser Services.
- 35. CSR did visit the premises of VR Laser Services. CSR also confirmed that VR Laser Services visited their premises in China during April 2014. CSR never appointed VR Laser Services as one of their sub-contractors.

## ***Summary of our findings (Continues)***

### ***Mr Sharma's role in awarding of the 1064 contract***

- 36. Mr Sharma has been a member of the BADC since 29 February 2011.
- 37. Mr Sharma was appointed as the Chairman of the BADC by the BOD on 29 August 2012.
- 38. The BADC was responsible for overseeing and making of recommendations to the BOD with regards to procurement transactions within the Committee's delegated authority.
- 39. The BADC oversaw the tender process for the 1064 tender since before it was first advertised on 13 July 2012.
- 40. The GCE approved a decision that all the tenderers for the Diesel tender must be requested to submit a best and final commercial offer after consultation with Mr Mkwanzazi, Mr Sharma and TIA. This resulted in GE South Africa being awarded part of the Diesel contract instead of EMD Africa.

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## *Summary of our findings (Continues)*

41. The BADC approved the recommendations made by management on 17 January 2014 to award the 1064 contract to the four winning bidders.

## *Way forward*

1. It is recommended that the matter be referred to Transnet's counsel in order to obtain an opinion on the following:
  - 1.1. Any transgressions of any Transnet's policy?
  - 1.2. Has any criminal offence been committed; be it statutory and/or common law?
2. Obtain share registers for all of the related entities and conduct an analysis of said share registers.

## Appendix 66



DELIVERED BY HAND

## TRANSNET SOC LTD

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Johannesburg  
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FOR THE ATTENTION: **MS LINDA MABASO**  
**THE CHAIRPERSON**

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7 July 2017

Dear Madam

re: **FORENSIC INVESTIGATION INTO ALLEGATIONS IN THE MEDIA PERTAINING TO A POSSIBLE CONFLICT OF INTEREST INVOLVING MR IQBAL SHARMA**

## Background

- 1 We have been requested to review and provide an executive summary of the views and considerations of Price WaterhouseCoopers ("PWC") in their draft report on a forensic investigation conducted in relation to allegations of possible conflict of interest involving Mr Iqbal Sharma ("Sharma") in respect of the acquisition of 1064 locomotives for Transnet Soc Limited ("Transnet") General Freight Business ("1064 Transaction"), as contained in a newspaper article of the Mail & Guardian, dated 4 July 2014 ("draft report").
- 2 Sharma was at the time of the allegations a non-executive member of the Board of Directors ("BOD") of Transnet and the Chairperson of Transnet's Board of Acquisitions and Disposals Committee ("BADC").
- 3 PWC was mandated to investigate the above conflict of interest as well as the possibility that there had been an unauthorised disclosure of confidential information in relation to the award of the 1064 Transaction.
- 4 In short, PWC's findings are essentially that Sharma was conflicted in relation to the award of the 1064 Transaction in as far as he had acquired a share in VR Laser Services (Pty) Ltd ("VR Laser Services") shortly prior to announcement of winning bidders in the 1064 Transaction under the following circumstances:

Werksmans Inc. Reg. No. 1990/007215, 11 Registered Office 155 5th Street Sandton 2196 South Africa  
Directors: D Hertz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata LM Becker JD Behr AR Barman MNM Bhengu Z Blieden HGB Boshoff GT Bossr  
TJ Boswell MC Brönn W Brown PF Burger PG Jeland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman S Fodor SJ Gardiner D Gewer JA Gobetz  
R Goodkin IC Gouws GF Griessel J Hollesen P H Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer  
SLG Kayana A Kenny BM Kew R Killoran N K by HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa  
PK Mabaso IPC Manaka H Masondo SM Mberane C Moraitis PM Mosebo KO Motshwane L Naidoo J Nicklg JJ Niemand BPF Olivier WE Oosthuizen  
S Padayachy M Pansegrouw S Passmoor A Pillay D Pisanzi T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg  
NL Scott TA Sibidla LK Silberman JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron JJ Truter KJ Trudgeon DN van den Berg  
AA van der Merwe HA van Niekerk FJ van To der JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Weglinski G Wickins M Wiehahn DC Willans  
DG Williams E Wood BW Workman-Davies

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- 4.1 Sharma had at all relevant times been a non-executive director of Transnet and the Chairperson of the BADC, the latter which evaluated tenders in respect of the Transaction;
  - 4.2 The successful bidders were required to source 60% of the components for the Transactions from the South African market;
  - 4.3 VR Laser Services manufactures such components;
  - 4.4 Some of the winning bidders had performed a site visit at the premises of VR Laser Services shortly prior to the award of the Transaction; and
  - 4.5 ~~Sharma failed to declare his interest in VR Laser Services and had not at any point disclosed such interest in any of the meetings of the BADC. The only explanation proffered for such failure was an oversight on his part.~~
- 5 PWC's mandate further included an investigation into the possibility that Sharma had perpetrated any unauthorised disclosure of confidential information in relation to the Transaction. In this regard PWC found that there was not sufficient evidence on hand to make a determination.

#### PWC Findings

- 6 In discharging its mandate PWC had regard to various documents including State Owned Entities' regulatory framework, Transnet's policies and procedures (including related legislation), correspondence by and to Sharma in relation to the article. PWC further conducted interviews and consultations with various stakeholders and other relevant persons including Sharma himself, shareholders of VR Laser Services, representative/s of the Mail & Guardian, staff of Transnet and some of the winning bidders of the 1064 Transaction.
- 7 In summary, PWC made the following findings:
  - 7.1 Sharma had interests in the form of directorships (including shareholding in some instances) in certain entities not declared in the February 2013 and April 2014 declarations or during BADC meetings, one of such entities being VR Laser Properties;
  - 7.2 As regards VR Laser in particular, it was found that Sharma had interests in VR Laser Services through his involvement in National Agricultural Development Project (Pty) Ltd ("NADP"), Elgasolve (Pty) Ltd ("Elgasolve") and Issar Capital (Pty) Ltd ("Issar Capital") respectively, in that Sharma:
    - 7.2.1 Was an active director in NADP, in which Elgasolve and Issar Capital held an 80% and 20% shareholding respectively;
    - 7.2.2 Declared a 50% shareholding in Elgasolve on 28 February 2013;
    - 7.2.3 Elgasolve holds a 74.9% shareholding in VR Laser Services
    - 7.2.4 Issar Capital holds a 100% in VR Laser Properties, the entity from which VR Laser Services rents land; and
    - 7.2.5 Therefore, has interests in VR Laser services through his involvement in NADP, Elgasolve and Issar Capital respectively.

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- 7.3 PWC also found that VR Laser Services was listed as an active vendor of Transnet and that Transnet's most recent procurement from VR Laser Services occurred in the period February 2014 to April 2014;
- 7.4 Further, PWC found that Sharma failed to declare the above interests and he presented various reasons for such failure, including lack of awareness that he was a shareholder and/or director of the relevant entities and, in some instances, that he had resigned as director or that the company had been deregistered. In particular reference to VR Laser Services and NADP, his stance was that he was not aware of his directorship in these entities and that he had thought himself only a shareholder of VR Laser Properties.
- 7.5 In regard to visits to VR Laser Service premises by the winning bidders, PWC found:
- 7.5.1 Bombardier Transportation contended they had never visited the premises of VR Laser services;
- 7.5.2 CSR E-LoCo Supply (Pty) Ltd confirmed having had visited the premises, as well as those of other manufacturers, for purposes of identifying opportunities to improve the localisation of locomotives being manufactured for Transnet. They did not know the owners of VR Laser Services and had no contact with Sharma and no knowledge of his business associates. They concluded VR Laser Services was not suited for their purposes, as it did not meet their manufacturing specifications. VR Laser Services also visited their plant in China in April 2014, but CSR R-LoCo Supply (Pty) Ltd had as at that date not ever sub-contracted them;
- 7.5.3 General Electric confirmed that the Board of Directors of Transnet had visited their premises in America in October 2014, Sharma was part of the delegation but there was no mention made of VR Laser Services during the visit; and
- 7.5.4 IR Import & Export Corporation Ltd provided no information about site visits, though they had been requested to.

#### Sharma's retort

- 8 On the basis of *inter alia* Sharma's interview with PWC and his correspondence to the Mail & Guardian and his complaint to the Ombudsman, as per the draft report, Sharma's retort is as follows:
- 8.1 His involvement in VR Laser Services commenced in March 2013 when a deal was being negotiated, which deal was concluded in December 2013. He did not acquire a direct interest in VR Laser Services but rather in VR Laser Properties, the latter from which VR Laser Services conducts its business;
- 8.2 VR Laser had previously rendered services to Transnet, but that had been in 2011 and he had not done any business with Transnet since. In the circumstances there could be no conflict between his "private business affairs", to wit his dealings with VR Laser Services and VR Laser Properties, and his roles and responsibility to Transnet as neither company does business with Transnet;
- 8.3 Further, the BADC merely provides "oversight of the process followed by executives as it does not decide on the assignment of tender awards" and under his chairmanship the BADC took the decision that information relating to the tender should only be disclosed to officials adjudicating the tender, thus no information of substance was ever shared with the BADC;

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- 8.4 He had it on good authority that a member/s of the BADC had influence on the publication of the article and there was therefore not much merit in the allegations;
- 8.5 As regards his failure to declare certain of his interests:
- 8.5.1 He stated he should have declared his interest in VR Laser Properties and NADP, failure to do so was a mere oversight on his part;
- 8.5.2 The above notwithstanding, his view was that there were no conflicts which he failed to declare as his understanding of what is required to be declared is any interests of his or his family that is in conflict with Transnet, of which there was none;
- 8.6 In any event, the purchase of VR Laser Services coinciding with the Transaction was a pure coincidence.

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#### Conclusion

- 9 PWC established that Sharma had interests in certain entities that point to conflict of interest which potentially placed a duty on Sharma to declare such interests. Sharma failed to so declare and/or disclose said interest.
- 10 We note that the above is not exhaustive and/or final given our mandate to investigate the 1064 locomotive acquisition, which investigation we are of the view will shed further light and amplify this note in as far as the subject matter may be involved.
- 11 We would welcome the opportunity of discussing these preliminary views with you at a mutually convenient time.

Kind regards

Werksmans Inc.

## Appendix 67 1360

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TRANSNET



## MEMORANDUM

www.transnet.net

**TO:** Transnet Board Acquisitions and Disposals Committee (BADC)

**FROM:** Mr. Brian Molafé

**DATE:** 30 August 2013

**SUBJECT:** MITIGATION OF MDS VOLUMES AT RISK THROUGH THE INVESTMENT IN AND PROCUREMENT OF 100 CLASS 19E EQUIVALENT DUAL VOLTAGE ELECTRIC LOCOMOTIVES AND 60 CLASS 43 DIESEL LOCOMOTIVES.

## PURPOSE

1. The purpose of this submission is to request the Transnet Board Acquisitions and Disposals Committee to recommend to the Transnet Board of Directors the following:
  - a) Note the risk to TFR MDS volumes through insufficient traction power resulting from the delay in the procurement of the 1064 locomotives;
  - b) Note the investment in and procurement of 100 Class 19 E and 60 Class 43 Diesels will protect 24.5 mt of General Freight volumes at risk resulting from the delay in procurement of the 1064 locomotives.
  - c) the investment in and procurement of 100 Class 19E equivalent electric locomotives required for the Coal Export Line in the amount of R3 871 m (excluding borrowing costs): (Annexure A)
  - d) the confinement and award of the procurement for the 100 Class 19 equivalent electric locomotives to Mitsui & Co African Railway Solutions (PTY) LTD (MARSA);
  - e) the investment in and procurement of 60 Class 43 diesel locomotives for General Freight in the amount of R1 826 m (excluding borrowing costs);
  - f) an expansion of the current contract with General Electric South African Technologies (GESAT) for 60 Class 43 diesel locomotives;
  - g) The above awards will be conditional subject to paragraphs 7B and 7C and
  - h) The CEO be delegated the power to sign and conclude all relevant documents to give effect to the above resolutions.

## EXECUTIVE SUMMARY

2. The TFR locomotive fleet plan was first approved by the Transnet Board in April 2011 and updated with the 1064 GFB locomotive submission. The proposed locomotive acquisitions are in line with the fleet plan and have been budgeted for in the 7 Year Market Demand Strategy (MDS) 2013/14 - 2019/20. The delay in the 1064 fleet acquisition has put General Freight Business (GFB) MDS volumes at risk. The Class 19E dual voltage electric and Class 43 diesel locomotives recently delivered are modern capable locomotives. The Class 19E electric

BADC 100 60 Locomotive update 0829 updated Page 1

8/30/2013

100 New Class 19E Equivalent Coal Line Locomotives and 60 Class 34 Diesels  
Transnet EXCO recommendation to BADC

locomotives will be deployed on the Coal Export line which will enable the release (cascade) of 125 locomotives to General Freight. This submission proposes an accelerated procurement to mitigate General Freight MDS volumes at risk by confining 100 Class 19E electric locomotives to MARS and extending the current Class 43 Contract with GERT by 60 locomotives. The accelerated acquisition will mitigate the MDS shortfall by at least a year with its full effect realised commencing 2014/15. The volumes mitigated increase from 6.2 mt (14/15) to 15.1 mt (16/17) and the cumulative income protected is R9 197 m (13/14 - 16/17).

3. The Class 19E dual voltage electric and Class 43 have proven themselves in service and will improve service quality through improved reliability and reduced maintenance costs.
4. This accelerated acquisition does not put the MDS cash flow at risk and the 1064 acquisition remain unaffected. The acquisitions are funded from the current MDS. The delay in the 1064 will extend its funding to beyond the 7 year period.
5. The proposed transactions do not increase the risk related to the 1064 tender process.
6. Socio-economic benefits will be realised in line with existing commitments and expectations.

#### GOVERNANCE PROCESSES

7. The following governance processes were followed in developing and approving the business case. In each case the queries and amendments were dealt with.
  - a) The matter was tabled and recommended by Transport Freight Rail Investment Committee on 15 July 2013
  - b) The matter was tabled and recommended by Transnet Capital Investment Committee (CAPIC) on 19 August 2013
  - c) The matter was tabled and recommended by Transnet EXCO on 21 August 2013.

