



**EXHIBIT BB 2.2**

**PETER STEPHEN  
VOLMINK**

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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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**AMENDMENTS TO STATEMENT**

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I, the undersigned,

**PETER STEPHEN VOLMINK**

do hereby state that:

1. I wish to effect the following amendments to the statement dated 23 April 2019 which I submitted to Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector ("the Commission").

**Ad para 45.4.4**

2. The second sentence of this paragraph is deleted and replaced with the following sentence:

*"In the draft 2012 PPM, it was recommended that genuine urgency could be used as a ground for confinement, even if the urgency arose as a result of bad planning e.g. if fuel had not been procured as a consequence of bad planning, a confinement process could still be triggered because the fuel had to be procured urgently".*

3. The fourth sentence of this paragraph is deleted and replaced with the following sentence:

*"But the Board did not approve this recommendation and decided that if the urgency arose as a result of bad planning, a confinement could not be justified under any circumstances".*

**Ad para 82.7 thereof**

4. The last sentence of this paragraph is hereby deleted and replaced with the following sentence:

*"The affidavit provided by T Systems further stated that Transnet may wish to verify the correctness of what was said therein. The deponent further acknowledged that providing false information or failing to provide the information required constitutes misrepresentation. A copy of this affidavit is attached as "PV 9(a)".*

**Ad para 91 thereof**

5. The reference to "2014" in the fourth sentence of this paragraph is deleted and replaced with "2013". The sentence thus reads as follows:

*"During December 2013, a consultation was held with Adv. Gilbert Marcus SC to obtain his view on the legality of the decision taken by the GFE."*

**Ad para 94 thereof**

6. This paragraph is amended by adding the following sentence at the end of the paragraph:

*"A copy of the attorney's summary of the advice provided is attached as "PV 19(a)".*

**Ad para 113 thereof.**

7. The first sentence of this paragraph is deleted and replaced with the following sentence:

*"During October 2013, a submission was made to the BADC to approve the confinement of 100 class 19E locomotives to Mitsui African Rail Solutions (MARS)."*




Ad para 116.3 thereof

8. The second sentence of this paragraph is deleted and replaced with the following:  
*“These words appeared in an early draft of the 2012 PPM, but as indicated above this suggestion was never approved by the Board.”*
  
9. The reference to “2013” in the third sentence is deleted and replaced with “2012”.

Ad Annexure “PV 35”

10. The last column (column 8) headed “Value and Period of Contract Extensions” is hereby deleted.
  
11. The revised annexure “PV 35” is attached hereto.



Peter Stephen Volmink

Date: 2 May 2019

**“PV 9(a)”**



"PV 9(a)"


AFFIDAVIT

I, the undersigned

**ANJA STEFANIE HATTINGH**  
 (Passport No. C486MLRFO)

Do hereby make oath and say:

1. I am an adult female person and employed as Vice President: Finance of T-Systems South Africa (Pty) Ltd;
2. I am duly authorized to make this affidavit. Everything I state in this affidavit is of my own personal knowledge, unless specifically mentioned otherwise.
3. Detecon is a German company with a branch in South Africa. T-Systems South Africa (Pty) Ltd does not have any legal, controlling, beneficial or equitable ownership of any voting equity interests in Detecon, nor does it own shares in any subsidiaries of Detecon. Detecon does not have any legal, controlling, beneficial or equitable ownership of any voting equity interests in T-Systems South Africa (Pty) Ltd or its subsidiaries.
4. Notwithstanding that the entities share a parent company, the entities are completely independent of each other and have no local affiliation and have no ability to represent each other, nor contractually bind each other.
5. Additionally there is currently no existing local engagement or collaboration between the T-Systems South Africa (Pty) Ltd and the local Detecon branch. T-Systems South Africa (Pty) Ltd has not obtained any information relating to the Network RFP (GSM/13/04/0722) from Detecon or its parent company.
6. I agree and accept that Transnet SOC Limited may wish to verify the correctness of that stated above at any stage after signature of this affidavit by verifying this information with any such entity as may be in position to be of assistance in such verification process.
7. I declare that information supplied in this affidavit is true and correct. I understand that providing false information or failing to provide the information required constitutes misrepresentation.

  
 ANJA STEFANIE HATTINGH

I hereby certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn before me at Midrand on 10 October 2013 the regulation contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

  
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 COMMISSIONER OF OATHS

**Bongwiwe Lynette Dube**  
 Commissioner of Oaths ex officio  
 Attorney  
 International Business Gateway,  
 New Road, IBG Midrand, RSA  
 Area: RSA

**“PV 19(a)”**







▪ **MKHABELA HUNTLEY ADEKEYE INC** ▪

To: Transnet SOC Limited

10 December 2013

Attention: Mr N Silingwa

Our Ref:

TRA25.0007\_Mkhabela\_gn

Per Email:

[Ndiphiwe.Silinga@transnet.net](mailto:Ndiphiwe.Silinga@transnet.net)