#### BACKGROUND

8. The status of the TFR Fleet Plan is summarised in the table below:

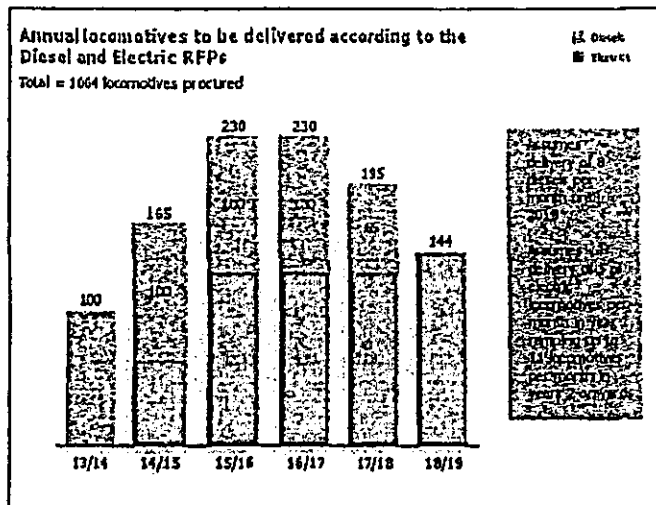
	Approved Fleet Plan	RFP / Contracted	This Submission	Future
Coal Fleet	112	-	100	62
GFB	1064 & 95	1064 & 95	60	-
Ore Export Line	32 & 26	32	-	26

9. The future acquisitions for the expansion of the Coal Export line to 97.5 mt and the Ore Export line to 80 mt will depend on market conditions and development of the full supply chain across all stakeholders.
10. The submission is to mitigate locomotive shortfalls over the next four years in support of TFR MDS volumes through:
  - a) Accelerated 100 Class 19E equivalent dual voltage electric locomotives for the Coal Export Line which will release locomotives to General Freight before the locomotives run out of their useful life.
  - b) 60 Class 43 Diesel Locomotives for General Freight.
11. TFR's Corporate Plan sets out the *7 Year Market Demand Strategy, (MDS) 2013/14- 2019/20* to virtually double General Freight volumes to 170 mt by 2019/20. This requires an integrated and

synchronised approach across locomotives, wagons, infrastructure and personnel. These aspects were covered in the 1064 business case submission.

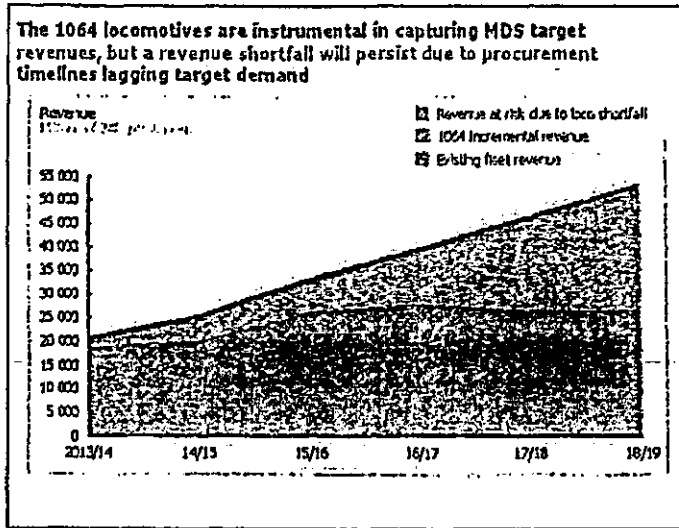
a) The 1064 locomotive business case which drives the General Freight volumes received its PFMA approval in August 2013. The 1064 business case was in support of the locomotive fleet plan linked to the annual volume increase and the run out of the existing fleet.

- 12. At the time of the tabling the 1064 business case, the 465 diesel and 599 electric delivery timelines were based on the RFP then in the market. The exhibit below details the locomotive delivery timelines that were modelled as per the RFPs and used as the base case assumption.



- 13. The PPPFA exemption also contributed to the delay of the 1064 procurement timeline.
- 14. With the PFMA approval recently obtained and the tender adjudication process still to be completed, the 1064 program has slipped by at least a year against original expectations. The current RFP timelines are being reviewed by the Locomotive Steering Committee to ensure a compressed timetable to further mitigate volume risks to the MDC.
- 15. Even with the 1064 business case being approved, there is a revenue shortfall which is exacerbated by the delay in locomotive delivery.

8/30/2013



16. The MDS shortfalls are tabled below. Even without any delay in the 1064 procurement, the MDS was under pressure in the early years. With the year delay, the shortfall in volumes spikes in 2014/15 and propagates through the MDS.

Shortfall	MDS Shortfall Scenario				Cumulative Total
	2013/14	2014/15	2015/16	2016/17	
M Tons					
No Delay	7.4	14.7	6.3	4.1	32.52
Year Delay	8.5	19.5	16.4	18.5	62.97
Rand Million					
No Delay	1 716	3 663	1 672	1 091	8143
Year Delay	1 989	4 850	4 373	4 900	16 111
1064 Year Delay					
M Tons	1.2	4.8	10.1	14.4	30.45
Rand Million	272	1 187	2 701	3 809	7 969

17. Should the 1064 locomotives be delayed by two years then the General Freight MDS shortfall Scenario worsens as shown in the following table.

Shortfall	MDS Shortfall - Two Year Delay				Cumulative Total
	2013/14	2014/15	2015/16	2016/17	
M Tons	1.2	7.5	18.0	29.9	56.59
Rand Million	272	1 855	4 804	7 932	14 864

**MOTIVATION**

18. The program and motivation below partially addresses the above MDS shortfall in the early years protecting tons and income per the table below.

Income Protected	2013/14	2014/15	2015/16	2016/17	Cumulative Total

8/30/2013

Avg. Rand / Ton	225.4	244.7	255.4	264.0	
100 19E -Tons Protected	2.4	2.4	4.4	7.2	16.44 Tons
Income Protected Rm	R 541	R 587	R 1 134	R 1 901	R 4 163
60 Diesels Tons Protected		3.8	7.9	7.9	19.6 Tons
Income Protected Rm		R 930	R 2 018	R 2 086	R 5 033
Total Tons	2.4	6.2	12.3	15.1	36.04 Tons
Income Protected Rm	R 541	R 1 517	R 3 152	R 3 987	R 9 197

19. The prime motivators for this submission are to:
- Protect General Freight volumes through delivering diesel and electric locomotives earlier than is possible through the 1064 program.
  - Ensure delivery earlier than the 1064 program by:
    - Confining the procurement of the electric locomotives
    - Extending the current diesel locomotive contract.

**MDS Shortfall – 100 Class 19E Dual Voltage Electric Locomotives:**

20. The 100 Class 19E locomotives will be deployed on the Coal Export Line which will enable the release of 125 locomotives to the General Freight network protecting approximately 16.4 million tons (cumulative 13/14-16/ 7) of General Freight in the 7 Year MDS volume targets and thus allowing growth in the GFB market which would not have been possible because of the 1064 locomotive procurement delay.
21. The locomotive fleet plan presented to the Transnet Board in April 2011 proposed 112 new locomotives to meet an unconstrained coal export demand of 97 mt by 2015/16 with a proposed fleet of 308 electric locomotives. The "Capital Investment for Export Coal 81 mt" predicated replacing the aged fleet with Class 19E equivalent locomotives. The updated locomotive fleet plan of April 2013 accompanying the 1064 General Freight locomotive business case also predicated 112 new locomotives for the Coal Business.
22. Subsequent to the Fleet Plan, the operational model was revised to take full advantage of the dual voltage capability of the Class 19E locomotive. The changeover to the new operational model commenced in July 2013 and will build up as drivers are trained on Radio Distributed Power operations on the current fleet and new the locomotives become available. This changes the future mix of the Coal Fleet. The new operational model is bringing about greater efficiencies and creating capacity.
23. The 112 locomotives were for expansion and replacement. Due to the volume shortfall in MDS it was decided to accelerate the acquisition of 100 electrics to enable the cascade of 125 locomotives to GFB and mitigate the MDS volume risk.
24. Cascading locomotives to General Freight will assist in mitigating the delay currently experienced in the 1064 program. In all cases the cascading will facilitate growth through to 2017/18 when the 1064 delivery begins to have significant impact. The class 7E and Class 10E series of the current coal fleet are facing imminent run outs, increasing maintenance costs and decreasing reliability and the cascade to General Freight is an Interim measure.



25. The 100 Class 19E locomotives will sustain the Coal Line electric fleet for 81 million tons per annum capacity and standardize the coal fleet on Class 19E type locomotives with significant operational and cost advantages.

a) To achieve this operational efficiency requires 200 wagon trains to bypass Ermelo Yard and couple parallel to the main line eliminating shunting and standing time in the yard.

26. The cumulative cascade program for the Class 10E and Class 7E locomotives depends on the acquisition of the 100 Class 19E locomotives which we envisage can be cascaded to GFB, as an interim measure, as follows;

a) 40 in 2013/14

b) 74 end 2015/16

c) 120 end 2016/17

27. The first locomotives are cascaded in 2013/14. There are no or minimal cascades in 2014/15 as the locomotives are being delivered and commissioned. The effectiveness of the cascade is felt in 2015/16 and beyond.

28. Using the rule of thumb for General Freight that 100 locomotives generate approximately 6 mt per annum, the 125 released locomotives will protect approximately 7.2 mt per annum of general freight.

29. The exact allocation to the areas below will be determined at the time of cascading according to operational priorities.

a) **Manganese exports through Ngqura:** Manganese exports from the Northern Cape through Ngqura are expected to grow according to the *7 Year Business Plan* to 12 mt (and to 16 mt thereafter). The Class 7E series released from the Coal Line to General Freight traffic will supplement this service till the full complement of class 20E locomotives have been delivered where after the Class 7E series will be retired.

b) **Thabazimbi – Pyramid South:** This is an AC electrified section served by Class 7E series locomotives and the predicted volume growth is:

Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
M Tons	8.868	10.347	15.135	17.056	18.446	22.897	22.912

c) Cascading the Class 7E Series will facilitate volume growth through to 2015/16 as well as the potential life extending / technology changing modification on the cascaded Class 10E series.

d) **Maputo Export:** This is a DC electrified section suitable for Class 18E locomotives only. The cascaded Class 10E will release Class 18E locomotives from other sections which will be transferred into this section. The tonnage increase is:

Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
M Tons	6.421	8.353	12.469	13.499	16.446	21.168	21.598

e) **General Freight on the Coal Line:** This traffic uses DC traction or Diesel locomotives to Ermelo and then AC electrification to Richards Bay. Currently Class 7E3 locomotives

are designated for this traffic south of Ermelo. Releasing Class 11E locomotives from the export coal operation will enable the additional traffic and also substitute for the current Class 7E3 which will be cascaded.

Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
M Tons	10.702	11.901	13.404	15.036	15.733	16.32	16.470

30. The TFR Business Plan volume projections for the Coal Export Line are:

	Actual	Actual	Budget	Projections					
	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Export Coal Mt	67.7	69.21	77.00	81.00	81.00	84.00	95.00	97.50	97.50

31. The 100 Class 19E business case articulates the benefits of the earlier than previously planned delivery of the locomotives to the Coal Export Line.
32. The market analysis and infrastructure investment for "Capital investment for Export Coal 81 mt" was recommended by Transnet Board on 16 February 2011 and approved by the Shareholder (Minister of Public Enterprises) on 20 June 2012.
33. Other aspects more fully covered in the 100 Class 19E Locomotive submission are:
- Reliability and Operational efficiency
  - Savings on operational expenditure and capitalised maintenance
  - Energy Savings
  - Locomotive Fleet Plan and Standardisation and its benefits which include:
    - The fleet is standardized with operational Interoperability
    - Standard maintenance practices are propagated
    - Reduction in spares holdings and special tools

#### MDS Shortfall – 60 Class 43 Diesel Locomotives

34. TFR is in the process of acquiring 143 class 43 Diesel locomotives from GESAT which have been delivered over the past two years which are have proven to be a capable locomotive. Given the MDS volume shortfall it is proposed that a further 60 locomotives be acquired from GESAT to further mitigate the volume risk as those in the 1064 program are now likely to come on stream in 2015.
35. The efficiency utilization of the locomotives will be comparable to that currently achieved on the Phalaborwa – Richards Bay flow of 7 262 GTK per locomotive month. This flow powered by new class 43 Diesels already exceeds the national fleet efficiency targeted for 2018/19. This represents a 24% increase on the targeted 2013/14 efficiency.
36. The 60 locomotives have a potential mitigation of 3.8 – 7.9 mt at an average 8 149 GTK's per loco per month exceeding the current Phalaborwa – Richards Bay flow. The potential income protection is R5 033 m (cumulative 2014/15 - 2015/16). The exact allocation of the 60 locomotives will be confirmed at the time of deployment over the following factors:

- a) Botswana Coal to Bulk Connexion and Richards Bay.
  - i. Potential 1.8mt – 3.8mt
  - ii. Diesels required: 35 inclusive of technical allowance.
  - iii. Potential GTK's per loco per month: 5 957
- b) Elitheni Coal from Sterkstroom to East London
  - i. Potential 1mt to 2.5mt
  - ii. Diesels required: 15 inclusive of technical allowance
  - iii. Potential GTK's per loco per month: 12 784
- c) Manganese from Postmasburg to Bloemfontein / Bloemcon
  - i. Potential 1 - 1.6mt mostly from new entrant miners.
  - ii. Diesels required: 10 inclusive of technical allowance.
  - iii. Potential GTK's per loco per month: 7 821.

#### PROJECT BENEFITS

- 37. Protection of GFB MDS Income and targets amounting to R4 163 m for the 100 Class 19E and R5 033 m for the 60 Class 43 Diesels over the period 2013/14-2016/17.
- 38. Coal Export volumes and Income are protected through improved reliability.
- 39. Sustainability objectives as per the Transnet Sustainability framework are met threefold:
  - a) Sustainability from an economic perspective is met by offering a long term cost effective, low cost rail solution that addresses the needs of Industry to remain globally competitive and allows emerging miners to enter the coal export market.
  - b) Sustainability from a social perspective is met through the optimisation of manufacturing facilities, job creation and proactive stakeholder engagement.
  - c) Sustainability from an environmental perspective in energy savings through (i) the improved efficiency of the new locomotives and (ii) the overall energy saving through the regenerative capability of the locomotives.
- 40. The programme will support the shift from road to rail as the cascaded locomotives take up the shortfall in the General Freight market.
- 41. Benefits specific to the 100 Class 19E include:
  - a) Energy savings will be achieved with an 18% improvement in KVA requirements over the old technology Class 7E and Class 10E locomotives.
  - b) The regenerative capability of the new locomotives introduces further energy savings of between 22% and 26%.
  - c) Quantifiable savings in maintenance of the new locomotives over the older series.
  - d) Not quantified but direct and indirect savings with uninterrupted operations due to fewer failures.
- 42. Benefits specific to the 60 Class 34 Diesels include:
  - a) Fuels savings of 8% over the older diesel fleet.

- b) Significantly reduced failures compared to the current diesel fleet improving availability and reliability.
- c) Standardisation of maintenance regimes with current Class 43 fleet.
- d) Virtual elimination of significant damage to rail Infrastructure (skid-marks) which are prevented by the modern traction control system.
- e) The characteristics of the locomotive more closely match that of the electric fleet enabling optimum use of traction capability when worked in multiples with electric locomotives using RDP.

**FINANCIAL AND BUDGET IMPLICATIONS**

43. The financial motivation and budget implications for the 100 Class 19E and 60 Class 43 Diesels are discussed in detail in the respective submissions.

**100 Class 19E Equivalent**

44. The 100 Class 19E Locomotives are summarized below:

a) A base price per locomotive price of R 34.34 m (2013/14 - Yen 385 m @ Rand/Yen 0.09823)

b) Capital Investment Summary:

Year / Rm	13/14	14/15	15/16	16/17	17/18	18/19	Contingency	Total
Project Plan Payment	R 343	R 1 737	R 1 439				R352	R 3 871
Delivery		56	44					100

- c) Based on the original Coal 81 mt model, the acquisition of the 100 Class 19E sustaining locomotives has a net present value (NPV) of R98.49m over 10 years.
- d) The present value (PV) of the Total Cost of Ownership using the 1064 locomotive model is R59.1m.
- e) Approved infrastructure investments supporting the project totals R3 974 million.

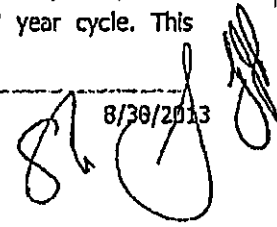
**60 Class 43 Diesels**

45. The 60 Class 43 Diesels are summarized below:

46. The 60 Class 43 locomotives are over and above the 465 diesels of the approved 1064 locomotives.

- a) The delays in the 1064 will result in the delivery of the 1064 locomotives extending beyond the current 7 year MDS capital plan. The diesels in particular will not meet the originally planned delivery.
- b) The fleet plan and the 1064 locomotive business case stress sustaining the fleet beyond the seven year period in the order of 60 to 80 locomotives per year.
- c) The 60 Class 43 diesels will be funded from the 1064 locomotive budget for the first year.
- d) The 1064 locomotive budget will be adjusted commencing the 2014/15 7 year cycle for the delayed delivery of the 1064 beyond the current 2013/14 7 year cycle. This

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adjustment is in line with the stated intent of sustaining the fleet through a continuous replenishment of new locomotives.

e) A price per locomotive price of R 26m @ Rand / USD (R9.59/USD) (R27.67 m @ R10.4/USD for 2014/15).

f) Capital Investment Summary:

Year / Rm	13/14	14/15	15/16	16/17	17/18	18/19	Contingency	Total
Project Plan Payment	R 156	R 1 504					R166	R 1 826
Delivery		60						60

g) The acquisition of the 60 Class 43 Diesel preserves an NPV of R1 529 m based on the 1064 Locomotive Model.

h) The PV of the Total Cost of Ownership using the 1064 Locomotive model is R59.1m.

#### PROCUREMENT STRATEGY

##### Confinement of 100 Electric Locomotives

47. An extract from the latest approved Procurement Procedures Manual, dated 01 October 2012, stipulating grounds for confinement which are relevant to this submission, reads:

"Confinements will only be considered under the following circumstances:

- a) where a genuine unforeseeable urgency has arisen. Such urgency should not be attributable to a lack of proper planning. However, where a genuine urgency has been created by the lack of proper planning, urgency can still be relied upon as a ground for Confinement. In such cases appropriate action must be taken against the individual(s) responsible for the bad planning.
- b) the Goods/Services are only obtainable from one/limited number of suppliers. For Instance, patented/proprietary Goods or OEM spares and components. Operating divisions are however required to provide evidence that there are no new entrants to the market who could also be approached;
- c) for reasons of standardisation or compatibility with existing Goods and Services. A case must be made that deviation from existing standardized Goods or Services will cause major operational disruption. If not, confinements based on "standardisation" will not be considered; or
- d) when the Goods or Services being procured are highly specialized and largely identical to those previously executed by that supplier and it is not in the interest of the public or the organization to solicit other offers, as it would result in wasted money and/or time for Transnet. When this particular ground is intended to be used as a ground for Confinement, It is important to note that all pre-requisites must be satisfied: The Goods or Services must be highly specialised, almost identical to previous work done and approaching the market again would result in wasted money and time."

48. Par a, c and d are relied upon with urgency (a) being the main reason as described in this memo in detail. The urgency is motivated on:
- a) The one year delay between the requirements of the locomotive fleet plan and the delivery and commissioning of 1064 locomotives for general freight, with its related threat to the MDS volumes. The early delivery of these locomotives will release capacity to general freight as outlined earlier and provide a partial buffer until there are material deliveries of the 1064 locomotives. It buffers the anticipated shortfall in volumes as described earlier.
  - b) The need for 60 Diesel locomotives and 100 Electric locomotives in order to deliver upon committed volumes in line with the MDS as a matter of extreme urgency.
49. In 2009, Transnet Freight Rail (TFR) entered into a contract with Mitsui & Co African Railway Solutions (PTY) LTD (MARS for the procurement of 110 new Class 19E electric locomotives for the Coal Export Line; TFR took delivery of the last locomotive in August 2012. MARS are also delivering the Class 15E locomotives for the Ore Export line and the last one is due to come off the factory line in September 2013:
- a) Feedback from the Technical Engineering team is that the Class 19E and Class 15E locomotives are performing well and have proven to be both efficient and reliable.
50. The Class 19E is a modern locomotive and the proposed 100 locomotives will be an extension of the current design. No prototyping or type testing is required conservatively saving 12 months or more.
51. The Japanese Yen has weakened marginally against the South African Rand. The Rand in turn has weakened significantly against the US Dollar. The foreign component of the original 110 x Class 19E contract was 40% Yen based and a contract on similar terms would be considerably cheaper than a new US Dollar based contract.
52. Considering the volumes at risk and the urgent requirement for the coal line locomotives to cascade the current fleet to General Freight, it is proposed that the procurement be confined to MARS Railway Solutions, a subsidiary of Japan's Mitsui & Co Limited.
53. Confinement will realize the quickest delivery and existing facilities previously used for the assembly of the 110 x Class 19E, the 76 x Class 15E locomotives, and 43 Class 43 Diesel locomotives will be idle and available and Transnet will save by not requiring set up costs of facilities and production runs.
54. The locomotives requested have been through the teething phase with most initial manufacturing and operational faults rectified. Present models are operating optimally and have exceeded their design parameters
55. Crew (drivers and assistants) are already trained on these locomotives.
56. TE is currently maintaining and repairing the Class 43 locomotives and the Class 19E Series which means that no additional training will be required
57. The following jobs will be retained in assembly facilities:
- a) Approximately 186 jobs will be retained at the TE assembly facility and further jobs will be retained in downstream enterprises

- b) Approximately 400 jobs will be created over the period at the Union Carriage Works assembly facility and further jobs will be retained in downstream enterprises
58. Standardisation of the locomotive fleet brings the following benefits:
- i. Operational simplicity
  - ii. Reduced spares holdings and simplified and standardised inventory
  - iii. Simplified maintenance
  - iv. Crew operations
59. Re-starting of these production lines will be quick; the designs are finalised so delivery lead times will be kept to a minimum and set up costs reduced.
60. Toshiba has indicated its serious intent in building a traction motor assembly facility in SA and this could be expedited through the SD obligations that would be linked to this contract.
61. The above reasons satisfy the confinement criteria of 'a', 'c' and 'd'.
62. Given that the original 110 Class 19E contract arose from an open tender process it would not be advisable to extend this contract as this could be seen as a material amendment to the initial tender. Additionally, the terms and conditions will be considerably different to those entered into in 2006 and will include significantly more SD requirements. This calls for a new procurement event via a confined tender.

Contract Extension with GESAT for 60 Class 43 Diesels

63. In December 2009, Transnet concluded a contract with General Electric South Africa Technologies (GESAT) PTY Ltd for the Supply of 100 Diesel Locomotives through an open tender process.
64. In 2011, through a confinement process, TFR concluded a contract with GESAT for an additional 43 Class 43 diesel locomotives. The completion date of the 43 Locomotives was end June 2013 in line with the Transnet planned schedule. The last few locomotives to roll out of assembly will be tested by 30 September 2013, whereafter they may be accepted. GESAT and TE have the ability to roll out between 8 to 10 locomotives per month.
65. In both transactions, Transnet Engineering (TE) was appointed as GESAT's subcontractor for the local assembly of the locomotives and the contractual obligations have been met.
66. As the production line is currently operational and design is finalised, delivery lead times will be reduced by approximately 18 months.
67. TE is currently maintaining and repairing the Class 43 locomotives which means that no additional training will be required.
68. The latest approved Procurement Procedures Manual, dated 01 October 2012, par 22.4.2, allows for a contract extension in this instance as we are requesting a material contract amendment to a previously confined event. The reasoning for the original confinement of the additional 43 loco's is still applicable given that there is a genuine unforeseeable urgency which has arisen due to the delay in the 1064 tenders, such urgency is not attributable to a lack of proper planning, the goods are highly specialized and largely identical to those previously executed by that supplier and standardisation is a key benefit. Given that a contract is already

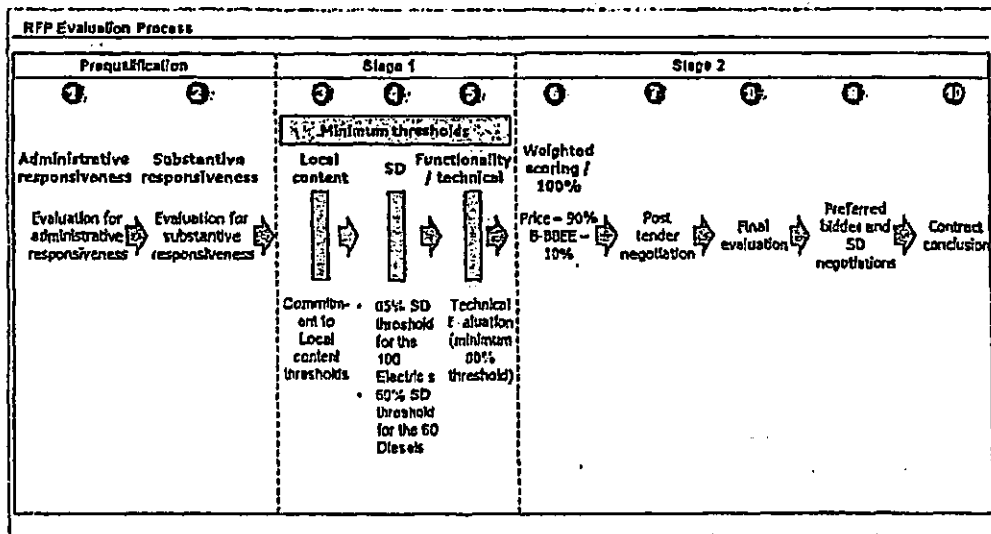
In place and that the additional 60 loco requirement will be largely on the same terms and conditions as the 43 loco confinement, this warrants extension.

Contracting strategy

- 69. Extend the current contract with General Electric South African Technologies (GESAT) for 60 Class 43 Diesel Locomotives.
- 70. Confine and award to Mitsui & Co African Railway Solutions (PTY) LTD (MARS) for 100 Class 19E locomotives.
- 71. The reasons for the different confinement and extension strategies have been highlighted in the sections above.

Evaluation Methodology

- 72. The Request for Proposals (RFP's) for the confinement to Mars and extension to GESAT respectively will be issued and their respective proposals will be assessed as described below. The normal open tender process would follow the evaluation methodology indicated below.



- 73. The Evaluation Methodology for an open tender comprises the following steps:
  - 1) **Administrative responsiveness** – bidders will need to pass the administrative responsiveness to enable them to be evaluated further. This includes evaluating all returnable documents were submitted and the bid documents were duly signed by the bidders
  - 2) **Substantive responsiveness** – bidders must ensure that all pre-qualification criteria, the pricing schedule is completed, their bid materially complies with the scope/specification and that all material terms and conditions in the bid documents have been met
  - 3) **Local Content** – bidders must comply to the minimum local content thresholds for Electric and Diesel locomotives as stipulated in the PPPFA
  - 4) **SD thresholds** – the SD thresholds of 65% and 60% set for Electric and Diesel locomotives respectively must be met for bidders to proceed to the next step of the evaluation.

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- 5) **Technical evaluation** – bidders will need to pass the minimum technical thresholds of 80% for both Electric and Diesel locomotives to proceed to the final phase (stage 2) of evaluations.
  - 6) A weighted scoring approach for Price (90%) and B-BEE – scorecard (10%) will be used to determine final award
  - 7) **Post tender negotiations** – post tender negotiation requesting preferred bidders to provide their Best and Final Offers
  - 8) **Final evaluation** – preferred bidders to undergo final evaluation based on the 90/10 as stipulated by the PPM
  - 9) **Preferred bidder negotiations** – selection of the preferred bidder and negotiation of various aspects including final SD commitments and the B-BEE improvement plan (FRC Future)
  - 10) **Conclude contract** – the parties sign a contract and addendums to formalize the agreement.
2. The above process is modified for the proposed confinement and extension in that:
- a) Administrative response (1) is simplified to essential documentation such as tax clearance certificate, BEE certificate etc.
  - b) Substantive response (2) will be required on to ensure that all material terms and conditions in the bid documents have been met
  - c) Local content threshold must be met
  - d) SD threshold must be met
  - e) Technical evaluation (5) is simplified to ensure that all modifications / improvements made over the life of the locomotives (Class 43 and Class 19E's) for incorporation.
  - f) Weighted Scoring Approach (6) and
  - g) Final Evaluation (8) is not required due to confinement and extension to one party although evaluation against expected SD, BEE improvement and price ranges will be conducted to ensure the deals meet Transnet's expectations.,

**Local Content, Designated Components and Supplier Development (SD)**

74. Meeting Local Content (3) is a prerequisite to proceeding to SD threshold (4) evaluation.
75. The targets per PPPFA National Treasury Instruction Note (dated 16-07-2012) on 'Invitation and Evaluation of Bids Based on a Stipulated Minimum Threshold for Local Production and Content for the Rail Rolling Stock Sector' (Section 3 (3.1)) are compulsory and are elaborated in following table:

Local Content - Section 3 (3.1)	
Category	Weighting
Local manufacturing: Threshold: 60% for Electric and 55% for Diesels)	100% of PPPFA

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Total	100%
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76. In addition, the progressive Local Content for Designated Components (Section 3 (3.2)) will also be applicable to both Electric and Diesel Locomotives as per the table below though they may not materialize as the contracts will be fulfilled before three years and they are not programmatic.