Dear Counsel

**RE: ORAL OPINION: TRANSNET NETWORK SERVICES TENDER**

1. We refer to the above matter and the consultation in respect thereof held at the chambers of Advocate Gilbert Marcus SC during the course of today (10 December 2013).
2. We confirm that counsel's provided advice in respect of the oral opinion sought by Transnet SOC Limited ("Transnet") regarding the Transnet Network Services Tender and such advice is set out as follows:
  - 2.1. Transnet has conducted a competitive tender process which culminated in a thorough tender evaluation exercise in respect of the above tender and in terms thereof, Neotel subsequently emerged as the highest scoring bidder;
  - 2.2. During the tender evaluation process, the technical proposals were evaluated by highly qualified technical experts with substantial levels of expertise in the subject matter that formed the basis of the technical proposals;
  - 2.3. During the course of the aforementioned evaluation, the issues raised by the CEO were considered by the aforementioned experts and disregarded as not being of material importance to the evaluation thereof;
  - 2.4. In light of the evaluation of the above factors, the tender was awarded to Neotel upon the conclusion of a fair and competitive process as required by statute;

▪ **MKHABELA HUNTLEY ADEKEYE INC. ATTORNEYS** ▪

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Reg No. 2000/029792/21 | Directors: Babatunde Adekeye, Jackie Huntley, Jim Matemane, Leslie Mkhabela, Dawn Norton | Consultant: Stanley Mphahlele  
Senior Associate: Wendel Bloem | Associate: Ehiremen Enabor, Moleboge Lekwane | Financial Manager: Moloka Mogotlane | Office Manager: Rolene Dennison

- 2.5. Section 217 of the Constitution prescribes that when an organ of state contracts for goods and services , contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;
- 2.6. The PFMA and PPPFA Acts were enacted in order to give effect to section 217 of the Constitution;
- 2.7. In light of the dictates imposed by the Constitution and underpinned by different statutes, the decision of the CEO falls to be set aside as it does not fall within the bounds of section 217 of the Constitution;
- 2.8. The factors considered by the CEO in making the decision seem to have taken into extraneous evidence that had already been considered during the course of the tender evaluation process;
- 2.9. In addition to the above, Neotel was not afforded an opportunity to make representations on the negative risk factors highlighted by the CEO and used when making the decision to overlook Neotel notwithstanding the fact that Neotel scored the highest number of points;
- 2.10. In addition to the above, the process is fraught with instances of procedural unfairness such as the consideration of and acceptance of the T-Systems price offer which was transmitted after the deadline for the delivery thereof;
- 2.11. The decision of the Constitutional Court in *AllPay v Cash PayMaster and Others* (unreported case CCT 48/13 handed down 29 November 2013) bears reference to this scenario. In paragraph 4 of the Court's judgment, it was stated that "*The outcome of this case is a matter of national importance and public interest. It is because procurement so palpably implicates socio-economic rights that the public has an interest in its being conducted in a fair, equitable, transparent, competitive and cost-effective manner*". The Court in paragraph 39 continued by stating, in relation to equal treatment of tenderers, that "*Yet another requirement is that competitors should be treated equally, in the sense that they should all be entitled to tender for the same thing. Competitiveness is not served by only one or some of the tenderers knowing what is the true subject of tender. . . . That would deprive the public of the benefit of an open competitive*". In light of the non-compliance with the precepts of the Constitution by SASSA awarding the tender on the basis of a procedurally unfair tender process, the Constitutional Court (in a unanimous judgment) held that the decision to award the tender to Cash Paymaster is constitutionally invalid.
- 2.12. Therefore the Constitutional Court has set out a framework in terms of which there must be strict legal compliance with the terms of section 217 of the Constitution and any failure to do automatically renders the tender process invalid and the award liable to be set aside on review;
- 2.13. On an analysis of the factual background read against our law and the recent *AllPay* judgment, it is clear that the decision taken by the CEO to overlook Neotel would be susceptible to review and subsequently being set aside by virtue of the non-compliance with section 217 of the Constitution and the laws governing procedural fairness.

2.14. In light of the above, Transnet is advised to consider the review and subsequent withdrawal of the internal decision to award the tender to T-Systems and once effected, Transnet should proceed to award the tender to Neotel. In theory, Transnet may revoke its decision if it is clear that there was fraud or illegality or mistake. In the present circumstances<sup>1</sup> however, counsel is of the view that even if such factors were present it would be more prudent to seek an order of court<sup>2</sup>.