Designated Component / Activity Heading Only - Section 3 (3.2)	% Local Content 1-5 Years	% Local Content 6 Years and above.
Assembly of Locomotives and EMU	100%	100%
Car Body	100%	100%
Bogie (including wheels)	100%	100%
Coupling Equipment	100%	100%
Suspension	100%	100%
Heat, Ventilation and Air Conditioning	60%	70%
Braking System	70%	80%
Alternators	90%	100%
Traction Motors	65%	80%
Electric Systems	80%	90%

77. The Supplier Development targets are set out in the table below. They are considered realistic and achievable without posing a risk to the project.

Supplier Development (SD)	Weighting
Category	
Investment in plant – bidders monetary commitment to investment in plant and equipment	10%
Downstream procurement – bidders commitment to supporting 2 <sup>nd</sup> , 3 <sup>rd</sup> tier suppliers, etc.	15%
Skills development – supplier's commitment to skills development (number of people and monetary)	20%
Job creation / preservation – supplier's commitment to number of jobs maintained/created	30%
Small business promotion – supplier's commitment to usage of small businesses (monetary)	10%
ED/SD – bidders commitment to SD initiatives and development	15%
<b>Total &amp; Threshold &gt; 65% for Electric and &gt; 60% for Diesels</b>	<b>100%</b>

**Award Conditions – 100 Class 19E Equivalent**

8/30/2013

100 New 19E Equivalent Coal Locomotives and 60 Class 34 Diesels  
Transnet EXCO recommendation to BADC

78. Approval to award the business to MARS is requested subject to SD compliance with the following:

- a) Local content meeting or exceeding 60% by value
- b) Compliance with new SD commitments with a minimum of 65% as measured in the SD Value Summary which forms part of the RFP
- c) Transnet will also request a price range of between R30.5m and R32m for the purposes of negotiation with the objective of coming in within the R34.34m per loco.

Award Conditions – 60 Class 43 Diesels

79. Approval to award the business to GESAT is requested subject to SD compliance with the following:

- a) Local content meeting or exceeding 55% by value
- b) Compliance with new SD commitments with a minimum of 60% as measured in the SD Value Summary which forms part of the RFP
- c) Transnet will also request a price range of between R22.5m and R24m for the purposes of negotiation with the objective of coming in within the R26m per loco.

SOCIO-ECONOMIC BENEFITS

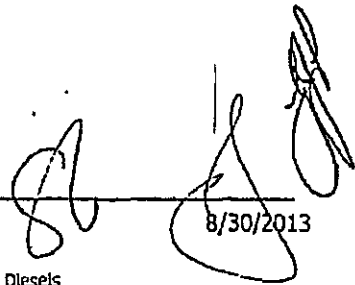
- c. The transaction will be aligned with the Government of South Africa's socioeconomic policy framework, including CSDP, NGP, NDP, SSI, and IPAP2.
- 81. Meeting the MDS growth targets supports the National Development Program in the industrialisation of SA's mineral resources.
- 82. The program supports the sustainable development of a South African locomotive production industry.
- 83. Economic benefits include:
  - a) Using idle capacity available in South Africa
  - b) In terms of the National Treasury instruction note the local content for designated sector (rolling stock - locomotives) for electric locomotives is 60% and for diesel locomotives is 55%.
  - c) Ability to reinstate / retain local jobs as the skills pool already exists
  - d) Approximately 2 900 indirect and direct South African jobs will be preserved which include approximately 186 direct jobs at the TE assembly facility and 1076 (first, second and third tier) at MARS with further jobs retained in downstream enterprises

PROJECT RISKS

- 84. Both projects face several risks that could affect their overall economic viability:
- 85. **Locomotive Delivery:** This could arise if (i) the confinement is not approved (ii) unforeseen circumstances on the part of supplier including not complying with CSDP conditions.
- 86. **Lower volumes:** MDS volumes may not materialise per plan negating the need to cascade locomotives and / or the class 43 diesels not being fully or optimally utilised.

87. The coal line locomotives are nonetheless still nearing their end of life and these will require replacement in the short term to sustain coal exports at 81 mt. Long term coal contracts are currently being negotiated for 81 mt and there are sufficient coal reserves to sustain this tempo. The model and NPV is further based on 95% of the coal export volumes materialising. There is no risk to this project if volumes do not ramp up to 97.4 mt.
88. Exchange Rate Fluctuations:
- For the 100 Class 19E confined to MARS, the Yen / Rand Rate is forecast to be more stable than the Rand / Dollar rate. Localisation is already set at 60%, thus mitigating exchange fluctuation risks.
  - For the 60 Class 43 confined to GESAT the base price is taken R10/USD. The rate is forecast to strengthen in the short term which includes the duration of the contract before weakening.
89. Tariffs not being realised:
- For the coal line current FOB prices for RBCT coal are around US\$90 per ton, well below the peak of over US\$150 per ton. At R9.50/USD and a tariff of R126 per ton, transport accounts for ~13% of the FOB price. Pressure on tariffs will remain till there is a long term sustainable uptick in the FOB price.
  - For General Freight increases linked to Inflation are not seen as a risk while increases above inflation will be subject to scrutiny and downward pressure.
90. Tariff exposure to commodity downturns:
- In the short term this could impact the viability of emerging miners for export coal. This will affect only 3 mt as the rest are based on long term contracts being negotiated. The model is also based on 95% of the volumes realising.
  - Locomotives have a 30 year life-cycle which transcends economic cycles. In the short to medium term the global economic recovery is seen as slow but sustained. The economic environment for General Freight locomotives was fully set out in the 1064 business case.
91. Over Capitalisation of the Coal Line: This is not seen as a risk as the locomotives sustain current volumes of 81 mt for which long term contracts are being negotiated. The reserves in the Mpumalanga basin are also acknowledged to be able to sustain this tempo for the long term. There is thus little risk of stranded assets. The locomotives being replaced are at the end or very close to the end of their economic life and would require replacement in the very short term even if they were not cascaded to General Freight.
92. Project interdependencies:
- Crucial to the new operations and achieving 81mt on the Coal Export Line with the additional 100 a Class 19E equivalent requires constructing the Ermelo bypass line. This line enables two 100 wagons trains from the mines to be coupled together enabling the train to proceed as a single 200 wagon Radio Distributed Power (RDP) train without going into Ermelo Yard.
  - An interdependency for the 100 Class 19E locomotives is cascading locomotives to general freight. The 60 Class 43 Diesels do not have other project interdependencies.

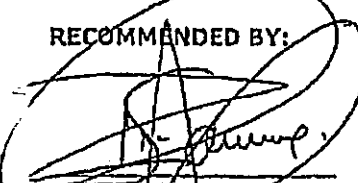
93. Project risks will be mitigated during implementation by a dedicated cross-functional project team to manage the contract.




**RECOMMENDATION:**

94. It is recommended that the Transnet Board Acquisitions and Disposals Committee recommends to the Transnet Board of Directors the following:
- a) Note the risk to TFR MDS volumes through insufficient traction power resulting from the delay in the procurement of the 1064 locomotives;
  - b) Note the investment in and procurement of 100 Class 19 E and 60 Class 43 Diesels will protect 24.5 mt of General Freight volumes at risk resulting from the delay in procurement of the 1064 locomotives.
  - c) the investment in and procurement of 100 Class 19E equivalent electric locomotives required for the Coal Export Line in the amount of R3 871 m (excluding borrowing costs); (Annexure A)
  - d) the confinement and award of the procurement for the 100 Class 19E equivalent electric locomotives to Mitsui & Co African Railway Solutions (PTY) LTD (MARS);
  - e) the investment in and procurement of 60 Class 43 diesel locomotives for General Freight in the amount of R1 826 m (excluding borrowing costs);
  - f) an extension of the current contract with General Electric South African Technologies (GESAT) for 60 Class 43 diesel locomotives;
  - g) The above awards will be conditional subject to paragraphs 73 and 79 and
  - h) The GCE be delegated the power to sign and conclude all relevant documents to give effect to the above resolutions.

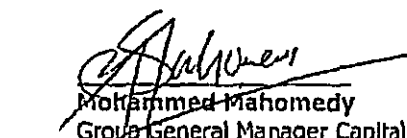
**RECOMMENDED BY:**

  
 Siyabonga Gama  
 Chief Executive  
 Transnet Freight Rail  
 Date: 2013.08.30

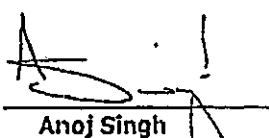
**RECOMMENDED BY:**

  
 Garry Pita  
 Transnet SOC  
 Group Procurement Officer  
 Date: 2/9/13

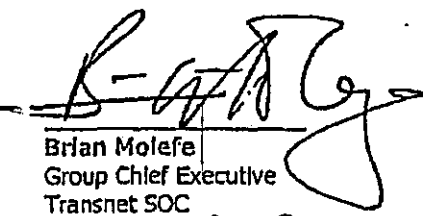
**RECOMMENDED BY:**

  
 Mohammed Mahomed  
 Group General Manager Capital Integration  
 Transnet SOC  
 Date: 05/09/13

**RECOMMENDED BY:**

  
 Anoj Singh  
 Group Chief Financial Officer  
 Transnet SOC  
 Date: 16/09/13

**RECOMMENDED BY:**

  
 Brian Molefe  
 Group Chief Executive  
 Transnet SOC  
 Date: 20.9.13



EXCERPTS FROM THE MINUTES OF THE MEETING OF THE BOARD ACQUISITIONS AND DISPOSALS COMMITTEE NO.13/12 HELD ON 21 OCTOBER 2013 AT 09:00 IN BOARDROOM 4902, 49<sup>TH</sup> FLOOR, CARLTON CENTRE, JOHANNESBURG

5 MATTERS FOR DISCUSSION/APPROVAL

5.1 TFR: Update on the 1064 transaction

*Mr Callard joined the meeting at 09:13*

- 5.1.1 Management highlighted that the tender for the procurement of the 1064 Electric and Diesel locomotives for General Freight Business ("GFB") was issued on 13 July 2012 and due to close on 16 October 2012; however, the deadline was extended to 30 April 2013. The Shareholder Minister has since granted the S54 PFMA Approval for the transaction. A two-fold evaluation process that focussed on the administrative and substantive responsiveness was applied. A Procurement Management Office will be created by TFR to manage all documentation relating to the transaction. To ensure that there is no contamination of information, the evaluation lead team is separated from other teams. The process is reviewed and recommended by the TFR CE and GCFO for the GCE's approval. The GCE will approve the request to progress to the next phase of the project.

*Ms Tshepe joined the meeting at 09:15*

- 5.1.2 Management indicated that the evaluation process was underway. Negotiations with the potential bidders have not yet commenced. Management proposed that the locomotive requirements be approved annually by the Committee or the Board to determine the procurement for the next year. This will allow a year's lead time for the manufacturers to adjust factory supplies, thus enabling locomotives to be matched according to absolute requirements of the next year. Programmatic procurement will form part of the final contract and will be tabled to the Board for approval. The negotiation process will be finalised by March 2014; with the contract finalised by May 2014.
- 5.1.3 The GCE sought clarity on the negotiation process timelines when the adjudication process is scheduled to be finalised by 30 October 2013. Management stated that the timelines were necessitated by various factors, amongst others, the number of tenderers, the range of negotiation that will cover both financial and technical aspects, the extent of the negotiation process, the technical aspects relating to the transaction and the December holiday break. The Chairperson requested Management to coordinate with the GCE's Office to expedite the matter prior to re-tabling to the Committee.
- 5.1.4 The Chairperson stated that while he was not drawing comparisons, PRASA had a higher value tender and was able to conclude the negotiation process and award the tender in a period of 60 days. TFR should shorten the negotiation and award periods. The international bidders do not share the same lengthy holiday period as is customary in the Country. While the Committee will not be micro-managing Management, the Committee requested submission of steps being taken into the finalisation of the transaction; and those already completed.
- 5.1.5 Ms Tshepe sought clarity behind the withdrawal of the 100 + 60 Diesel submission from the current Agenda as the Committee had requested that it be tabled due to the urgency of the transaction. Management stated that the matter was previously tabled to the Committee; and certain concerns were raised. The request was based on a tender that was awarded in 2006 and subsequently confined in 2010. A request for a further confinement was being made. Management indicated that

Messrs Molefe/  
Gama

Messrs Molefe/  
Gama



upon reflection, it opted to withdraw the matter after considering that when the initiatory confinement was made in 2010, there were press reports alleging that the Company had entered into a R1.4bn locomotive procurement "secret deal" (that was concluded without being put out to tender, which the then Deputy President Mollanthe's special adviser was set to benefit from). An article in relation to this matter was circulated in the meeting. Ms Tshepe was of the view that the press reports and the confinement ought to have been considered prior to the matter being tabled to the Committee. She stated that the antecedent submission was tabled on the basis of urgency to alleviate the risk relating to MDS volumes. Management stated that the withdrawal of the Agenda Item was due to potential governance risk relating to the transaction.

- 5.1.6 Mr Mkwanazi was of the view that the Committee should have been provided with the information prior to deliberating on the transaction to allow the Committee to adequately apply its mind to the matter. He further stated that the same information was not provided in 2011 and the communications intelligence was "caught on the back foot". Ms Tshepe enquired if a response to the media reports was issued and why the Board was not informed about the matter. She stated that the Committee enquired about the possible governance issues when the confinement was requested. The Chairperson stated that the Board was not provided with a holistic picture and implored upon Management to ensure that instances that may lead to a material risk to the reputation of the Company should be brought to the attention of the Committee.