3. We hope that you find the above in order.

Yours sincerely

*Transmitted electronically herewith without signature*

▪ **MKHABELA HUNTLEY ADEKEYE INC** ▪

Per: Ehiremen Enabor

Email: [enabor@mhalaw.co.za](mailto:enabor@mhalaw.co.za)

<sup>1</sup> Given the nature of the issue and the possibility that the rights of consumers are at stake, it would be better to present such exceptional circumstances to a court for its decision. However, in theory and if the revocation is absolutely justified, Transnet can revoke its decision in accordance with the principles of fairness,

<sup>2</sup> *Pepcor Retirement Fund and Another v Financial Services Board and Another* 2003 (6) SA 38 (SCA)

**“PV 35”**



**Summary of McKinsey Confinements**

NO	Contract Description	Procurement method	Date of Confinement	Grounds for Confinement	Date contract concluded & contract period	Original Contract Value
1.	For the provision of services related to the acquisition of 1064 locomotives tender (GSM /12/05/0447) 1064 Contract	Confinement	10 May 2012	Urgency Services are highly specialized and largely identical to work previously done	Service provider signed 21 February 2014 and Transnet Representatives signed 11 August 2014	R35.2m
2.	The award of contract to support MDS for Procurement and Capital Excellence and Productivity (GSM/12/10/0578) SWAT 1	Confinement <sup>1</sup>	22 November 2012	Urgency Services are highly specialized and largely identical to work previously done	Signed on 21/2/14 by service provider and on 11/8/14 Transnet representatives (Contract period 01 February 2013 to 31 March 2015).	The signed contract value was capped at R154.6m (excluding expenses and VAT). The schedule of fees indicated R174.6m (including expenses, excl VAT)
3.	The award of contract for Capital Optimization and Implementation Support to a consortium of McKinsey and Regiments (GSM 14/04/1052) Swat 2	Confinement	18 October 2013	Standardization or compatibility with existing services are highly specialized and largely identical to work previously done.	10 March 2015 (9 April 2014 – 8 April 2016)	R225m (R33m fixed fee + contingent fee R192m)

\*The contract was ceded from McKinsey to Regiments

<sup>1</sup> The TAC initially awarded the Swat 1 tender to McKinsey (See TAC resolution dated 26 July 2012). However, the GCE subsequently decided to split the award of contract between McKinsey and Deloitte. McKinsey then raised concerns about a possible conflict of intellectual property rights between itself and Deloitte, which led to the TAC approving the non-award of the tender (see TAC

### Summary of McKinsey Confinements

4.	The award of contract for professional services to increase the coal line with a breakthrough of 2 million tons per week (GSM/14/04/1037) Coal contract)	Confinement	March/ April 2014? <sup>2</sup>	Urgency (EBIDTA at risk) Services are highly specialized and largely identical to work previously done.	10 March 2015 (9 April 2014 – 30 September 2015)	R216.7m (R73.5m fixed fee + contingent fee R143.2m)
5.	The award of contract for renegotiating the Kumba Iron Ore Contract (GSM /14/04/1038) Iron ore contract	Confinement	1 April 2014	Urgency (EBIDTA at risk) Services are highly specialized and largely identical to work done before	1 April 2015 (9 April 2014 – 8 April 2015). <sup>3</sup>	R239m (R34m fixed fee + R205m contingent fee). <sup>4</sup>
6.	Manganese Execution Support (GSM /14/04/1039) Manganese contract	Confinement	3 April 2014	Urgency (EBIDTA at risk) Services are highly specialized and largely identical to work done before Confidentiality	10 March 2015 (9 April 2014 – 8 October 2016)	R179.9m

resolution dated 12 October 2012). The confinement to McKinsey was subsequently approved by the GCE on 22 November 2012. McKinsey undertook to subcontract a portion of the confined tender to Letsema Consulting, Regiments Capital and PD Naidoo.

<sup>2</sup> The exact date on which the GCE approved the confinement was not indicated on the memo. However, the GCFO signed on 31 March 2014.

<sup>3</sup> The contract was concluded on 1 April 2015, a few days before its initial expiry date of 8 April 2015. It must be determined whether a valid LOI was in place for the 12 month period before the contract expired.

<sup>4</sup> This is an increase from what was stated in the original confinement memo, in which the fixed fee amount was set at R20m + contingent fee R193m. The fees payable to McKinsey were payable over a 3 year period, despite the fact that the calculation was to be made on revenues earned over the full term of the contract. See para 31 of the confinement memo for the iron ore contract.

### Summary of McKinsey Confinements

7.	The award of contract for NMPP Acceleration – de-risking the way forward (GSM/14/04/1040) NMPP contract	Confinement	3 April 2014	Urgency (EBIDTA at risk) Services are highly specialized and largely identical to work previously done Confidentiality	10 March 2015 9 April 2014- 8 October 2015.	R190m+R256.2m
8.	The award of contract for professional services to support Transnet in increasing General Freight Business with a Breakthrough to reach the planned volume targets for FY 2015/16 and 2016/17 (GSM/15/03/1255) GFB contract. <sup>5</sup>	Confinement	24 March 2015	Urgency (Transnet not meeting its planned GFB targets) Services are highly specialized and largely identical to work previously done	30 November 2015 (19 May 2015 – 18 May 2017)	R375m (fixed fee R135m + contingency R240m)

<sup>5</sup> The GFB contract was awarded to Regiments Capital with McKinsey as the subcontractor.