The Committee noted the update and agreed that the matter will be dealt with as a matter arising.

*Mr Callard was excused from the meeting at 09:40*

## 8 MATTERS ARISING FROM THE MINUTES OF THE PREVIOUS MEETING

- 8/2 **Procurement of 1064 locomotives for the TFR General Freight Business:** The terms of reference for the appointment of an independent expert will be formulated and finalised by the Board Steering Committee comprised of the Chairperson, Chairperson of Risk and Mr Singh. The Board Steering Committee will gauge the skills required and appoint a service provider. Going forward, the expert will assist the Board

Management stated that the use of the independent expert will not be limited to the Procurement of 1064 locomotives, however, rolled across all matters relating to acquisitions and disposals. Independent expert advice is required on Rail, Ports and Pipes. The specifics-in-relation-to-frequency-of-the-expert's-attendance will be determined by the Committee. Management will finalise the process of appointing independent expert. A conversation on how the matter will be finalised will be communicated with the Chairperson.

Messrs Singh/  
Pita"



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## MEMORANDUM

**TO:** Transnet Board Acquisitions and Disposals Committee (BADC)

**FROM:** Mr Brian Molefe, Group Chief Executive, Transnet SOC

**DATE:** 21 January 2014

**SUBJECT:** MITIGATION OF MDS VOLUMES AT RISK THROUGH THE INVESTMENT IN AND PROCUREMENT OF 100 DUAL VOLTAGE ELECTRIC LOCOMOTIVES AND 60 CLASS 43 DIESEL LOCOMOTIVES.

## PURPOSE

1. The purpose of this submission is to request the Transnet Board Acquisitions and Disposals Committee to recommend to the Transnet Board of Directors the following:
  - a) Note the risk to TFR MDS volumes through insufficient traction power resulting from the delay in the procurement of the 1064 locomotives;
  - b) To approve the investment in and procurement of 100 electric locomotives required for the Coal Export Line in the amount of R3 871 m (excluding borrowing costs);
  - c) To approve the confinement and award of the procurement for the 100 electric locomotives.
  - d) To approve the investment and change in the fleet plan to procure of 60 Class 43 diesel locomotives for General Freight in the amount of R1 826 m (excluding borrowing costs);
  - e) To approve an extension of the current Class 43 diesel locomotives contract for 60 additional locomotives;
  - f) The GCE be delegated the power to sign and conclude all relevant documents to give effect to the above resolutions, including the award and process approval.

## EXECUTIVE SUMMARY

2. The TFR locomotive fleet plan was first approved by the Transnet Board in April 2011 and updated with the 1064 GFB locomotive submission. The proposed locomotive acquisitions are in line with the fleet plan and have been budgeted for in the *7 Year Market Demand Strategy (MDS) 2013/14 - 2019/20*. The delay in the 1064 fleet acquisition has put General Freight Business (GFB) MDS volumes at risk.
3. This risk will be mitigated by the urgent acquisition of these locomotives.
  - a) The heavy haul 100 Electric locomotives will be deployed in the Coal Export Line and will release 125 locomotives that will be used on GFB pending delivery from the 1064 program. The 100 locomotives form part of the already approved Fleet Plan
  - b) The 60 Class 43 diesel locomotives also fill the gap pending delivery from the 1064 program. These 60 locomotives do not form part of the approved Fleet Plan and this submission requests an amendment to the Fleet Plan to include these 60 locomotives
4. The Class 43 diesel locomotives recently delivered are modern capable locomotives. They have proven themselves in service and will improve service quality through improved reliability and reduced maintenance costs.

1/22/2014

5. This submission proposes an accelerated procurement to mitigate General Freight MDS volumes at risk by confining 100 electric locomotives to CSR (China South Rail) and extending the current Class 43 Contract with GESAT (General Electric South Africa Technologies) by 80 locomotives. The accelerated acquisition will mitigate the MDS shortfall by at least a year with its full effect realised commencing 2014/15. The volumes mitigated increase from 6.2 mt (14/15) to 15.1 mt (16/17) and the cumulative income protected is R9 197 m (13/14 - 16/17).
6. The confinement to CSR and extension of the GE contract is motivated on the basis of urgency.
7. This accelerated acquisition does not put the MDS cash flow at risk and the 1064 acquisition remains unaffected. The acquisitions are funded from the current MDS. The delay in the 1064 will extend its funding to beyond the 7 year period.
8. The 60 Class 43 locomotives are in addition to the approved Locomotive Fleet Plan but accord with the fleet strategy. With the year delay in the 1064 procurement, the 60 locomotives fill the gap of the first year. Post the 1064 procurement, the sustaining fleet requirements based on a 30 year life are approximately 80 locomotives per annum and the last year of the 1064 procurement moves into the sustaining phase.
9. The programmatic element of the 1064 procurement enables locomotive quantities per annum to be adjusted to circumstances.
10. The proposed transactions do not increase the risk related to the 1064 tender process.
11. Socio-economic benefits will be realised in line with existing commitments and expectations.
12. The context and arguments are presented as follows:
  - a) History and Status of the TFR Fleet Plan
  - b) Status of the 1064 Procurement
  - c) Impact of the 1064 delay
  - d) MDS Risk Mitigation
  - e) Project Benefits
  - f) Procurement Strategy
  - g) Financial and budget Implications

#### BACKGROUND

13. The history and status of the TFR Fleet Plan and 1064 Procurement are presented to show that a genuine unforeseeable urgency has arisen and that the urgency is not attributable to a lack of proper planning. (Item 68 "Extract from Procurement Procedures Manual" refers)

##### History and Status of the TFR Fleet Plan

14. The TFR Locomotive Fleet and Modernisation Plan was presented to the new Board in April 2011 and predicated 776 GF locomotives by 2015/16 for GF volumes of 155.8 mt. The plan was modified in August 2011 when a further 426 locomotives were requested as the volumes increased to 176 mt by 2018/19. To mitigate the immediate shortage and facilitate the volume ramp up, 138 locomotives (95 electrics and 43 diesels) were approved by the Board in August 2011. Minor adjustments were made to the locomotive fleet plan for GFB with the presentation of the business case of the 1064 locomotives in April 2013.

15. The history and status of the TFR Fleet Plan is summarised in the table below:

Loco Fleet History and Plan	Tons	Comment and Update
<b>Coal Fleet (26 ton axle)</b>		
112  (100)	97.5	<ul style="list-style-type: none"> <li>Probable downward volume revision. Contracts currently being signed for 10 years for 80 mt as coal reserves, sources and Eskom demand are evaluated.</li> <li>112 targeted for expansion to 97.5 mt</li> <li>Current fleet of 10E, 7E and 11E require near term replacement.</li> <li>100 (off the 112) switched to fleet replacement pending finality of and commitment to long term coal export expansion and requested per this submission</li> <li>Feasibility studies investigating expansion of Coal Line to Waterberg as 26ton per axle heavy haul line. This is not currently included in the Locomotive fleet plan.</li> </ul>
<b>GFB (22 ton axle)</b>		
50 EMD		<ul style="list-style-type: none"> <li>50 "like new" EMD diesels were delivered between December 2009 and March 2010 on open tender.</li> </ul>
100 GE (Class 43)		<ul style="list-style-type: none"> <li>In 2008 these locomotives were identified as a "quick fix" with 81 to sustain the aging fleet and 19 for volume expansion.</li> <li>GE won the tender, which was confined to three companies, and the locomotives were delivered between May 2011 and January 2013.</li> </ul>
776	155 mt	<ul style="list-style-type: none"> <li>In April 2011 the Fleet Plan was presented to the "new" Transnet Board for 776 GFB locomotives for 155.8 mt.</li> </ul>
95 CSR and 43 GE		<ul style="list-style-type: none"> <li>In June 2011 the Board approved 138 locomotives (95 electric and 43 diesels). The electrics were for open tender. A new confined contract was entered into with GE for the 43 diesels.</li> <li>The 95 and 43 locomotives were determined and limited by the uncommitted funds in the then five year Capital program</li> <li>The diesels were delivered between January 2013 and June 2013.</li> <li>The 95 CSR are planned for delivery March 2014 to March 2015.</li> </ul>
1064	170 mt	<ul style="list-style-type: none"> <li>August 2011 the locomotive requirements for 176 mt were presented being 1202 locomotives (776+446).</li> <li>With the 138 already approved the balance of the GFB fleet plan was 1064 locomotives. (1202 -138)</li> <li>In March 2012 the 1064 approval process commenced in tabling the business case at Transnet Freight Rail Investment Committee.</li> <li>The 1064 procurement is expanded in the body of the document below.</li> </ul>
60		<ul style="list-style-type: none"> <li>60 Class 43 requested to fill the gap in the first year of the 1064 resulting from the delay in procurement.</li> </ul>

Loco Fleet History and Plan	Tons	Comment and Update
<b>Ore Export Line (30 ton axle)</b>		
44  <del>32</del> 76	44 mt  60 mt	<ul style="list-style-type: none"> <li>44 15E bought open tender (Toshiba / Mitsui) to replace / supplement existing 9E locomotives and Class 34 GE Diesels with an option for a further 18 locomotives.</li> <li>The option to extend by 18 locomotives was not exercised.</li> <li>A new confined contract was entered into with Mitsui for a total of 32 locomotives to take the Ore Export Line to 60 mt. This confinement was motivated on standardisation of the fleet.</li> <li>~ 110 Class 34 GE diesels returned to General Freight and replaced with 30 Class 43 GE.</li> <li>Potential General Freight traffic may materialise from 2013/14 on the Ore Export line and 4 9E locomotives may be retained for this traffic.</li> </ul>
23 15E and 3 Diesels	80 mt	<ul style="list-style-type: none"> <li>The volumes are not likely to materialise in the 7 year M05 program. The FEL feasibility study is on hold and there is currently no commitment to the increased volumes.</li> <li>The locomotives are also put on hold.</li> <li>The 15E production line has shut down. As and when required, the procurement options will be evaluated against standardisation, cost and interoperability.</li> <li>Diesels, if required, will be provided from the GFB fleet</li> </ul>

16. The essential points relating to this proposal are:
- a) The 100 Electric locomotives are for the coal line and were always part of the TFR locomotive fleet plan. See Para 35 and following. They release locomotives that can be used on GFB for the year that the 1064 program is delayed.
  - b) The 60 Class 43 diesel locomotives are not part of the 1064 locomotive program.
    - i. They are in addition to the approved Locomotive Fleet Plan but accord with the fleet strategy. With the year delay in the 1064 procurement, the 60 locomotives fill the gap of the first year. Post the 1064 procurement, the sustaining fleet requirements based on a 30 year life are approximately 80 locomotives per annum and the last year of the 1064 procurement moves into the sustaining phase.
17. The programmatic element of the 1064 procurement enables locomotive quantities per annum to be adjusted to circumstances and this flexibility has been built into the tender and will be carried forward in the ultimate contracts.
18. The rationale for the 100 Electric and 60 Class 43 Diesel not being part of the 1064 locomotive process are covered under the Procurement Strategy Para 58.a) and following.
19. The future acquisitions for the expansion of the Coal Export line to 97.5 mt and the Ore Export line to 80 mt will depend on market conditions and development of the full supply chain across all stakeholders.

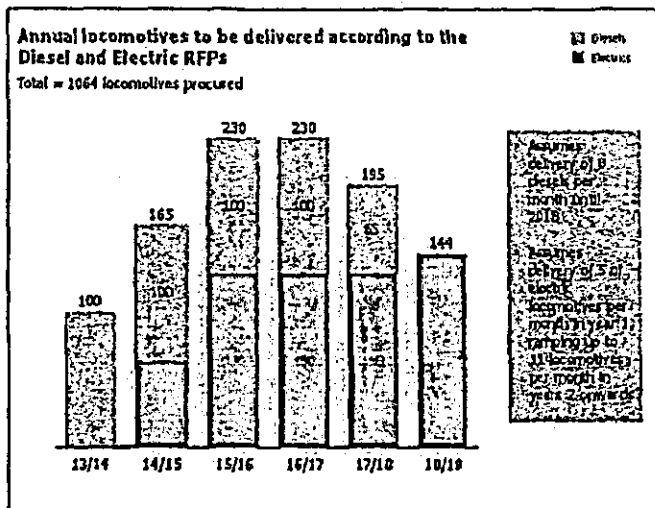
**History and Status of the 1064 Procurement**

20. TFR's Corporate Plan sets out the 7 Year Market Demand Strategy (MDS) 2013/14- 2019/20 to virtually double General Freight volumes to 170 mt by 2019/20. This requires an integrated and synchronised approach across locomotives, wagons, infrastructure and personnel and these aspects were covered in the 1064 business case submission.
21. The history of the 1064 procurement is depicted in the exhibit below.

	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	
1064	[Gantt chart bars]											
Current GP Fleet Revised	1758	1748	1838	1892	1904	1872	1770	1650	1550			
March 2012			100	100	220	220	190	144			1064	
Availability	Considering current plus a two year delay measure					100	166	220	220	190	144	1064
ES CBM			10	85								

22. The approval process of the 1064 locomotives started in March 2011 when the business case was tabled at the Transnet Freight Rail Investment Forum.
23. Two approaches were used to shorten delivery times of the new locomotives as far as possible:
- a) An aggressive approach was taken with the maximum locomotives delivered per month cognisant of local conditions and
  - b) Approval was obtained in July 2012 to go out on an RFP before the acquisition was finally approved or PFMA approval obtained.

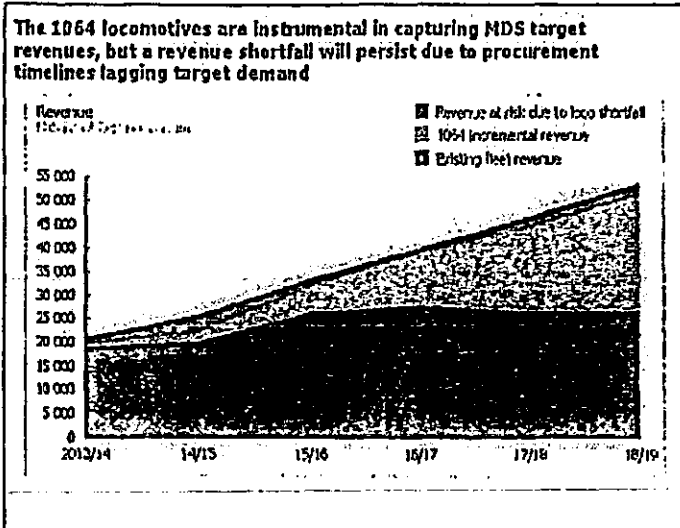
- 24. Transnet adopted a cautious approach because of the value of the acquisition and appointed external consultants to evaluate the business case.
- 25. Board approval was obtained in April 2013 and PFMA approval in August 2013.
- 26. The tenders closed in April 2013 but negotiations with tenderers could not commence till PFMA approval had been obtained.
- 27. It is expected that adjudication will be finalised by February 2014 and contracts awarded by May 2014.
- 28. At the time of the tabling the 1064 business case, the 465 diesel and 599 electric delivery timelines were based on the RFP then in the market. The exhibit below details the locomotive delivery timelines that were modelled as per the RFPs and used as the base case assumption.



- 29. The 1064 program has slipped by at least a year against original expectations. The current timelines are being reviewed by the Locomotive Steering Committee to ensure a compressed timetable to further mitigate volume risks to the MDC.

**Impact of the 1064 Delay**

- 30. Even with the 1064 business case being approved, there is a revenue shortfall which is exacerbated by the delay in locomotive delivery. This is depicted in the graph below extracted from the 1064 locomotive business case.



31. The MDS shortfalls are tabled below for a one and two year delay.

a) One Year Delay:

Shortfall	MDS Shortfall Scenario - One Year Delay						
Locomotives	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
No Delay	33	138	314	533	763	946	1040
Year Delay	0	57	202	405	638	828	972
Impact							
Locomotives #	33	81	112	129	125	118	68
Tons Mt	1.6	5.2	9.8	13.7	14.0	13.3	7.6
Revenue Rm	363	1286	2610	3639	4073	4188	2584
Capital Rm	-1725	-1248	-1641	276	381	20	5249
Mtce. Rm	36	91	132	159	162	160	96
Fuel and Elec. Rm	67	183	331	440	469	471	290

Shortfall Total One Year Delay	2013/14	2016/17
Tons Mt		30
Revenue Rm		7 900
Mtce. Rm		417
Fuel and Elec. Rm		1021

b) Two Year delay:

Shortfall	MDS Shortfall Scenario - Two Year Delay						
Locomotives	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
No Delay	33	138	314	533	763	946	1040
Year Delay	0	0	57	177	302	415	465
Impact							
Locomotives #	33	138	257	331	358	309	212
Tons Mt	1.6	7.9	18.1	28.6	33.0	31.3	23.8
Revenue Rm	363	1955	4831	7593	9604	9899	8057
Capital Rm	-2183	-3910	-4014	-1807	1292	2003	6480
Mtce. Rm	36	155	302	409	465	418	301
Fuel and Elec. Rm	67	303	678	1004	1194	1153	903

Shortfall Total Two Year Delay	2013/14	2016/17
Tons Mt		56
Revenue Rm		14 743
Mtce. Rm		901
Fuel and Elec. Rm		2052

c) Notes to tables:

- i. The locomotives per year in the tables are mid-year numbers representing productive capacity and are lower than the total "delivered" during the course of the year.

- ii. The shortfall is totalled to 2016/17 on the assumption that other mitigating strategies will be put in place for the subsequent years.

## MOTIVATION

### MDS Risk Mitigation

32. The program and motivation below partially addresses the above MDS shortfall in the early years protecting tons and income per the table below.

Income Protected	2013/14	2014/15	2015/16	2016/17	Cumulative Total
Avg. Rand / Ton	225.4	244.7	255.4	264.0	
100 19E - Tons Protected	2.4	2.4	4.4	7.2	16.44 Tons
Income Protected Rm	R 541	R 587	R 1 134	R 1 901	R 4 163
60 Diesels Tons Protected		3.8	7.9	7.9	19.6 Tons
Income Protected Rm		R 930	R 2 018	R 2 086	R 5 033
Total Tons	2.4	6.2	12.3	15.1	36.04 Tons
Income Protected Rm	R 541	R 1 517	R 3 152	R 3 987	R 9 197

33. Note that this submission is not a full risk mitigation. Further the benefit in 2013/14 is from Project Shongololo which are the new operating procedures introduced on the Coal Export Line.
34. The prime motivators for this submission are to:
- a) Protect General Freight volumes through delivering diesel and electric locomotives earlier than is possible through the 1064 program.
  - b) Ensure delivery earlier than the 1064 program by:
    - i. Confining the procurement of the electric locomotives
    - ii. Extending the current diesel locomotive contract.

### MDS Shortfall – 100 Dual Voltage Electric Locomotives:

35. The 100 Electric locomotives will be deployed on the Coal Export Line which will enable the release of 125 locomotives to the General Freight network protecting approximately 16.4 million tons (cumulative 13/14-16/17) of General Freight in the 7 Year MDS volume targets and thus allowing growth in the GFB market which would not have been possible because of the 1064 locomotive procurement delay.
36. The locomotive fleet plan presented to the Transnet Board in April 2011 proposed 112 new locomotives to meet an unconstrained coal export demand of 97 mt by 2015/16 with a proposed fleet of 308 electric locomotives. The "Capital Investment for Export Coal 81 mt" predicated replacing the aged fleet with modern electric locomotives. The updated locomotive fleet plan of April 2013 accompanying the 1064 General Freight locomotive business case also predicated 112 new locomotives for the Coal Business.
37. Subsequent to the Fleet Plan, the operational model was revised to take full advantage of the dual voltage capability of the locomotive. The changeover to the new operational model commenced in July 2013 and will build up as drivers are trained on Radio Distributed Power operations on the current fleet and new the locomotives become available. This changes the future mix of the Coal Fleet. The new operational model is bringing about greater efficiencies and creating capacity and the order will be based on this technology.



- 38. The 112 locomotives were for expansion and replacement. Due to the volume shortfall in MDS it was decided to accelerate the acquisition of 100 electrics to enable the cascade of 125 locomotives to GFB and mitigate the MDS volume risk.
- 39. Cascading locomotives to General Freight will assist in mitigating the delay currently experienced in the 1064 program. In all cases the cascading will facilitate growth though to 2017/18 when the 1064 delivery begins to have significant impact. The class 7E and Class 10E series of the current coal fleet are facing imminent run outs, increasing maintenance costs and decreasing reliability and the cascade to General Freight is an interim measure.
- 40. The 100 Electric locomotives will sustain the Coal Line electric fleet for 81 million tons per annum capacity and standardize the coal fleet on Electric type locomotives with significant operational and cost advantages.
  - a) To achieve this operational efficiency requires 200 wagon trains to bypass Ermelo Yard and couple parallel to the main line eliminating shunting and standing time in the yard.
- 41. The cumulative cascade program for the Class 10E and Class 7E locomotives depends on the acquisition of the 100 Electric locomotives which we envisage can be cascaded to GFB, as an interim measure, as follows;
  - a) 40 in 2013/14
  - b) 74 end 2015/16
  - c) 120 end 2016/17.
- 42. The first locomotives are cascaded in 2013/14. There are no or minimal cascades in 2014/15 as the locomotives are being delivered and commissioned. The effectiveness of the cascade is felt in 2015/16 and beyond.
- 43. Using the rule of thumb for General Freight that 100 locomotives generate approximately 6 mt per annum, the 125 released locomotives will protect approximately 7.2 mt per annum of general freight.
- 44. The exact allocation to the areas below will be determined at the time of cascading according to operational priorities.
  - a) **Manganese exports through Ngqura:** Manganese exports from the Northern Cape through Ngqura are expected to grow according to the *7 Year Business Plan* to 12 mt (and to 16 mt thereafter). The Class 7E series released from the Coal Line to General Freight traffic will supplement this service till the full complement of class 20E locomotives have been delivered where after the Class 7E series will be retired.
  - b) **Thabazimbi – Pyramid South:** This is an AC electrified section served by Class 7E series locomotives and the predicted volume growth is:

Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
M Tons	8.858	10.347	15.135	17.056	18.446	22.897	22.912

- c) Cascading the Class 7E Series will facilitate volume growth through to 2015/16 as well as the potential life extending / technology changing modification on the cascaded Class 10E series.
- d) **Maputo Export:** This is a DC electrified section suitable for Class 18E locomotives only. The cascaded Class 10E will release Class 18E locomotives from other sections which will be transferred into this section. The tonnage increase is:

Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
M Tons	6.421	8.353	12.469	13.499	16.446	21.168	21.598

e) **General Freight on the Coal Line:** This traffic uses DC traction or Diesel locomotives to Ermelo and then AC electrification to Richards Bay. Currently Class 7E3 locomotives are designated for this traffic south of Ermelo. Releasing Class 11E locomotives from the export coal operation will enable the additional traffic and also substitute for the current Class 7E3 which will be cascaded.

Year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
M Tons	10.702	11.901	13.404	15.036	15.733	16.032	16.470

45. The TFR Business Plan volume projections for the Coal Export Line are:

	Actual	Actual	Budget	Projections					
	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Export Coal Mt	67.7	69.21	77.00	81.00	81.00	84.00	95.00	97.50	97.50

- 46. The 100 Electric locomotive business case articulates the benefits of the earlier than previously planned delivery of the locomotives to the Coal Export Line.
- 47. The market analysis and infrastructure investment for "Capital Investment for Export Coal 81 mt" was recommended by Transnet Board on 16 February 2011 and approved by the Shareholder (Minister of Public Enterprises) on 20 June 2012.
- 48. Other aspects more fully covered in the 100 Electric Locomotive submission are:
  - a) Reliability and Operational efficiency based on past experience of electric locomotives of similar design
  - b) Savings on operational expenditure and capitalised maintenance
  - c) Energy Savings

**MDS Shortfall – 60 Class 43 Diesel Locomotives**

- 49. TFR is in the process of acquiring 143 class 43 Diesel locomotives from GESAT which have been delivered over the past two years which are have proven to be a capable locomotive. Given the MDS volume shortfall, it is proposed that 60 class 43 locomotives be acquired to further mitigate the volume risk as those in the 1064 program are now likely to come on stream in 2015.
- 50. The efficiency utilization of the locomotives will be comparable to that currently achieved on the Phalaborwa – Richards Bay flow of 7 262 GTK per locomotive month. This flow powered by new class 43 Diesels already exceeds the national fleet efficiency targeted for 2018/19. This represents a 24% increase on the targeted 2013/14 efficiency.
- 51. The 60 locomotives have a potential mitigation of 3.8 – 7.9 mt at an average 8 149 GTK's per loco per month exceeding the current Phalaborwa – Richards Bay flow. The potential income protection is R5 033 m (cumulative 2014/15 - 2015/16). The exact allocation of the 60 locomotives will be confirmed at the time of deployment over the following flows:
  - a) Botswana Coal to Bulk Connexion and Richards Bay.
    - i. Potential 1.8mt – 3.8mt



- ii. Diesels required: 35 inclusive of technical allowance.
- iii. Potential GTK's per loco per month: 5 957
- b) Elitsheni Coal from Sterkstroom to East London
  - i. Potential 1mt to 2.5mt
  - ii. Diesels required: 15 Inclusive of technical allowance
  - iii. Potential GTK's per loco per month: 12 784
- c) Manganese from Postmasburg to Bloemfontein / Bloemcon
  - i. Potential 1 - 1.6mt mostly from new entrant miners.
  - ii. Diesels required: 10 inclusive of technical allowance.
  - iii. Potential GTK's per loco per month : 7 821

#### PROJECT BENEFITS

- 52. Protection of GFB MDS income and targets amounting to R4 163 m for the 100 Electric locomotives and R5 033 m for the 60 Class 43 Diesels over the period 2013/14-2016/17 .
- 53. Coal Export volumes and Income are protected through improved reliability.
- 54. Sustainability objectives as per the Transnet Sustainability framework are met threefold:
  - a) Sustainability from an economic perspective is met by offering a long term cost effective, low cost rail solution that addresses the needs of industry to remain globally competitive and allows emerging miners to enter the coal export market.
  - b) Sustainability from a social perspective is met through the optimisation of manufacturing facilities, job creation and proactive stakeholder engagement.
  - c) Sustainability from an environmental perspective is met through energy savings through (i) the improved efficiency of the new locomotives and (ii) overall energy saving through the regenerative capability of the locomotives.
- 55. The programme will support the shift from road to rail as the cascaded locomotives take up the shortfall in the General Freight market.
- 56. Benefits specific to the 100 Electric locomotives based on past experience include:
  - a) Energy savings will be achieved with an 18% improvement in KVA requirements over the old technology Class 7E and Class 10E locomotives.
  - b) The regenerative capability of the new technology of modern locomotives introduces further energy savings of between 22% and 26%.
  - c) Quantifiable savings in maintenance of new locomotives.
  - d) Not quantified but direct and indirect savings with uninterrupted operations due to fewer failures.
- 57. Benefits specific to the 60 Class 34 Diesels include:
  - a) Fuels savings of 8% over the older diesel fleet.
  - b) Significantly reduced failures compared to the current diesel fleet improving availability and reliability.
  - c) Standardisation of maintenance regimes with current Class 43 fleet.
  - d) Virtual elimination of significant damage to rail infrastructure (skid-marks) which are prevented by the modern traction control system.

- e) The characteristics of the locomotive more closely match that of the electric fleet enabling optimum use of traction capability when worked in multiples with electric locomotives using RDP.

**PROCUREMENT STRATEGY**

Rationale for not being part of the 1064 process

- 58. The procurement process was carefully considered and was not taken into or part of the 1064 locomotive process. Aspects considered were:
  - a) **Type:** The 100 electrics are 26 ton per axle locomotives for heavy haul use to be deployed on the coal line. The 599 electric locomotives in the 1064 tender are 22 ton per axle locomotives for GFB use.
  - b) **Delivery:** The 60 diesels are similar to the 465 of the 1064 but the motivation below for extension is one of urgency because of the overall delay in the 1064 program. Including the diesels in the 1064 does not address the delay or urgency.

Analysis and Implications of Procurement Options

- 59. The following options were considered and reasoned:
  - a) Go out on tender
  - b) Do Nothing
  - c) Confine / Extend Contract
  - d) Extend current 20E contract for 95 CSR Locomotives
  - e) Leasing
- 60. **Go out on tender:** With this option the locomotives become available beyond the 1064 timeframe and hence this is not a viable option as it does not address the urgency. It is however the best option insofar as public perceptions, fairness and transparency are considered.
- 61. **Do Nothing:** This option puts the MDS volumes at risk that this proposal wishes to mitigate. The implications are:

Income Protected	2013/14	2014/15	2015/16	2016/17	Cumulative Total
Tons Lost	2.4	6.2	12.3	15.1	36.04 Tons
Income Lost	R 541	R 1 517	R 3 152	R 3 987	R 9 197 Rm

- 62. **Confine / Extend contract:** This addresses the urgency of the proposal but has potential negative public implications. For the urgency already outlined and the reasons below this is not part of the 1064 process and will not impact on that process.
  - a) The diesel locomotives are known, running effectively, meet the technical requirements and prototyping and set up costs are not required
  - b) Extension of the GE contract is the fastest most efficient way to procure the diesel locomotives.
  - c) The CSR facilities are available for immediate production which will result in significant delivery acceleration based on the learnings of the 95 loco processes. CSR has capacity to produce 2000 locomotives per annum.

- d) CSR is a known current supplier who has excelled in the two most recent tenders for electric locomotives from a technical capability and capacity perspective, supplier development, commercial and transformational perspective.
  - e) Confinement of the contract to CSR meets the grounds for confinement per the most recently BADC approved PPM.
  - f) Both the extension and confinement are acceptable procurement mechanisms per the PPM in this instance.
63. **Extend current 20E contract for 95 CSR Locomotives:** The 20E currently on order is a 22 ton per axle GFB locomotive. Additionally, extension would not be an acceptable procurement mechanism per the PPM given the material amendment to contract which could be challenged.
64. **Leasing:** Aurizon in Australia have indicated that they have about 20 locomotives available for lease. However, the newest of these is 30 years old and the quantities are not likely significantly impact volumes. We will view the 20 locomotives and assess their suitability for our network. There is no viable external market for 1064mm dual voltage electric locomotives. South African circumstances are (historically) unique requiring bespoke electric designs. Even if leased the conditions would be that TFR take ownership after a period of time.
65. **Implications:** The 1064 tender is currently under adjudication. It is the largest procurement processes within Transnet and while it seeks (inter alia) to launch a South African locomotive industry, it will be closely scrutinised by the losing bidders seeking any loophole to press an advantage. The tender calls for programmatic procurement and it is possible to reduce the final quantities. The following implications were considered in adjusting the (diesel locomotive) quantities.
- a) The tenders have closed and asking respondents for revised submissions would delay the process further.
  - b) The perceptions that may be generated by "backtracking" on and reducing a visibly stated need and objective to "favour" a supplier, the urgency argument notwithstanding.
  - c) Proceeding with the proposed contract extension and announcing the reduction in diesel quantities at the time of award may be perceived as an underhanded manner of "favouring" a supplier.

#### Procurement Recommendation

66. For reasons of urgency, the confine / extend contract option is the recommended option.
67. This will procure the locomotives in the shortest possible time and, by so doing, best mitigates the potential shortfall in MDS volumes. The reasons of urgency have been set out as well as the complementary benefits of the recommended option.

#### Confinement of 100 Electric Locomotives

68. An extract from the latest approved Procurement Procedures Manual stipulating grounds for confinement which are relevant to this submission, reads:

"Confinements will only be considered under the following circumstances:

- a) where a genuine unforeseeable urgency has arisen. Such urgency should not be attributable to a lack of proper planning. However, where a genuine urgency has been created by the lack of proper planning, urgency can still be relied upon as a ground for Confinement. In such cases appropriate action must be taken against the individual(s) responsible for the bad planning.



- b) the Goods/Services are only obtainable from one/limited number of suppliers. For instance, patented/proprietary Goods or OEM spares and components. Operating divisions are however required to provide evidence that there are no new entrants to the market who could also be approached;
- c) for reasons of standardisation or compatibility with existing Goods and Services. A case must be made that deviation from existing standardized Goods or Services will cause major operational disruption. If not, confinements based on "standardisation" will not be considered; or
- d) when the Goods or Services being procured are highly specialized and largely identical to those previously executed by that supplier and it is not in the interest of the public or the organization to solicit other offers, as it would result in wasted money and/or time for Transnet. When this particular ground is intended to be used as a ground for Confinement, it is important to note that all pre-requisites must be satisfied: The Goods or Services must be highly specialised, almost identical to previous work done and approaching the market again would result in wasted money and time."

69. The project is motivated on the basis of Para (a) where a genuine unforeseeable urgency has arisen.

- a) Item 13 et al covering the "History and Status of the TFR Fleet Plan" and the "History and Status of the 1064 Procurement" demonstrates the reasonable and timely steps taken to address to the Board the run out of the current fleet and the locomotive requirements required to address the volume ramp up of GFB.
- b) Item 11 et al further indicates that the delay was not attributable to a lack of proper planning as the GFB locomotive requirements have remained consistent throughout.
- c) Considering (a) and (b), no individual or group of individuals is responsible for bad planning.

70. Complementing the urgency is ground (d):

- a) Locomotives are highly specialised with limited suppliers worldwide.
- b) The locomotives would be largely identical with those already supplied and to be supplied and
- c) Transnet would incur wasted time and money in approaching the market (b) and (c) are relevant due to the fact that:
  - i. CSR has been adjudicated as the best bidder during the 95 electric loco process as well as joint on the 1064 process. Both these tenders include the Board approved procurement methodology of maximising supplier development whilst ensuring highest standards of quality and best possible commercial offering. Transnet has just spent a large amount of time, human capital and money in the recent tenders and going through another tender process would not be efficient given the urgency.
  - ii. Production of the current MARS contract has been completed and was based on previous procurement methodology where supplier development was not a key focus area and the Mitsui consortium did not fare well in the two most recent tenders issued by Transnet. Therefore continuation with Mitsui via confinement would pose unnecessary risk to the organisation. Furthermore, reputation risk exists, although subjective and places the company under

unnecessary risk if it were to follow a confinement approach with Mitsui. This reputation risk involves speculation in the media around Mitsui's local partners and their political affiliations. Transnet would never entertain awards based on political prowess of any business partners to an OEM but the risk does need to be taken into account from a reputational perspective.

71. TE is currently maintaining and repairing the Class 19E Electric Series which means that they are accustomed to maintenance regimes are more modern electric dual voltage locomotives. Limited additional training will be required and optimum utilisation of the current maintenance facilities will be met. Simplified maintenance practises will result in shorter Mean Time to Repair. Common practices will be addressed through maintenance regimes of the 95 loco series, 599 elements that CSR is shortlisted for and this fleet.

72. From a social-economic perspective the following jobs will be retained in assembly facilities:

- a) Approximately 186 jobs will be retained at the TE assembly facility and further jobs will be retained in downstream enterprises
- b) Approximately 400 jobs are estimated to be created over the period for electric assembly and further jobs will be retained in downstream enterprises
- c) Based on SD offerings made in recent tenders Transnet believes it can achieve maximum SD possible with at least 65% for diesels and 70% for electrics.

73. Considering the volumes at risk and the urgent requirement for the coal line locomotives to cascade the current fleet to General Freight, it is proposed that the procurement be confined to CSR.

**Contract Extension with GESAT for 60 Class 43 Diesels**

74. The arguments for an extension to the GESAT contract are similar to those for confinement and are motivated on:

- a) the basis of urgency (a) as outlined above
- b) and complemented by standardisation (c) and goods largely identical to those previously executed (d).

75. The project is motivated on the basis where a genuine unforeseeable urgency has arisen. The arguments above are also applicable to the 60 Class 43 Diesels.

76. The latest approved Procurement Procedures Manual, dated 01 October 2013, par 22.4.2, allows for a contract extension. In this instance the request is for a material contract amendment to a previously confined event. The reasoning for the original confinement of the additional 43 loco's is still applicable given that there is a genuine unforeseeable urgency which has arisen due to the delay in the 1064 tenders and such urgency is not attributable to a lack of proper planning.

77. Complementing the urgency is that the goods are largely identical to those previously executed by that supplier and standardisation is a benefit for the specialized locomotives.

78. Addressing the urgency:

- a) In December 2009, Transnet concluded a contract with General Electric South Africa Technologies (GESAT) PTY Ltd for the Supply of 100 Diesel Locomotives through a limited tender process confined to three potential suppliers. In 2011/ through a

confinement process, TFR concluded a contract with GESAT for an additional 43 Class 43 diesel locomotives. The completion date of the 43 Locomotives was end June 2013 in line with the Transnet planned schedule. The last few locomotives to roll out of assembly will be tested by 30 September 2013, where after they may be accepted.

- b) As the production line is currently operational and design is finalised, delivery lead times will be reduced by approximately 12 months and Transnet will save by not requiring set up costs of facilities and production runs.
- c) GESAT and TE have the ability to roll out between 8 to 10 locomotives per month.
- d) No prototyping or type testing is required.

79. Complementing the urgency (a) is the standardisation (c) and goods largely identical to those previously executed (d). Inter alia:

- a) Locomotives are highly specialised with limited suppliers worldwide.
- b) The locomotives would be identical with the 143 Class 43 Diesels already supplied or about to be commissioned.
- c) Transnet would incur wasted time and money in approaching the market as:
  - i. The specialised tender specifications take time to prepare; prospective tenderers need time to respond and there is the time to adjudicate. This process takes at least 12 months by which time the urgency has passed and the 1064 deliveries will start to kick in.
  - ii. Furthermore a new supplier would necessitate a new design, design review and prototyping and type testing. This is a further 12 months for diesels before production commences.
- d) Standardisation of locomotives has two elements. (i) Operational standardisation and (ii) Maintenance standardisation.
  - i. Operational standardisation requires locomotives of the same class to operate as a consist (i.e. two or more locomotives coupled together operating as a single unit). This is not negotiable but is implemented through de facto industry standards.
 

After many years these standards have now changed and TFR is evaluating the impact of these changes.
  - ii. Maintenance standardisation addresses:
    - Reduced spares holdings and simplified and standardised inventory.
    - Standardised tools and diagnostic instruments serving a common fleet
    - Unified training and for maintenance staff.
    - Simplified maintenance practises resulting in shorter Mean Time to Repair.
  - iii. TE is currently maintaining and repairing the Class 43 Series which means that no additional training will be required and optimum utilisation of the current maintenance facilities.

80. In light of the foregoing concerning standardisation, specialisation and similar locomotives already supplied and further considering that:

- a) the Class 43 diesel is a modern locomotive that is performing well and has proven to be both efficient and reliable and



- b) the proposed 60 locomotives will identical to the current design and no prototyping or type testing is required conservatively saving 15 months or more and
- c) the limited quantities required:

It is submitted that It is not in the best interest of Transnet to solicit other offers for the 60 Class 43 diesel locomotives.

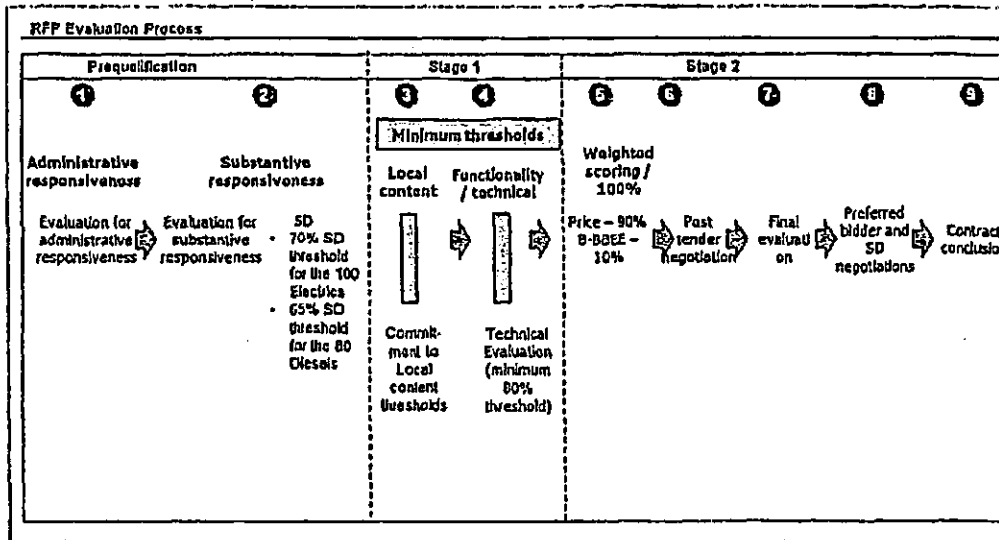
- 81. In both transactions, Transnet Engineering (TE) was appointed as GESAT's subcontractor for the local assembly of the locomotives and the contractual obligations have been met.
- 82. The time and cost to localise production to comply with local content and SD requirements has to be amortised over the anticipated production run. The smaller the run, the more expensive the overhead.
- 83. Given that a contract is already in place and that the additional 60 loco requirement will be largely on the same terms and conditions as the 43 loco confinement, this warrants extension.

**Contracting strategy**

- 84. Extend the current contract with General Electric South African Technologies (GESAT) for 60 Class 43 Diesel Locomotives.
- 85. Confine and award to China South Rail (CSR) for 100 Electric locomotives.
- 86. The reasons for the different confinement and extension strategies have been highlighted in the sections above.

**Evaluation Methodology**

- 87. The Request for Proposals (RFP's) for the confinement to Mars and extension to GESAT respectively will be issued and their respective proposals will be assessed as described below.



- 88. The Evaluation Methodology for an open tender comprises the following steps:

- 1) **Administrative responsiveness** – bidders will need to pass the administrative responsiveness to enable them to be evaluated further. This includes evaluating all returnable documents were submitted and the bid documents were duly signed by the bidders



- 2) **Substantive responsiveness** – bidders must ensure that all pre-qualification criteria, the pricing schedule is completed, their bid materially complies with the scope/specification and that all material terms and conditions in the bid documents have been met. SD pre-qualification criteria will be set at 65% for diesels and 70% for electrics based on recent learnings from the 1064 process.
  - 3) **Local Content** – bidders must comply to the minimum local content thresholds for Electric and Diesel locomotives as stipulated in the PPPFA
  - 4) **Technical evaluation** – bidders will need to pass the minimum technical thresholds of 80% for both Electric and Diesel locomotives to proceed to the final phase (stage 2) of evaluations.
  - 5) A **weighted scoring approach** for Price (90%) and B-BBEE – scorecard (10%) will be used to determine final award
  - 6) **Post tender negotiations** – post tender negotiation requesting preferred bidders to provide their Best and Final Offers
  - 7) **Final evaluation** – preferred bidders to undergo final evaluation based on the 90/10 as stipulated by the PPM
  - 8) **Preferred bidder negotiations** – selection of the preferred bidder and negotiation of various aspects including final SD commitments and the B-BBEE improvement plan (FRC Future)
  - 9) **Conclude contract** – the parties sign a contract and addendums to formalize the agreement.
89. The above process is modified for the proposed confinement and extension in that:
- a) **Administrative response (1)** is simplified to essential documentation such as tax clearance certificate, BEE certificate etc.
  - b) **Substantive response (2)** will be required on to ensure that all material terms and conditions in the bid documents have been met. SD pre-qualification must be met
  - c) **Local content threshold** must be met
  - d) **Technical evaluation (5)** is simplified to ensure that all modifications / improvements made over the life of the locomotives (Class 43 and Electric's) for incorporation.
  - e) **Weighted Scoring Approach (6)** and
  - f) **Final Evaluation (8)** is not required due to confinement and extension to one party although evaluation against expected SD, BEE improvement and price ranges will be conducted to ensure the deals meet Transnet's expectations.,

**Local Content, Designated Components and Supplier Development (SD)**

90. Meeting Local Content (3) is a prerequisite to proceeding to SD threshold (4) evaluation.
91. The targets per PPPFA National Treasury Instruction Note (dated 16-07-2012) on 'Invitation and Evaluation of Bids Based on a Stipulated Minimum Threshold for Local Production and Content for the Rail Rolling Stock Sector' (Section 3 (3.1) are compulsory and are elaborated in following table:

Local Content - Section 3 (3.1)	
Category	Weighting
Local manufacturing: Threshold: 60% for Electric and 55% for Diesels)	100% of PPPFA
Total	100%

92. In addition, the progressive Local Content for Designated Components (Section 3 (3.2)) will also be applicable to both Electric and Diesel locomotives as per the table below though they may not materialize as the contracts will be fulfilled before three years and they are not programmatic.

Designated Component / Activity Heading Only - Section 3 (3.2)	% Local Content 3-5 Years	% Local Content 6 Years and above
Assembly of Locomotives and EMU	100%	100%
Car Body	100%	100%
Bogie (including wheels)	100%	100%
Coupling Equipment	100%	100%
Suspension	100%	100%
Heat, Ventilation and Air Conditioning	60%	70%
Braking System	70%	80%
Alternators	90%	100%
Traction Motors	65%	80%
Electric Systems	80%	90%

1. The Supplier Development categories are set out in the table below. The pre-qualification targets are considered realistic and achievable without posing a risk to the project.

Supplier Development (SD)
Category
Investment in plant – bidders monetary commitment to investment in plant and equipment
Downstream procurement – bidders commitment to supporting 2 <sup>nd</sup> , 3 <sup>rd</sup> tier suppliers, etc.
Skills development – supplier's commitment to skills development (number of people and monetary)
Job creation / preservation – supplier's commitment to number of jobs maintained/created
Small business promotion – supplier's commitment to usage of small businesses (monetary)
ED/SD – bidders commitment to SD Initiatives and ED development

**Award Conditions – 100 Electric locomotives**

2. Approval to award the business to CSR is requested subject to SD compliance with the following:



- a) Local content meeting or exceeding 60% by value
- b) Compliance with new SD commitments with a minimum of 70% as measured in the SD Value Summary which forms part of the RFP
- c) Transnet will also request a price range of between R30.5m and R32m for the purposes of negotiation with the objective of coming in within the R34.34m per loco which will be used as a guide as is dependent on forex fluctuation.

**Award Conditions – 60 Class 43 Diesels**

- 3. Approval to award the business to GESAT is requested subject to SD compliance with the following:
  - a) Local content meeting or exceeding 55% by value
  - b) Compliance with new SD commitments with a minimum of 65% as measured in the SD Value Summary which forms part of the RFP
  - c) Transnet will also request a price range of between R22.5m and R24m for the purposes of negotiation with the objective of coming in within the R26m per loco which will be used as a guide as is dependent on forex fluctuation.

**FINANCIAL AND BUDGET IMPLICATIONS**

- 1. The financial motivation and budget implications for the 100 Electrics and 60 Class 43 Diesels are discussed in detail in the respective submissions.

**100 Electrics**

- 2. The 100 Electric Locomotives are summarized below and are based on previous experience with the Class 19E contract:
  - a) A base price per locomotive price of R 34.34 m (2013/14 - Yen 385 m @ Rand/Yen 0.09823)
  - b) Capital Investment Summary:

Year / Km	13/14	14/15	15/16	16/17	17/18	19/19	Contingency	Total
Project Plan Payment	R 343	R 1 737	R 1 439				R352	R 3 8 1
Delivery		56	44					100

- c) Adding the 100 class 19E sustaining locomotives to the original Coal 81 mt model changes the Net Present Value of the total Coal 81 Project from (NPV) R90.63m to (IPV) R98.49m over 10 years.
- d) The present value (PV) of the Total Cost of Ownership using the 1064 locomotive model is R58.6m per locomotive and R5 863m for the 100 locomotives.
- e) Approved Infrastructure Investments supporting the project totals R3 974 million.
- f) The cost is estimated and therefore a final price can only be given upon negotiation.

**60 Class 43 Diesels**

- 3. The 60 Class 43 Diesels are summarized below:
- 4. The 60 Class 43 locomotives are over and above the 465 diesels of the approved 1064 locomotives.

- a) The delays in the 1064 will result in the delivery of the 1064 locomotives extending beyond the current 7 year MDS capital plan. The diesels in particular will not meet the originally planned delivery.
- b) The fleet plan and the 1064 locomotive business case stress sustaining the fleet beyond the seven year period in the order of 60 to 80 locomotives per year.
- c) The 60 Class 43 diesels will be funded from the 1064 locomotive budget for the first year.
- d) The 1064 locomotive budget will be adjusted commencing the 2014/15 7 year cycle for the delayed delivery of the 1064 beyond the current 2013/14 7 year cycle. This adjustment is in line with the stated intent of sustaining the fleet through a continuous replenishment of new locomotives.
- e) A price per locomotive price of R 26m @ Rand / USD (R9.59/USD) (R27.67 m @ R104/USD for 2014/15).
- f) Capital Investment Summary:

Year / Rm	13/14	14/15	15/16	16/17	17/18	18/19	Contingency	Total
Project Plan Payment	R 156	R 1 504					R166	R 1 826
Delivery		60						60

- g) The acquisition of the 60 Class 43 Diesel preserves an NPV of R1 871 m based on the 1064 Locomotive Model.
- h) The NPV of the Total Cost of Ownership using the 1064 Locomotive model is R63.7m per locomotive and R222m for the 60 additional diesels over their 30 year life.
- i) The cost is estimated and therefore a final price can only be given upon negotiation

Financial Impact Group

- 5. The proposed procurement has limited impact on Group finances and the critical ratios are maintained.
- 6. For no delay the ratios are:

Ratios: Transnet Group - As)	Budget	Projections				
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
- Operating margin %	24.9	29.1	31.5	32.5	35.4	36.3
- EBITDA %	42.9	46.7	49.1	49.7	51.8	52.6
- Return on average total assets (%)	8.0	10.0	11.3	12.4	14.2	14.5
- Gearing (%)	46.6	47.7	47.7	47.0	45.2	41.6
- Net debt to EBITDA (Times)	3.04	2.70	2.53	2.40	2.17	1.94
- Asset turnover (Times)	0.30	0.33	0.34	0.37	0.38	0.38
- Cash interest cover (Times)	3.3	3.6	4.0	4.1	4.5	4.8



7. For a one (1) year delay the ratios are:

Ratios: Transnet Group One (1) Year Delay	Budget	Projections				
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
- Operating margin %	24.8	28.5	29.6	29.0	31.3	32.0
- EBITDA %	42.7	46.2	47.6	47.1	48.7	49.5
- Return on average total assets (%)	7.9	9.7	10.4	10.6	11.8	12.0
- Gearing (%)	46.2	47.3	47.8	48.7	48.7	47.1
- Net debt to EBITDA (Times)	3.01	2.71	2.67	2.75	2.64	2.49
- Asset turnover (Times)	0.30	0.33	0.33	0.35	0.36	0.36
- Cash Interest cover (Times)	3.3	3.6	3.8	3.7	3.7	3.9

9. For a two (2) year delay the ratios are:

Ratios: Transnet Group Two (2) Year Delay	Budget	Projections				
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
- Operating margin %	24.8	28.3	29.3	29.1	31.6	32.6
- EBITDA %	42.7	45.9	47.2	47.1	48.9	50.0
- Return on average total assets (%)	7.9	9.6	10.3	10.7	12.0	12.3
- Gearing (%)	46.0	46.6	46.8	47.4	47.7	46.3
- Net debt to EBITDA (Times)	2.99	2.67	2.61	2.64	2.55	2.41
- Asset turnover (Times)	0.30	0.33	0.34	0.35	0.36	0.36
- Cash Interest cover (Times)	3.3	3.6	3.9	3.8	3.9	4.0

**SOCIO-ECONOMIC BENEFITS**

- 9. The transaction will be aligned with the Government of South Africa's socioeconomic policy framework, including CSDP, NGP, NDP, SSI, and IPAP2.
- 10. Meeting the MDS growth targets supports the National Development Program in the Industrialisation of SA's mineral resources.
- 11. The program supports the sustainable development of a South African locomotive production industry.
- 12. Economic benefits include:
  - a) Using idle capacity available in South Africa
  - b) In terms of the National Treasury Instruction note the local content for designated sector (rolling stock - locomotives) for electric locomotives is 60% and for diesel locomotives is 55%.
  - c) Ability to reinstate / retain local jobs as the skills pool already exists
  - d) Significant indirect and direct South African jobs will be preserved which include approximately 186 direct jobs at the TE assembly facility with further jobs retained in downstream enterprises

**PROJECT RISKS**

- 13. Both projects face several risks that could affect their overall economic viability:
- 14. **Locomotive Delivery:** This could arise if (i) the confinement is not approved (ii) unforeseen circumstances on the part of supplier including not complying with CSDP conditions.
- 15. **Lower volumes:** MDS volumes may not materialise per plan negating the need to cascade locomotives and / or the class 43 diesels not being fully or optimally utilised.

16. The coal line locomotives are nonetheless still nearing their end of life and these will require replacement in the short term to sustain coal exports at 81 mt. Long term coal contracts are currently being negotiated for 81 mt and there are sufficient coal reserves to sustain this tempo. The model and NPV is further based on 95% of the coal export volumes materialising. There is no risk to this project if volumes do not ramp up to 97.4 mt.
17. Exchange Rate Fluctuations:
- For the 100 Electric confined to CSR, the Yen / Rand Rate is used as a forecast given that the Class 19E deal was used as a base. Localisation is already set at 60%, thus mitigating exchange fluctuation risks.
  - For the 60 Class 43 confined to GESAT the base price is taken R10/USD. The rate is forecast to strengthen in the short term which includes the duration of the contract before weakening.
18. Tariffs not being realised:
- For the coal line current FOB prices for RBCT coal are around US\$90 per ton, well below the peak of over US\$150 per ton. At R9.50/USD and a tariff of R126 per ton, transport accounts for ~13% of the FOB price. Pressure on tariffs will remain till there is a long term sustainable uptick in the FOB price.
  - For General Freight increases linked to inflation are not seen as a risk while increases above inflation will be subject to scrutiny and downward pressure.
19. Tariff exposure to commodity downturns:
- In the short term this could impact the viability of emerging miners for export coal. This will affect only 3 mt as the rest are based on long term contracts being negotiated. The model is also based on 95% of the volumes realising.
  - Locomotives have a 30 year life-cycle which transcends economic cycles. In the short to medium term the global economic recovery is seen as slow but sustained. The economic environment for General Freight locomotives was fully set out in the 1064 business case.
20. Over Capitalisation of the Coal Line: This is not seen as a risk as the locomotives sustain current volumes of 81 mt for which long term contracts are being negotiated. The reserves in the Mpumalanga basin are also acknowledged to be able to sustain this tempo for the long term. There is thus little risk of stranded assets. The locomotives being replaced are at the end or very close to the end of their economic life and would require replacement in the very short term even if they were not cascaded to General Freight.
21. Project Interdependencies:
- Crucial to the new operations and achieving 81mt on the Coal Export Line with the additional 100 Electric locomotives requires constructing the Ermelo bypass line. This line enables two 100 wagon trains from the mines to be coupled together enabling the train to proceed as a single 200 wagon Radio Distributed Power (RDP) train without going into Ermelo Yard.
  - An interdependency for the 100 Electric locomotives is cascading locomotives to general freight. The 60 Class 43 Diesels do not have other project interdependencies.
22. Project risks will be mitigated during implementation by a dedicated cross-functional project team to manage the contract.

**RECOMMENDATION:**

23. It is recommended that the Transnet Board Acquisitions and Disposals Committee recommends to the Transnet Board of Directors the following:

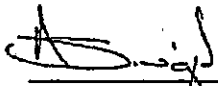
- a) Note the risk to TFR MDS volumes through insufficient traction power resulting from the delay in the procurement of the 1064 locomotives;
- b) To approve the investment in and procurement of 100 Electric locomotives required for the Coal Export Line in the amount of R3 871 m (excluding borrowing costs);
- c) To approve the confinement and award of the procurement for the 100 Electric locomotives.
- d) To approve the investment and change in the fleet plan to procure of 60 Class 43 diesel locomotives for General Freight in the amount of R1 826 m (excluding borrowing costs);
- e) To approve an extension of the current Class 43 diesel locomotives contract for 60 additional locomotives;
- f) The GCE be delegated the power to sign and conclude all relevant documents to give effect to the above resolutions, including the award and process approval.

**RECOMMENDED BY:**

\_\_\_\_\_  
Siyabonga Gama  
Chief Executive  
Transnet Freight Rail

\_\_\_\_\_  
Date:

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Anoj Singh  
Group Chief Financial Officer  
Transnet SOC Ltd

21.11.14.  
\_\_\_\_\_  
Date:

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Brian Molefe  
Group Chief Executive  
Transnet SOC Ltd

22.1.14.  
\_\_\_\_\_  
Date:



