



EXHIBIT BB 24

**MALUSI KNOWLEDGE NKANYEZI
GIGABA**



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

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

**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE
REGULATIONS OF THE COMMISSION**

TO : MR MALUSI GIGABA

**ADDRESS : 308 Derrick Avenue
Waterkloof Ridge
Pretoria**

TEL : 082 888 8617

EMAIL : nkanyezi.gigaba@gmail.com

By virtue of the powers vested in me in my capacity as Chairperson of the abovementioned Commission by Regulation 10(6)* of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, I hereby direct you, **Mr Malusi Gigaba**, to:

* Regulation 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

1. Deliver by **4 January 2021** to the Secretary or Acting Secretary of the Commission at the address given above an affidavit or affirmed declaration in which:
 - 1.1 you state whether you admit or deny the allegations made about, or, against, you in the attached affidavit (including annexures) of **Witness 3 dated 14 September 2020** which was submitted to the Commission for the purpose of its investigations. Your attention is drawn to paragraphs 9 to 26, 67 to 70 and 72.3 of the affidavit;
 - 1.2 you state, if you deny or dispute any allegation or statement made about, or, against, you in the affidavit, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in this affidavit which refer, or, relate, to you.
 - 1.3 you specifically address, in addition to the allegations in the aforementioned affidavit (and annexures), your involvement in the following:
 - 1.3.1 findings made in the **Fundudzi Report** that you compromised the procurement process of the 95 locomotives by signing the Locomotive Supply Agreement between Transnet and China South Rail (“CSR”) on 22 October 2012 as a witness. Your attention is drawn in particular to paragraphs 1.1.12 and 5.5.18.92 of the report;
 - 1.3.2 findings made in the **Fundudzi Report** on Transnet’s acquisition of 100 locomotives that you approved the application by the Transnet Board to increase the ETC of the contract with CSR from R3.8 billion to R4.8 billion, in terms of section 54 of the PFMA, knowing that you were relying on incomplete documentation

submitted by the Chairman of the Board, Mr Mafika Mkwanazi.

Your attention is drawn in particular to paragraph 5.6.19 of the report;

1.3.3 findings made in the **Fundudzi Report** and the **MNS Report** on Transnet's acquisition of 1064 locomotives, *inter alia*:

- (a) that you acted outside of your authority in advising Transnet to continue to procure the locomotives as if the exemption of the Preferential Procurement Policy Framework Act (PPPFA) was in place before the Finance Minister granted full exemption. Your attention is drawn in particular to paragraph 1.3.3 and paragraph 5.9.7.14 to 5.9.7.20 of the Fundudzi Report;
- (b) on 23 July 2012, Transnet issued a RFP in respect of the 1064 locomotives. The RFP criteria deviated from the minimum thresholds for local content production as prescribed by Treasury. According to the MNS Report, on 7 December 2012 you advised Transnet that you will engage the Minister of Finance about this Treasury Instruction and instructed Transnet to proceed as if Transnet could decide its own criteria as per the PPPFA exemption. However, MNS found that you did not have the authority to override the Treasury Instruction, and thus that the deviation in the RFP was unlawful. Your attention is drawn in particular to section 2.1 of the MNS Report.

- 1.3.4 allegations by **Ms Barbara Hogan** (“Ms Hogan”) that when you became Minister of Public Enterprises, you declined any handover meetings with Ms Hogan;
- 1.3.5 allegations that when you became Minister of Public Enterprises, you overhauled **Transnet’s Board of Directors**, which *inter alia*:
- (a) was in disregard of a decision taken at the Transnet AGM in July 2010 to reappoint all non-executive directors;
 - (b) was to place Gupta associates in strategic positions. This in circumstances where you played a role in appointing Mr Iqbal Sharma and Mr Mafika Mkwanaazi who have been implicated in State Capture; and
 - (c) resulted in the removal of the only railway specialist, Mr Vijay Raman, who would have sat on the Transnet Board.
- 1.3.6 allegations of your involvement in irregularities relating to the appointment of **Mr Brian Molefe** as GCE of Transnet in February 2011, including your lack of engagement with Board members who demonstrated their dissatisfaction;
- 1.3.7 allegations that you attempted to remove **Mr Mafika Mkwanaazi** as Chairperson of the Board in May and June 2011, in order to appoint Mr Iqbal Sharma as Chairperson, despite knowledge of his close ties to the Gupta family;

1.3.8 the details of **international trips** that coincided with trips by members of the Gupta family and their associates, *inter alia*:

(a) a return trip to Hong Kong between 25 July to 7 August 2010.

The following individuals were in Hong Kong during the same period: Ayanda Dlodlo, Baleka Mbete, Bathabile Olive Dlamini, Siphiwe Nyanda, Vusi Vivian Mvelase, Nosiviwe Noluthando Mapisa Nqakula, Arti Gupta, Rajesh Kumar Gupta, Khulubuse Clive Zuma, Michael Andrew Thomas Hulley, and Edward Muziwoxolo Zuma;

(b) a return trip to Dubai, UAE between 23 and 31 October 2014.

The following individuals were in Dubai during the same period: Akash Garg, Ashok Narayan, Sanjay Grover, Gezinhliziyo Vincent Zuma, Salim Aziz Essa, Iqbal Meer Sharma, Mohamed Noor Kapdi, and Rajesh Naithani;

(c) a return trip to Dubai, UAE between 28 and 30 November

2015. The following individuals were in Dubai during the same period: Xenia Verbeek, Hamza Farooqui, Soo Young Jeon, Ashok Narayan, Rajesh Naithani, Aidan Essa, Zeenat Osmany, Surya Kant Singhala, Angelo Agrizzi, Gavin Joseph Watson, Stefan Nell, Erika Lamprecht, Aman Kant Singhala, Arti Gupta, Kamal Kant Singhala, Maleatlana Joel Raphela, Ronica Ragavan / Govender, Shubhangi Gupta, Varun Gupta, and Mosebenzi Joseph Zwane; and

- (d) a return trip to Beijing, China between 1 to 6 September 2017.

The following individuals were in Beijing during the same period: Jianbao Chen, Zhong Ying Potgieter, Nomvula Paula Mokonyane, Sheila Glodinah Mazibuko, Elias Sekgobelo Magashule, Sphilile Malcolm Mabaso, Mbana Peter Thabethe, and Michael Andrew Thomas Hulley.

2. If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within five days (excluding weekends and public holidays) of receipt of this directive, contact, or, communicate with, the Secretary or Acting Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such a case you will not pay anything for such assistance. In this regard, please contact Mr Clarence Benjamin (clarenceb@commissionsc.org.za).
3. If, in order to prepare the affidavit or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary or Acting Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.
4. This directive is issued for the purpose of pursuing the investigation of the Commission.

5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(c), (d) and (e) of the Regulations of the Commission, as amended. Regulation 8(2) reads:

- “8 (1) ...
- (2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947).”

Regulation 11(3)(a) and (b) reads:

- “11 (1) ...
- (2) ...
- (3) No person shall without the written permission of the Chairperson—
- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
- (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.”

Regulation 12(2)(c), (d) and (e) reads:

- “12 (1) ...
- (2) Any person who
- (a) ...
- (b) ...

- (c) . . . wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10(1) or (2);
- (d) refuses or fails, without sufficient cause, to submit, within a period fixed by the Chairperson or at all, an affidavit or affirmed declaration pursuant to a directive issued by the Chairperson under regulation 10(6); or
- (e) contravenes a provision of regulation 11, is guilty of an offence and liable on conviction -
 - (i) in the case of an offence referred to in paragraph (a), (c), (d) or (e), to a fine, or to imprisonment for a period not exceeding 12 months; or
 - (ii) in the case of an offence referred to in paragraph (b), to a fine, or to imprisonment for a period not exceeding six months.”

SIGNED IN JOHANNESBURG ON THIS 30th DAY OF NOVEMBER 2020.



JUSTICE RMM ZONDO
DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

and

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



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

**SUMMONS TO:
APPEAR AS A WITNESS**

This summons is issued in terms of section 3(2) of the Commissions Act 8 of 1947, read with:

- **Proclamation 3 published in Government Gazette No. 41403 on 25 January 2018**
- **Government Notice No. 105 published in Government Gazette No. 41436 on 9 February 2018 (as amended)**
- **Rules of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State published in Government Gazette No. 41774 on 16 July 2018**

Tracking reference:	SPS09/0299/CB
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To the sheriff or his/her deputy of Pretoria South East

INFORM: MR KNOWLEDGE MALUSI GIGABA

OF

308 DERRICK AVENUE
WATERKLOOF RIDGE
PRETORIA

Cell: 082 888 8617

that he is hereby summoned to:

appear before the Commission personally at the Civic Centre, 158 Civic Boulevard, Braamfontein, Johannesburg from **8 March 2021 to 12 March 2021 (both dates inclusive) at 09h00 on each such day**, for the purpose of giving evidence before the Commission and being questioned regarding:

- a) his affidavits dated 3 November 2020 and 4 January 2021, and any further affidavit/s he may submit to the Commission;
- b) the following matters under investigation:
 - his refusal to conduct a handover with Ms Barbara Hogan when he became Minister of Public Enterprises;
 - his role in the efforts to have SAA close the Mumbai route;
 - his role in the appointment of Mr Colin Matjila as CEO of Eskom;
 - the overhaul of the Transnet board of directors in December 2010;
 - the appointment of Mr Brian Molefe as the GCE of Transnet;
 - the attempt to remove Mr Mafika Mkwana as chairperson of the Transnet board of directors in 2011, in order to replace him with Mr Iqbal Sharma;
 - his involvement in the acquisition of the 95 locomotives for the General Freight Business (GFB);
 - his involvement in the acquisition of the 100 21E electric locomotives for the GFB;
 - his involvement in the acquisition of Transnet's 1064 locomotives;

- his involvement in the reinstatement of Mr Siyabonga Gama as the CEO of Transnet Freight Rail in 2011;
- his visits to the Saxonwold residence of the Gupta family;
- the evidence of Witness 3 (a Transnet driver);
- his international trips that coincided with trips by members of the Gupta family and their associates; and
- matters connected therewith.

Your failure to attend before the Commission at the time and place specified in this summons without sufficient cause (the onus of proof whereof shall rest upon you) or to remain in attendance until the conclusion of the enquiry or until you are excused by the chairman of the Commission from further attendance, or having attended, refuse to be sworn or to make affirmation as a witness after you have been required by the chairman of the Commission to do so or, having been sworn or having made affirmation, fail to answer fully and satisfactorily any question lawfully put to you, or fail to produce any book, document or object in your possession or custody or under his control, which you have been summoned to produce, constitutes an offence and under section 6(1) of the Commissions Act 8 of 1947, as amended.

DATED at Parktown on this 8th day of February 2021.



Prof. Itumeleng Mosala

SECRETARY:

**Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud
in the Public Sector including Organs of State**

IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE, HELD AT BRAAMFONTEIN, JOHANNESBURG (“the Commission”)

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

PRELIMINARY STATEMENT OF REPONSE TO THE REGULATION 10(6) DIRECTIVE INCORPORATING AN APPLICATION FOR PROCUREMENT OF DOCUMENTS

KINDLY TAKE NOTICE that the applicant hereby files his preliminary statement of response to the Regulation 10(6) Directive by the Chairperson of the Commission dated 30 November 2020 (“the regulation 10(6) directive”) and simultaneously hereby gives notice of his intention to apply to the Commission on a date and at the time determined by the Chairperson of the Commission, for Directions in the following terms:

1. That the preliminary statement of response annexed hereto marked “A” be admitted to the Commission as a preliminary response to the regulation 10(6) directive;
2. That the secretary of the Commission be directed to take all necessary steps within the Rules of the Commission and in particular Rule 10 thereof in order to procure from the relevant below parties the following documentation required by the applicant in order to effectively respond

to the regulation 10(6) directive:

2.1 Transnet: -

- 2.1.1 The approved/signed minutes of the July 2010 annual general meeting;
- 2.1.2 A copy of the exemption granted by the former Finance Minister Mr Gordhan dated 7 December 2011 which is described as annexure C8 in the Fundudzi report dated November 2018 annexed to the Regulation 10(6) Directive (“the 2011 exemption”);
- 2.1.3 The shareholders compacts between Transnet and the relevant Ministers of Public Enterprises for the years between 2009 – 2010, 2010 – 2011 and 2011 – 2012;
- 2.1.4 The memorandum of incorporation which applied between the years 2010 – 2012;
- 2.1.5 The Board recommendation and supporting documentation for the appointment of either Dr Mandla Gantsho or Mr Brian Molefe or Mr Mninawe Silinga as Group Chief Executive;

- 2.1.6 Any and all correspondence between the DPE or the Ministry of Public Enterprises and the alleged disgruntled non-executive directors of Transnet relating to the appointment of Mr Brian Molefe as the Group Chief Executive;
- 2.1.7 The section 54(2) Public Finance Management Act ("PFMA") approval by the applicant in respect of the 1064 locomotives project;
- 2.1.8 The section 54(2) PFMA notifications from Transnet to Treasury in respect of the 95 locomotives project;
- 2.1.9 The business case for the increase in value of the acquisition of the 100 locomotives to R4, 840 billion and minutes of the Board meeting approving the acquisition of the 100 locomotives at R3, 871 billion which were annexures A and B respectively, to the section 54(2) application from Transnet to the applicant dated 10 April 2014;
- 2.1.10 The Board resolution approving the 359 locomotives project;
- 2.1.11 The section 54(2) PFMA notifications from

Transnet to the Department of Public Enterprise in respect of the 359 locomotives project; and

2.1.12 The section 54(2) PFMA notifications from Transnet to Treasury in respect of the 359 locomotives project.

2.2 National Treasury: -

2.2.1 The 2011 exemption referred to in prayer 2.1.1 above, in the event that Transnet is not in possession thereof;

2.2.2 The section 54(2) PFMA approvals by National Treasury to Transnet in respect of the 95 locomotives project;

2.2.3 The section 54(2) PFMA approvals by National Treasury to Transnet in respect of the 100 locomotives project; and

2.2.4 The section 54(2) PFMA approvals by National Treasury to Transnet in respect of the 359 locomotives project.

2.3 Department of Public Enterprise ("DPE"): -

2.3.1 The Board Review report and related documents

by the DPE relating to the recommendation for the appointment, re-appointment and retirements of the non-executive directors of Transnet in December 2010 as referred to in the decision memorandum dated 8 December 2010;

2.3.2 The memoranda of the DPE, the Cabinet memoranda and letters of appointment of the following persons to Transnet: -

2.3.2.1 Mr Mafika Mkwanaazi;

2.3.2.2 Mr Brian Molefe; and

2.3.2.3 Mr Vijay Raman.

2.3.3 The Cabinet memorandum approving the appointment of the following persons to the Transnet board in 2010 or 2011: -

2.3.3.1 Mr Peter Malungani;

2.3.3.2 Mr Israel Skosana;

2.3.3.3 Ms Nazmeera Moola;

2.3.3.4 Mr Michele Fannuchi;

2.3.3.5 Ms Doris Tshepe;

2.3.3.6 Mr Donald Mkhwanazi;

2.3.3.7 Ms Thembekazi Mnyaka;

2.3.3.8 Ms Ellen Tshabalala;

2.3.3.9 Mr Harry Gazendam;

2.3.3.10 Mr Iqbal Sharma;

2.3.3.11 Professor Juergen Schrempp;

2.3.3.12 Mr Peter Moyo;

2.3.3.13 Ms Nolwazi Gcaba; and

2.3.3.14 Ms Nunu Ntshingila.

2.3.4 The section 54(2) approvals by the DPE in respect of the 359 locomotives project; and

2.3.5 The amended and sent letter from me to Minister Gordhan referred to in the decision memorandum dated 5 February 2012.

(“the required documents from the Commission”)

3. That the applicant be granted leave to supplement his preliminary response (being annexure A hereto) within a period of 14 (fourteen) calendar days from receipt of the required documents from the

Commission; and

4. That the applicant be granted such further and alternative relief as the Chairperson of the Commission may deem fit.

DATED at Sandton, Johannesburg on Monday, 4 January 2021.

Reginald Tshabalala

TSHABALALA ATTORNEYS, NOTARIES
AND CONVEYANCERS

Attorneys for Mr Gigaba (the applicant)

1st Floor, 3 Gwen Lane

Sandton, Johannesburg

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kim@tshabalala.com

Ref: Mr TR Tshabalala/Miss Y

Silindane/Miss K Slaffa/jp/G01469

TO:

THE SECRETARY OF THE COMMISSION

2nd Floor, Hillside House

17 Empire Road

Parktown, Johannesburg

Tel: (010) 214 0651

E-mails: secretary@commissionsc.org.za

Ref: Adv Shannon van Vuuren

Filed with the Secretary of the Commission by e-mail
secretary@commissionsc.org.za
on Monday, 4 January 2021

"A"

IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT BRAAMFONTEIN,
JOHANNESBURG ("the Commission")

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

PRELIMINARY STATEMENT OF REPONSE TO THE REGULATION 10(6)
DIRECTIVE WHICH ALSO SERVES AS A STATEMENT IN SUPPORT OF
APPLICATION FOR PROCUREMENT OF DOCUMENTS

I, the undersigned,

MALUSI KNOWLEDGE NKANYEZI GIGABA

do hereby make oath and say:

THE DEPONENT

1. I am:
 - 1.1 an adult male; and
 - 1.2 the Former Minister of Public Enterprises.
2. The contents of this statement are within my personal knowledge and belief, save where the context indicates otherwise and are both true and correct.



Handwritten signature of Malusi Knowledge Nkanyezi Gigaba.

PURPOSE OF THIS STATEMENT

3. The purpose of this statement is two-fold, namely to serve as: -
 - 3.1 a preliminary response to the Regulation 10(6) Directive dated 30 November 2020 ("the regulation 10(6) directive"); and
 - 3.2 an application to the Commission to obtain through its powers of subpoena *duces tecum* certain relevant documents identified in this statement and in the notice of application to which statement is annexed, which documents and information are required by me for the purposes of comprehensively responding to the regulation 10(6) directive.

INTRODUCTION

4. On 4 December 2020, the regulation 10(6) directive was served on me in person at the offices of my attorney, Mr Reginald Tshabalala ("Mr. Tshabalala") by Mr Clarence Benjamin of the Commission.
5. On the same day, the Commission sent an e-mail to Mr Tshabalala with a *We Transfer* link containing the annexures to the regulation 10(6) directive. A copy of the said e-mail is annexed hereto as "MG1".
6. The annexures to the regulation 10(6) directive consisted of the following:-


Kani

- 6.1 The redacted affidavit of Witness 3 dated 14 September 2020 ("Witness 3's affidavit");
 - 6.2 The Fundudzi report dated November 2018, without the annexures thereto ("the Fundudzi report");
 - 6.3 The Mncedisi Ndlovu & Sedumedi Attorneys (MNS) report dated October 2018, without the annexures (exhibits) thereto ("the MNS report"); and
 - 6.4 The transcript of the evidence of former Minister Barbara Hogan heard by the Commission on 13 November 2018 ("the transcript of the evidence of former Minister Hogan").
7. On 11 December 2020, Mr Tshabalala addressed an e-mail annexed hereto as "MG2" on my behalf to the Commission, requesting the following annexures in the Fundudzi report and MNS report which relate to the matters that I have been requested to respond to:-

7.1 The Fundudzi report:-

7.1.1 A8, being the section 54 Public Finance Management Act ("PFMA") application by Mr Mafika Mkwanazi ("Mr. Mkwanazi") to the Department of Public Enterprises ("DPE") signed on 24 October 2011;

7.1.2 A9, being the copy of the section 54 PFMA approval by the DPE signed on 21 December 2011;



- 7.1.3 A66, being the locomotive agreement between Transnet and China South Rail (CSR) dated 22 October 2012;
- 7.1.4 A66a, being the response dated 31 October 2018 by the State Attorney on my behalf to Fundudzi;
- 7.1.5 B33, being a copy of the shareholders compact signed on 25 June 2013 between myself in my capacity as a shareholder representative on behalf of the Government of the Republic of South Africa and Transnet;
- 7.1.6 B34, being a copy of the locomotive supply agreement dated 17 March 2014 between CSR and Transnet;
- 7.1.7 B38, being a copy of the letter from Mr Mkwanazi to me signed on 10 April 2014;
- 7.1.8 B39, being a copy of the memorandum from Ms Kgomoitso Modise of DPE advising me in regard to Transnet's section 54 PFMA application dated 19 May 2014;
- 7.1.9 B40, being a copy of the letter from me to Mr Mkwanazi signed on 23 May 2014;
- 7.1.10B44, being a copy of the letter from Mr Mkwanazi to Minister Gordhan signed on 10 April 2014;

A handwritten signature in black ink, appearing to be 'Kun' or similar, located in the bottom right corner of the page.

7.1.11C6, being a copy of the shareholders' compact between Transnet and the Government of the Republic of South Africa for the period 2012/2013;

7.1.12C7, being a copy of section 54 PFMA notification by Mr Mkwanazi to National Treasury dated 30 April 2013 in respect of the 1064 locomotives project;

7.1.13C8, being a copy of the exemption dated 7 December 2011 granted by the then Finance Minister to Transnet;

7.1.14C12, being a copy of the letter from me to Mr Mkwanazi dated 7 December 2012;

7.1.15C13, being a copy of the letter from Mr Mkwanazi to me dated 28 December 2012;

7.1.16C14, being a copy of the letter from Mr Mkwanazi to me dated 15 April 2013;

7.1.17C15, being a copy of the letter from me to Minister Gordhan dated 16 April 2013;

7.1.18C16, being a copy of the letter from Minister Gordhan to me dated 24 April 2013;

7.1.19C26, being a copy of the letter from Mr Mkwanazi to me dated 30 April 2013;

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7.1.20 C27, being a copy of the letter from Mr Mkwanazi to Minister Gordhan dated 30 April 2013;

7.1.21 C28, being a copy of the letter from me to Mr Mkwanazi dated 3 August 2013;

7.1.22 C29, being a copy of the letter from Minister Gordhan to Mr Mkwanazi dated 30 October 2013;

7.1.23 C71, being a copy of the E supply agreement signed on 17 March 2014 between Transnet and CSR in respect of the 359 locomotives; and

7.1.24 C72, being a copy of schedule 1 attached to the E supply agreement.

7.2 The MNS report:-

7.2.1 Exhibit 1 Part A dated 30 April 2013, being a letter from Transnet to me relating to an application for a section 54 approval in terms of the PFMA acquisition of 1064 locomotives;

7.2.2 Exhibit 2 Part A dated 30 April 2013, being a letter from Transnet to me relating to a section 54(2) PFMA notification from Mr Mkwanazi to National Treasury relating to the acquisition of the 1064 locomotives;

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7.2.3 Exhibit 3 Part A dated 7 December 2012, being the correspondence between Transnet and me regarding the National Treasury's Instruction Note;

7.2.4 Exhibit 4 Part E dated 25 June 2013, being the shareholders' compact between Transnet and the Government of the Republic of South Africa for the period 2013/2014;

7.2.5 Exhibit 6 Part E dated 25 June 2013, being the memorandum of incorporation of Transnet; and

7.2.6 Exhibit 1 Part F dated 16 July 2012, being the National Treasury Instruction Note.

8. The Commission responded to MG2 on 15 December 2020 in an e-mail annexed hereto as "MG3" with a *We Transfer* link containing some of the requested annexures.

9. On 18 December 2020 and subsequent to the receipt of the annexures furnished by the Commission, Mr Tshabalala transmitted another e-mail to the Commission on my behalf:-

9.1 Indicating that the Commission had not furnished annexure C8 being the Exemption granted by the former Finance Minister, Mr Gordhan to Transnet dated 7 December 2011;

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9.2 Requesting the documents listed below which are required by me for the purposes of responding to the regulation 10(6) directive and at the same time, requested an extension until the end of January 2021 to respond to the regulation 10(6) directive. A copy of the said e-mail is annexed hereto as "MG4".

10. I have since located some of the documents annexed to this statement, which were furnished to me by the DPE for the purposes of responding to the Portfolio Committee on Public Enterprises in March 2018. The documents which are still required by me for the purposes of effectively responding to the regulation 10(6) directive, are *inter alia*, as follows:-

10.1 Transnet: -

10.1.1 A copy of the Exemption granted by the former Finance Minister Mr Gordhan dated 7 December 2011 which is described as annexure C8 in the Fundudzi report;

10.1.2 The shareholders compacts between Transnet and the relevant Ministers of Public Enterprises for the years between 2009 – 2010, 2010 – 2011 and 2011 – 2012;

10.1.3 The memorandum of incorporation which applied between the years 2010 – 2012;

10.1.4 The section 54(2) PFMA approval by me in respect of the 1064 locomotives project;



- 10.1.5 The section 54(2) PFMA notifications from Transnet to National Treasury in respect of the 95 locomotives project;
- 10.1.6 (a) the business case and (b) minutes of the Board approving the acquisition of the 100 locomotives at R3,781 billion as annexures A and B respectively, to the application in terms of section 54(2) PFMA application dated 10 April 2014;
- 10.1.7 The Board resolutions approving the 359 locomotives project;
- 10.1.8 The section 54(2) PFMA notifications from Transnet to the DPE in respect of the 359 locomotives project;
- 10.1.9 The section 54(2) PFMA notifications from Transnet to National Treasury in respect of the 359 locomotives project;
- 10.1.10 The legal opinion obtained by Transnet from Adv Soni SC referred to at paragraph 5.9.7.30 of the Fundudzi report; and
- 10.1.11 A copy of the Exemption issued by National Treasury for the period 7 December 2011 to 7 December 2012 which is described in paragraph 2.1.4 of the MNS report.



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10.2 National Treasury: -

- 10.2.1 The section 54(2) PFMA approvals by National Treasury to Transnet in respect of the 95 locomotives project;
- 10.2.2 The section 54(2) PFMA approvals by National Treasury to Transnet in respect of the 100 locomotives project; and
- 10.2.3 The section 54(2) PFMA approvals by National Treasury to Transnet in respect of the 359 locomotives project.

10.3 DPE: -

- 10.3.1 The memoranda of the DPE, Cabinet approvals and letters of appointment of the following persons to Transnet: -
 - 10.3.1.1 Mr Mafika Mkwana; and
 - 10.3.1.2 Mr Brian Molefe.
- 10.3.2 The DPE Board Review of Transnet referred to in the decision memorandum dated 8 December 2010, referred to in paragraphs 19.5 and 19.7 below.



10.3.3 The section 54(2) approvals by the DPE in respect of the 359 locomotives project.

("the required documents from the Commission")

11. The Commission responded to MG4 on 18 December 2020 in an e-mail annexed hereto as "MG5", to indicating *inter alia* that: -

11.1 The Commission would attempt to source annexure C8 to the Fundudzi report from either Fundudzi or Transnet;

11.2 The regulation 10(6) directive and the annexures provided to Mr Tshabalala are sufficient for me to provide a version to the allegations and evidence listed in the regulation 10(6) directive; and

11.3 Denying the request for an extension and advised Mr Tshabalala to address a formal request for an indulgence to the Chairperson of the Commission for his decision on the request for an extension.

12. Although I would have preferred to make this statement with the required documents from the Commission in my possession, I have been impelled, due to the deadline of 4 January 2021, to make this statement in the absence thereof. I also do so in order to ensure that the work of the Commission is not delayed whilst simultaneously reserving my rights to supplement this statement once the required documents from the Commission are received. In the premises, I hereby request the



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Commission to assist in the process of procuring the required documents from the Commission through its powers of subpoena *duces tecum*.

13. When one has regard to the regulation 10(6) directive, it makes reference to certain events and documents some of which dates back to about 9 years ago. As already indicated, in order to comprehensively respond to the regulation 10(6) directive, I will need to do so by referencing the required documents from the Commission.
14. I have endeavored as much as possible to identify the specific allegations in the regulation 10(6) directive which I place in issue and to the extent that I may have omitted to deal with any specific allegation, such should not be construed as being admitted. I have also at the same time, set out my version in response to the allegations I have been directed to respond to.
15. In my assessment, the regulation 10(6) directive deals with seven topics which I will respond to *seriatim*, namely:-
 - 15.1 Witness 3's allegations;
 - 15.2 Allegations in the Fundudzi and MNS reports;
 - 15.3 The handover with former Minister Barbara Hogan;
 - 15.4 The appointment of Board members (non-executive directors) to Transnet;

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- 15.5 The appointment of Mr Brian Molefe as the Group Chief Executive of Transnet;
- 15.6 The alleged attempted removal of Mr Mafika Mkwana as chairperson of the Transnet Board in May and June 2011; and
- 15.7 The international trips.
16. In responding to the allegations in the Fundudzi and MNS reports relating to Transnet's locomotives projects, in addition to responding to the specific allegations therein, I have set out the background to Transnet's 1064 locomotives project and the related Section 54(2) PFMA processes as I understood them in paragraph 19 below.
17. WITNESS 3'S ALLEGATIONS
- 17.1 Prior to the hearing of the evidence of Witness 3 and on 13 August 2020, the Chairperson of the Commission granted an Order to the effect that the names of *inter alia*, Witness 3 are not to be made known to the public and furthermore, once the evidence of the three witnesses, including Witness 3 had been given, a transcript of the evidence together with the relevant redacted and corrected affidavit of the Witness (which formed the basis of his evidence) should be made available to the implicated parties. I am one of the implicated parties.
- 17.2 On 26 August 2020, the Commission sent to Mr Tshabalala a notice in terms of Rule 3.3 annexed hereto as "MG6" with (a) the



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Order of the Chairperson dated 26 August 2020 and (b) the transcript of the evidence of Witness 3 which was heard by the Commission on 13 August 2020.

- 17.3 On 9 September 2020, I submitted a preliminary response to the allegations made by Witness 3 without having received the redacted affidavit of Witness 3 as ordered by the Chairperson. I simultaneously applied for leave to cross examine Witness 3. A copy of my preliminary response to the allegations made by Witness 3 and my application for leave to cross examine him is annexed hereto as "MG7".
- 17.4 I have had regard to the redacted affidavit of Witness 3 dated 14 September 2020 ("the Witness 3's redacted affidavit dated 14 September 2020").
- 17.5 The preliminary statement dated 9 September 2020 being MG7 hereto serves as my response to the Witness 3's redacted affidavit dated 14 September 2020 and I hereby pray that the contents of my aforementioned said preliminary statement be incorporated herein by reference with the changes required by the context and serve as a rebuttal of the Witness 3's redacted affidavit dated 14 September 2020.



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18. BACKGROUND TO TRANSNET'S 1064 LOCOMOTIVES PROJECT
AND THE RELATED SECTION 54(2) PFMA PROCESSES

- 18.1 At the outset, it is apposite to mention that the need for the infrastructure investment in *inter alia*, Transnet, has been Government's intention for a while. Former Minister Alec Erwin mentioned the need for such an investment in the budget vote of 2004.
- 18.2 During his tenure, Minister Erwin also introduced the Competitive Supplier Development Programme (CSDP) which was intended to bind Original Equipment Manufacturers (OEMs) to partner with local suppliers in order to develop the upstream industrial sector in the country so as to leverage on our investment.
- 18.3 Before I respond to the specific allegations in the Fundudzi and MNS reports relating to me or the DPE, I think it is important to set out below the matters relating to the 1064 locomotives project as far as I can recall and understood them.
- 18.4 At the outset, I wish to categorically state I was never involved in the tender process, including preferring or selecting suppliers. My only involvement related to the section 54(2) PFMA approvals which were sought from me in my capacity as a shareholder representative.




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- 18.5 On 2 May 2013, after having so resolved on 25 April 2013, Transnet submitted a section 54(2) PFMA application annexed hereto as "MG8" to me to approve the acquisition of 1064 locomotives (465 Diesel and 599 electronic locomotives) that was estimated to cost R38.6 billion over a seven year period to allow the aged fleet to be replaced. The said application included supporting documents being annexures A to C which are not in my possession but the possession of the DPE. I obtained a copy of the said application from the Commission. The amount of R38.6 billion was above materiality threshold in the applicable shareholder's compact and required my approval.
- 18.6 I understand that Transnet also sent a section 54 PFMA notification annexed hereto as "MG9" to National Treasury.
- 18.7 I received a decision memorandum dated 13 June 2013 annexed hereto as "MG10" from the Deputy Director-General: Transport, Ms Kgomoitso Modise advising me of Transnet's application for approval to invest R38.6 Billion in the acquisition the 1064 locomotives. The 1064 locomotives were for Transnet Freight Rail's (TFR) General Freight Business (GFB).
- 18.8 In terms of the said decision memorandum, I was advised to sign the letter to the chairperson of Transnet Board, Mr


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Mkwanazi approving the application. The business case that was made out was, in summary, *inter alia*, the following:-

- 18.8.1 First, there had been no investment in GFB locomotives between 1992 and 2008;
- 18.8.2 Second, the average life of the fleet locomotives was 32 years whereas the design life of a locomotive is 30 years;
- 18.8.3 Third, 374 of the locomotive fleet were expected to be written off within 7 years;
- 18.8.4 Fourth, the above was unworkable considering that Transnet's market demand strategy (MDS) had projected a 90 million tonnes growth in GFB. It was necessary to replace the aging fleet if the MDS strategy was to be realized;
- 18.8.5 Fifth, GFB was expected to grow by 9% by 2018/19, and the majority of growth would be generated by rail-friendly bulk commodities such as manganese, manganite and iron ore. Further, coal transport was expected to shift from road to rail transport;
- 18.8.6 Sixth, historically, the GFB unit in TFR had been plagued by inefficiencies because of the aged



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locomotive fleet. As a result, TFR planned to invest R194 billion over a seven year period, of which R143 billion was allocated to GFB. It was hoped that this would lead to increased customer satisfaction and stop the customer exodus from rail to road freight;

18.8.7 Seventh, the aging fleet was a serious problem. The fleet plan showed that the fleet would decline from 1889 in 2014 to 1692 by 2019, and a further 50% reduction in the fleet would occur within 10 years after that. With a fleet that size, TFR would only have been able to meet 50% of its MDS target;

18.8.8 Eighth, the procurement of the 1064 locomotives (and other rolling stock) would provide Transnet and the rest of the country a unique opportunity to strategically re-position the rolling stock industry for localized assembly and localized manufacture of component parts, and the project was also aimed at increasing localization of manufacturing;

18.8.9 Ninth, the new locomotive purchase was going to create value for Transnet by enabling

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Transnet to achieve its MDS target resulting in a positive NPV, top line growth, enhanced return on assets, an improved environmental footprint, an increase in operational efficiencies, and it would assist in an anticipated shift from road to rail;

18.8.10 Tenth, there were also expected enormous benefits to the economy such as:-

18.8.10.1 R68 billion in localization benefits due to the local content requirements;

18.8.10.2 The catalyzing of the development of a locomotive production industry; and

18.8.10.3 the development of manufacturing skills and the creation and preservation jobs.

18.9 In terms of governance on the project, I was advised that an enhanced governance process was in place for the acquisition, and that this included the establishment of a locomotive steering committee (LSO) which was mandated by Transnet's Executive Committee and chaired by the Group Chief


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Executive. The purpose of the LSO was multi-dimensional and included monitoring business case development, recommendation of the business case for approval to the relevant authorities, procurement and tender processes, negotiating contracts and tenders. Over and above that, a governance framework had been developed specifically for this transaction and included high standards of confidentiality.

18.10 The said decision memorandum was:-

18.10.1 Prepared and signed by or on behalf of (a) Director: Transport, Mr Dion Harold (b) Acting Chief Director: Transport, Mr Ngoako Huma (c) Chief Director: Strategic Partnerships, Ms Femida Mahomed at the time on 13 June 2013 and 18 June 2013, respectively;

18.10.2 Reviewed and supported by the (a) Chief Director: LGRT, Adv Melanchton Makobe and (b) Acting Deputy Director-General: Transport, Mr Edwin Besa on 13 June 2013 and 11 July 2013, respectively;

18.10.3 Recommended by the Acting Director-General of DPE, Ms Matsietsi Mokholo on 11 July 2013;

18.10.4 Noted by the Deputy Minister, Mr Gratitude Magwanishe on 3 August 2013; and

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- 18.10.5 Approved by me on 3 August 2013 as I was satisfied with the business case.
- 18.11 On the same date of approval, 3 August 2013, I wrote a letter to Mr Mkwanaazi annexed hereto as "MG11" granting the approval sought, citing certain conditions. There were three conditions. The first condition was that Transnet would provide me with a clear statement with regard to Transnet Engineering's (TE) vision in the locomotive supply chain, and what capabilities would need to be developed to make this a reality. The second condition was that Transnet would supply me with Transnet Engineering's seven year locomotive supply chain strategy. The third condition was that Transnet would provide a clear plan as to the strategic fit of this locomotive procurement to the boarder road to rail migration objective. The final condition was that I would be provided with a view of the localization strategy.
- 18.12 Transnet Engineering subsequently provided the information sought and met with the DPE on the 28 February 2014. After this meeting, and on the 11 March 2014, I received a decision memorandum dated 11 March 2014 annexed hereto as "MG12" from the Deputy Director-General: Strategic Partnerships, Ms Jacky Molisane in which I was advised that, in light of the discussion and information provided, the DPE

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was satisfied that the procurement process and negotiations that were under way sought to achieve and address the industrial development objectives (nationally). However, the DPE at that stage registered its concerns about TE's role as opposed to the role of the private sector in procurement, which was later resolved.

18.13 Subsequent to this, there were tender-related delays in the acquisition of the 1064 locomotives. Although tenders closed in April 2013, the PFMA approval was only granted on 3 August 2013 in a letter annexed hereto as "MG13" and tender negotiations could not commence until the PFMA approval had been attained. It was thus expected that contracts would only finally be awarded by February 2014. The acquisition of the 1064 locomotives was running at least a year behind schedule. As a result of the delay, I was advised that there was a revenue shortfall in Transnet which was exacerbated by the delay of locomotive delivery.

18.14 Because of this, and in April 2014, I received an application from Mr Mkwanazi annexed hereto as "MG14" requesting approval for the acquisition of 100 dual voltage electric locomotives for an export coal line at an estimated cost of R4.840 Billion.

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18.15 I was informed that this acquisition was initially approved by the Transnet Board on 24 January 2014 at an estimated cost of R3.8 Billion which was within the Board's threshold, however after the contract negotiation process, it transpired that the estimated total cost of the investment would be R4.840 billion which required shareholder approval under section 54(2) of the PFMA. The 100 locomotives would be deployed on the coal export line which would release 125 locomotives to be used in the GFB, protecting revenue in the GFB and allowing growth.


18.16 I expand further in my statement below, the matters relating to the 100 locomotives and the section 54 PFMA processes relating thereto, in response to the specific allegations in the Funduzi and MNS reports.

18.17 I now turn to the specific allegations which I am directed to respond to in the Fundudzi and MNS reports.

19. ALLEGATIONS IN THE FUNDUDZI AND MNS REPORTS

19.1 My signature as a witness of the 95 locomotives agreement between Transnet and CSR

19.1.1 I have had regard to paragraphs 1.1.12 and 5.5.18.91 to 5.5.18.102 of the Fundudzi report. Whilst I agree in hindsight that it was undesirable for me to witness the conclusion of the 95 locomotives




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agreement between Transnet and CSR, I do not agree that I compromised myself and the DPE and that I created obligations for DPE to render it or myself to be at risk of being cited as one of the responsible parties to the 95 locomotives agreement in the event of a dispute arising.

19.1.2 Neither myself nor the DPE were parties to the 95 locomotives agreement and no obligations were created by me signing as a witness. The parties to the 95 locomotives agreement were clearly described as being Transnet and CSR. In my view, it is ludicrous to suggest that my signature as a witness to the said agreement created obligations for DPE and me.

19.1.3 My understanding is that the consequence of witnessing the 95 locomotives agreement means that I could be required to give evidence about the signatories to and the circumstances of the signing of the 95 locomotives agreement, as far as I can recall the same.

19.1.4 Having said that, I do concede in hindsight that my signing as a witness to the 95 locomotives agreement may create the impression that as a



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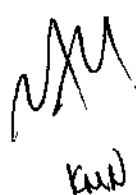
representative of the shareholder, I was participating in a process which was operational in nature, which was not the case and was never my intention.

19.1.5 I was invited by Transnet to deliver a speech at the signing ceremony of the 95 locomotives agreement. My intention was to attend thereat to represent the shareholder and not be a witness to the said agreement. I accepted the invitation because of the importance that the intended locomotive acquisition and the benefits which were expected therefrom for social-economic benefits, employment and industrialization. This was one of the important milestones in the fulfilment of Government's economic objectives as stated in the New Growth Path and the Industrial Policy Action Plan policy statements. Thus, I was invited to say a word at the said signing ceremony.

19.1.6 I delivered my speech annexed hereto as "MG15" at the signing ceremony held at Transnet Rail Engineering Hub in Tshwane, Pretoria. My speech encapsulates the Government's attitude towards the locomotives projects in so far as the attainment of its (Government) various objectives were concerned.

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- 19.1.7 I do not recall the circumstances which led me to sign as a witness.
- 19.1.8 On 24 October 2011, Mr Mkwana had written to me on behalf of Transnet in a letter annexed hereto as "MG16" requesting the section 54(2) PFMA approval in respect of the 95 locomotives project.
- 19.1.9 The said application was processed by the DPE and a decision memorandum from the Deputy Director-General, Ms Raisibe Lepule dated 5 December 2011 annexed hereto as "MG17" was issued by the DPE team as follows:-
- 19.1.9.1 It was prepared and signed by the (a) Director: Transport, Mr Nathaniel Sebitso (b) Chief Director: Transport, Mr Adam Seedat and (c) Chief Director: Transport, Mr Neelesh Amaidas on 5 November 2011, 5 December 2011 and 8 December 2011, respectively;
- 19.1.9.2 It was reviewed and supported by Acting Deputy Director-General, Mr Benedict Mogadime and Deputy Director-General: Transport, Ms Raisibe Lepule 8 December 2011;


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- 19.1.9.3 It was recommended by the Director-General, Mr Tshediso Matona on 14 December 2011;
- 19.1.9.4 It was reluctantly approved by me on 21 December 2011 subject to the concerns and furnishing of certain information as contained in my approval letter referred to in paragraph 19.1.12.5 below; and
- 19.1.9.5 It was approved by Deputy Minister, Mr Dikobe Ben Martins on 23 December 2011.
- 19.1.10 My reluctance was as a result of the fact I was of the view that the DPE should have ensured that Transnet complied with *inter alia*, the Competitive Supplier Development Programme (CSDP), Industrial Policy Action Plan (IPAP) and the New Growth Path (NGP), which are Government initiatives.
- 19.1.11 For example, the aim of CSDP is to increase the competitiveness, capacity and capability of the South African supply base where there are comparative advantages and potential competitive advantages of

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local supply which can be achieved through skills transfer, increasing the local content of items procured as well as building new capability in the local supplier base.

19.1.12 Even though I had reservations as aforementioned, having considered the said decision memorandum and the recommendations made therein by the DPE team being *inter alia*:-

19.1.12.1 That Transnet had indicated that it was in a position to afford funding the acquisition of the 95 locomotives from its balance sheet;

19.1.12.2 That Transnet had indicated that the acquisition of the 95 locomotives would immediately lead to improved financial and efficiency indicators in the business;

19.1.12.3 The support which Transnet required from DPE in the prioritization of the 95 locomotives acquisition to facilitate trade and to enhance competitiveness to support export led growth;

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- 19.1.12.4 That Transnet's procurement strategy would take into account issues of transformation, empowerment and economic growth as its main supplier development objectives;
- 19.1.12.5 That the acquisition of the 95 locomotives was expected to increase revenue by R844 million and decrease operating expenses by R114 million;

I approved the said section 54(2) PFMA application on 21 December 2011 in a letter annexed hereto as "MG18" with the proviso that Transnet provides me with a comprehensive briefing on its engagement with the CSDP process and particularly the supplier development and localization components for the acquisition of the 95 locomotives. I also requested Transnet to furnish me with an updated strategy, revised locomotive fleet procurement plan, a financial analysis of how the updated strategy would be implemented and how the process would contribute to Government's economic objectives as stated in the New Growth Path and Industrial Policy Action Plan policy statements.

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19.1.13 Although I do not have the details, I do recall that Transnet may have complied with the conditions to the section 54(2) PFMA approval.

19.2 The section 54(2) PFMA relating to the 100 locomotives project

19.2.1 In terms of the shareholders compact concluded on 25 June 2013 between the Government of the Republic of South Africa as a shareholder represented by me and Transnet, represented by Mr Mkwanazi annexed hereto as "MG19" ("the 2013/2014 shareholders' compact"), Transnet was exempted from obtaining the section 54(2) PFMA approval from the shareholder in respect of the acquisitions or disposals of significant assets to the value of R3,9 billion and below, however Transnet was still obliged to furnish DPE with detailed notification of all acquisitions and disposals of assets of R2 billion.

19.2.2 On 10 April 2014 and during the subsistence of the 2013/2014 shareholders' compact, Mr Mkwanazi submitted an application annexed hereto as "MG20" in terms of section 54(2) of the PFMA in respect of the 100 locomotives. As far as I am aware, there was no section 54(2) application made to me prior thereto or any notification by Transnet to the DPE in relation to



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the 95 locomotives when the value of the acquisition was estimated at R3,781 billion.

19.2.3 The said application by Transnet contained (a) the business case and (b) minutes of the Board approving the acquisition at R3,781 billion as annexures A and B respectively. The regulation 10(6) directive and the annexures obtained from the Commission do not include these two annexures and these would be helpful in understanding the reasons and justification furnished by Transnet to DPE for *inter alia*, the increase in the estimated acquisition costs of the 100 locomotives from R3,871 billion to R4, 840 billion. In the premises, I pray that these annexures be procured by the Commission and be made available to me. I have sought copies thereof in the notice of application to which this statement is annexed.

19.2.4 The said application was processed by the DPE team and a decision memorandum annexed hereto as "MG21" was sent to me by the Deputy Director-General: Transport, Ms Kgomoitso Modise after being processed by the DPE team as follows:-

19.2.4.1 It was prepared and signed by (a) the Director: Transport, Ms Malerato Goba (b)



Director: Transport, Mr Dion Harold and (c)
Director: Legal and Governance, Mr Vongani
Masondo on 19 May 2014;

19.2.4.2 It was reviewed and supported by (a) Chief
Director: Transport, Mr Ngoako Huma (b)
Deputy Director-General: Legal and
Governance, Ms Matsietsi Mokholo and (c)
Deputy Director-General: Transport, Ms
Kgomotso Modise on 19 May 2014;

19.2.4.3 It was recommended by the Director-
General, Mr Tshediso Matona on 19 May
2014 with comments;

19.2.4.4 It was noted by Deputy Minister, Mr
Gratitude Magwanishe on 23 May 2014; and

19.2.4.5 It was conditionally approved by me on 23
May 2014 subject to the concerns and
furnishing of certain information by Transnet
as contained in my approval letter annexed
hereto as "MG22".

19.2.5 In the said decision memorandum (MG21), the DPE
team quite correctly so, berated Transnet for its

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conduct. Amongst the reasons advanced by the DPE team were *inter alia*, that:-

19.2.5.1 The business case submitted by Transnet to the DPE had not provided all the critical information necessary to allow for proper assessment;

19.2.5.2 Transnet breached the 2013/2014 shareholders' compact by failing to notify the DPE prior to commencing negotiations with suppliers when the 100 locomotives project costs were estimated at R3,871 billion and the DPE only became aware of the 100 locomotives project when the section 54(2) application occasioned by the increase of the project costs from R3,871 billion to R4,840 billion was submitted to the DPE;

19.2.5.3 Transnet was required to provide reasons for the deviation from the original mitigation plan on the 1064 locomotives project delays and a risk mitigation plan;

19.2.5.4 Transnet was required to provide a mitigation plan in respect of the risk associated with possible litigation which may

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arise for using a confined procurement process as opposed to a tender process such as a closed tender process;

19.2.5.5 The DPE had been approached by a supplier who raised complaints against CSR and its performance against localization targets;

19.2.5.6 Transnet was required to furnish the DPE with a copy of:-

19.2.5.6.1 its contract with CSR for the 95 locomotives with particular reference to the CSDP targets, performance against supplier development and localization as well as the associated penalties;

19.2.5.6.2 its contract with CSR for the 1064 locomotives and the details of the CSDP and associated penalties that were being set;

19.2.5.6.3 any other contact with CSR either for locomotives or other

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rolling stock and performance
against supplier development
and localization, including
associated penalties; and

19.2.5.6.4 the extract of the Board
resolution to the increase in
the project value to R4, 840
billion in line with the section
54(2) PFMA application.

19.2.6 The decision memorandum also called for Transnet to
provide reasons as to why the specific corridors therein
(i.e the Manganese exports through Ngqura,
Thabazimbi to Pyramid south, Maputo exports and
General freight on coal line) were selected and in
addition, Transnet was requested to furnish information
about the volume impact of the transaction per corridor.

19.2.7 The decision memorandum indicated that despite the
positive outcomes which the transaction was expected
to deliver, there were a number of concerns raised by
the DPE which still needed to be cleared with Transnet
and these were, *inter alia* as follows:-

19.2.7.1 The business case did not seem to take into
account the maintenance implications of the

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older locomotives deployed to the General Freight Business;

19.2.7.2 The details relating to the traction power of the 100 locomotives compared to that derived from the existing 125 locomotives;

19.2.7.3 Further information to enable the DPE to ascertain the assurances that Transnet was providing to the DPE that by procuring the 100 locomotives, the Market Demand Strategy ("MDS") volume projections would be achieved;

19.2.7.4 The reasons for the deviation from the original mitigation plan on the 1064 locomotives project delays and a risk mitigation plan;

19.2.7.5 A mitigation plan in respect of the risk associated with possible litigation which may arise for using a confined procurement process as opposed to a tender process such as a closed tender process;

19.2.7.6 That the misuse of confinements had (and still does, I might add) the potential to

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entrench monopolies and as such is at odds with the imperatives of the New Growth Path which seeks to encourage open competition and the introduction of new entrants into market and it was therefore important that all Transnet's suppliers and business associates are given a fair and equitable opportunity to do business with Transnet; and

19.2.7.7 The copy of the 100 locomotives agreement which had already been concluded between Transnet and CSR prior to the section 54(2) PFMA approval so that the DPE could assess whether (a) the socio-economic objectives of the transaction were aligned with the Government's socio-economic policy framework, including local content and supplier development thresholds, skills development, poverty alleviations (b) Transnet was to derive value for money from the transaction, especially considering that:-

19.2.7.7.1 Transnet had deviated from an open tender process; and

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19.2.7.7.2 The original estimated price of the transaction having increased by 27%.

19.2.7.8 That I was unable to respond to Transnet on the section 54(2) PFMA application within the required period of 30 days due to the fact that Transnet had not submitted sufficient information to the DPE; and

19.2.7.9 That going forward, I should urge the Board of Transnet to ensure that Transnet management submits PFMA applications that contain detailed information on the transactions that Transnet seeks the Minister's approval on and that such applications are in full compliance with the provisions of section 54 of the PFMA and the Practice Notes on applications under section 54 of the PFMA by public entities.

19.2.8 Although the DPE team had raised concerns with the section 54(2) PFMA application in the said decision memorandum as stated above, it recommended to me that I approve the said section 54(2) PFMA application.

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Some of the reasons furnished by the DPE team for the said recommendation were *inter alia*, that:-

19.2.8.1 The business case of Transnet advanced, being that the acquisition of the 100 locomotives was meant for the export coal channel and was being undertaken to mitigate against the volume losses which Transnet was experiencing due to the delays in the acquisition of the 1064 locomotives;

19.2.8.2 The acquisition of the 100 locomotives would enable Transnet to cascade 125 much needed locomotives to the General Freight Business;

19.2.8.3 The 100 locomotives would sustain the coal line electric fleet at a capacity of 81 million tons per annum, thus standardizing the fleet on this type of locomotive with significant operational and cost advantages;

19.2.8.4 Over the long term, the DPE team was comfortable that the investment in the 100 locomotives would bear fruit;



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19.2.8.5 There was no doubt to the DPE team that the 100 locomotives would contribute to the commerce and the health of both the national and provincial (Kwa-Zulu Natal and Mpumalanga through the export coal line) economies with the socio-economic benefits still to be quantified with information required from Transnet;

19.2.8.6 According to the business case, *inter alia*:-

19.2.8.6.1 one year's delay on the acquisition of the 1064 locomotives could result in a 30 metric tons loss valued at R7,9 billion and a two year delay could result in a further 56 metric tons volume loss valued at R14,7 billion and thus Transnet had investigated the risk mitigation options and came with the strategy to acquire 100 locomotives from CSR through an expedited procurement process;



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- 19.2.8.6.2 The release of the 125 locomotives to the General Freight Business network would result in 16,4 metric tons of General Freight not being lost in the cumulative period between 2013/2014 to 2016/2017;
- 19.2.8.6.3 The 2013 updated fleet plans which supported expansion of capacity for increased export coal volume demand, predicated 112 new locomotives for the coal business in the 19E category. The 100 locomotives would be fit for such purpose. It was thus argued that the fleet planning process supported Transnet's risk mitigation strategy to procure 100 class 19E locomotives for the export coal line;

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19.2.8.6.4 The accelerated acquisition of the 100 locomotives would enable the protection of the General Freight Business volume loss for the MDS and that the MDS income and targets will amount to R4,16 billion for the 100 locomotives for the period 2013/2014 to 2016/2017;

19.2.8.6.5 The acquisition of the 100 locomotives would support the road to rail migration strategy which was already under threat due to the MDS volume targets being downgraded as a result of the economic outlook and revised customer demand;

19.2.8.6.6 It was submitted that the further motivating factor for the strategy of acquiring the 100 locomotives was that the 1064 locomotives supported

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22 ton axle mass limits whilst the 100 locomotives would support heavy haul axle mass limits such as the 26 metric tons required for the coal line;

19.2.8.6.7 The 100 locomotives were known and meet the requirements, the acquisition time would be shorter as no prototyping would be required. That through the 95 locomotives project, CSR had a working relationship with Transnet Engineering to continue production at Koedespoort facilities which would expedite delivery;

19.2.8.6.8 Transnet Engineering (TE) was maintaining and repairing 19E locomotives which meant that it was accustomed to maintenance regimes of the more modern dual voltage electric locomotives and thus



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limited training will be required and optimum utilization of the facilities would be met;

19.2.8.6.9 The class 7E and 10E series of the coal fleet were nearing the end of their useful life, thereby increasing maintenance costs and decreasing reliability;

19.2.8.6.10 The release of the 100 locomotives to the General Freight Business (GFB) was expected to protect approximately 7,2 metric tons per annum of general freight;

19.2.8.6.11 The 100 locomotives were dual voltage, modern capable locomotives proven in service and would improve service quality through improved reliability and reduced maintenance costs. The



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locomotives would provide
benefits such as:-

19.2.8.6.11.1 Reliability and
operational
efficiency;

19.2.8.6.11.2 Reduced
operational
expenditure
and
capitalized
maintenance;

19.2.8.6.11.3 Energy savings
locomotives
fleet plan
standardization;

19.2.8.6.11.4 The
locomotives to
be cascaded
from coal line
to the General
Freight
Business
(GFB) line



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would
primarily be
class E with
the areas such
as the
Manganese
exports
through
Ngqura,
Thabazimbi to
Pyramid
South, Maputo
Exports and
General
Freight on coal
line.

19.2.9 The decision memorandum further indicated that should the 100 locomotives not be acquired, by 2018/2019 the earnings before interest, taxes, depreciation and amortization (EBITDA) would be a significant 18.4% below what was projected in the 2013/2014 Corporate Plan and that the impact of the locomotive shortages increases annually on the financials of Transnet but even more devastating would



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be the loss of market share to road haulers, which would take Transnet longer to recover from.

19.2.10 In the end, it was recommended that I approve the section 54(2) PFMA application subject to the concerns as aforesaid and that Transnet furnish the required information to myself and the DPE team.

19.2.11 I accepted the recommendation of the DPE team to approve the section 54(2) PFMA application and on 23 May 2014, I approved the said section 54(2) PFMA application in writing annexed hereto as "MG23".

19.2.12 It is apposite to quote my said approval in full below:-

"Mr. Mafika Mkwanazi
Chairman
Transnet SOC limited
P.O Box 72501
Parkview
Johannesburg
2122

Tel: 011 308 2309
Fax: 011 308 2312

Dear Mr. Mkwanazi

Application to the Shareholder Minister in terms of the Public Finance Management Act (PFMA) for the acquisition of 100 dual voltage electric locomotives for the export coal line

Your application dated 10 April 2014 refers.

Whilst understanding that the Market Demand Strategy targets must be achieved by Transnet as committed, matters of concern remain existent in the latest application received in aim of mitigating the delay of the 1064



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locomotives delivery.

I appreciate that this acquisition will assist in realizing a portion of the Market Demand Strategy volumes and also avoid revenue losses, thereby contributing to the road to rail migration. While volume growth and retention is the basis of the business case to acquire these additional locomotives, the trend from previous years depicts that Transnet has consistently moved significantly lower than forecasted volumes. This therefore fuels the concern of the Department as to how realistic the assumptions are, which underpin the forecasted volume growth and therefore the capital investment programme needed to meet the assumed volume targets. While Transnet is encouraged to continue to stimulate the economy through capital investment, it remains a key focus of the Department to ensure that the capital programme is optimized and investments are made in the right areas.

In an effort to understand Transnet's rationale in the investment allocation, Transnet is requested to indicate the current capacity of the corridors in which the cascaded locomotives are expected to be deployed, as well as the reasons as to why those corridors were selected. In addition, Transnet is further requested to provide the incremental volumes expected to be derived for each of those corridors as a result of the deployment. This will assist and enable the Department to track the volume benefits of this acquisition.

Despite the benefit of increased traction capacity from additional locomotives, this project would be expected to also yield efficiency benefits. However, these benefits have not been quantified in the business case. In the absence of scientifically quantified benefits linked to the investment programme, it is almost impossible to hold Transnet accountable to deliver on efficiency improvements that are expected to be derived from the capital investment. Transnet is therefore requested to provide quantified and reliably measurable efficiency gains that should be extracted from this acquisition. This information should be provided by specific corridors or by business units as per the deployment of those locomotives.

I am also aware that post the submission of this application; there were engagement between officials of the Department and those of Transnet. As per those engagements, the following information was requested



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from Transnet and is still outstanding:

- *Transnet was requested to supply the determined impact/total value add of the project to GDP.*
- *Since Transnet has already concluded the contract for this acquisition, subject to PFMA approval, I therefore request that Transnet furnish me with a copy of the agreement concluded with China South Rail (CSR) as this will provide an in depth understanding of the transaction that Transnet is entering into and enable the Department to properly assess the risks pertaining to the proposed transactions.*
- *Considering that the 100 locomotives was not indicated by Transnet as part of the original mitigation action for the risk of delays in the 1, 064 locomotives delivery, Transnet needs provide reasons for the deviation from the initial risk mitigation plan.*
- *In relation to the confined procurement plan for this application; from a risk perspective the concern is the possible litigation challenges that can come from other possible suppliers, thus impacting on the project execution and delivery timelines. More information on Transnet's mitigation plan in this regard is therefore required.*
- *Transnet to provide further information about the types of jobs/skills to be created through this transaction. The SOC is further requested to specify how many jobs are expected to be created and retained in downstream Enterprises.*
- *Considering that this is a R4.84 billion transaction, the closed tender process could have been looked into rather than the confinement option as this would reduce Transnet's risk exposure to litigation challenges. Transnet is therefore requested to provide a full explanation as to why a closed tender process was not considered for this transaction.*



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- *The business case has not provided a proper risk assessment of the project and the mitigations thereof. This would further assist in the Department's assessment of this business case.*
- *From a Procurement and Supplier Development (SD) perspective, since the tender was confined to one supplier, the Department would like review the SD commitments, the enforceability of these commitments and the current performance of this supplier against set targets on contracts that are currently in place. Transnet is therefore requested to provide all contracts with China South Rail (CSR) as well as a report on how CSR is performing against current SD commitments.*
- *Indication of whether other alternatives were considered is not evident in the business case. Whilst the 100 locomotives acquisition is one mitigation factor that is expected to partially mitigate the delays in 1064 locomotives delivery, what other alternatives were considered to mitigate the impact of the delay of the 1064 locomotive delivery.*
- *Moreover, the amount indicated in the certified excerpt from the minutes of the special Board of Directors meeting held on 24 January 2014 differs from the amount indicated in the Transnet's section 54 application. I therefore request a resolution of the Board of directors approving the transaction at the current transaction amount of R4,84 billion as the one indicated in the section 54 application relates to the initial approved amount of R3.9 billion.*

Lastly, it is of grave concern to me that Transnet has failed to notify me timeously of a transaction which is of such significance in your business, even if the projected quantitative value was initially estimated below the monetary threshold for approval.

The significance and materiality framework agreed to in the 2013/14 Shareholder Compact, clearly stipulates that Transnet should provide me with notification on all acquisition and disposal of assets above R2 billion. It would therefore have been my expectation that after the Board had approved this acquisition, prior to entering



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into negotiations with the supplier, Transnet would have provided a notification. This failure to provide a notification timeously, has denied the Department an opportunity to review and engage on pertinent issues regarding this acquisition earlier in the process. Going forward, Transnet should involve the Department far earlier in its project planning phase so as to allow alignment between the Department and Transnet.

In spite of the concerns raised above, I do acknowledge the business need for the acquisition of these additional 100 locomotives for the coal line in order to avail more locomotives to be cascaded to the General Freight Business. I therefore, grant Transnet the approval to acquire the 100 locomotives subject to Transnet addressing the concerns raised above and providing the Department with the outstanding information as outlined above.


The Department therefore requests Transnet to fully submit the requested information on or before 19 June 2014. As per normal, continual interaction is imperative so as to ensure that there is no misalignment/confusion on the expectation.

I trust that you will find the above in order.

Yours sincerely"

19.2.13 As demonstrated above, the section 54(2) PFMA approval was subject to Transnet addressing the concerns raised in the said approval and submitting in full to the DPE, the information requested therein by 19 June 2014.

19.2.14 Even though Transnet had not submitted all of the information required, the view of the DPE, which I supported, was that based on the information

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submitted by Transnet in the business case, it had made a case for an approval. Despite that, the approval given to Transnet was conditional so as to ensure that the concerns raised in the decision memorandum (which were carried into the approval) were brought to the attention of Transnet for it to remedy within the specified deadline of 19 June 2014 and thus to render the approval unconditional.

19.2.15 As far as I am aware, the conditions to the section 54(2) PFMA approval were not complied with by Transnet by the time I was moved from Public Enterprises to Home Affairs in May 2014.

19.2.16 I do not know whether the said conditions were complied with at any stage after I had left the DPE or what happened to that process.

19.3 The PPPFA Regulations and Exemption on the 1064 locomotives project

19.3.1 I have had regard to paragraphs 1.3.3 and 5.9.7.14 to 5.9.7.20 of the Fundudzi report and section 2.1 of the MNS report. Although my answer is the same and equally applies to both the Fundudzi and the MNS report, I will first respond to the Fundudzi report before responding to the MNS report in this regard.



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- 19.3.2 Paragraphs 1.3.3 of the Fundudzi report states that I acted outside my authority in advising Transnet to continue to procure the 1064 locomotives as if the exemption of the Preferential Procurement Policy Framework Act ("the PPPFA") Regulations was in place before Finance Minister granted full exemption.
- 19.3.3 Before responding to this finding made by Fundudzi, I have to place it on record that on 12 April 2019 I requested Fundudzi (through my attorney, Mr Tshabalala) in a letter annexed hereto as "MG24" (excluding the annexures) at paragraph 7 thereof, to furnish me its report on the locomotives. This did not happen and it is only through the regulation 10(6) directive that it came to my attention that the finding in paragraph 1.3.3 of the Fundudzi report has been made against me.
- 19.3.4 I have noted paragraph 5.9.7.17 of the Fundudzi report which alleges that I was provided with questions to respond to this issue and that I had not responded to the questions. I did not receive the alleged questions and was not afforded an opportunity to respond to the allegations before the finding was made. In this regard, I reserve all of my rights.



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19.3.5 According to the decision memorandum dated 5 February 2012 annexed hereto as "MG25", *inter alia*:-

19.3.5.1 In December 2011, *inter alia* Transnet was granted exemption from the selected ("the PPPFA") Regulations by the Minister of Finance, Mr Pravin Gordhan ("the 2011 exemption"). The essence of the 2011 exemption was to exempt Transnet from the application of the 80/20 and 90/10 preference points system and the use of functionality as a threshold criterion. Transnet was then required to comply with Instruction Notes from the National Treasury relating to setting minimum local content threshold for procurement from designated sectors;

19.3.5.2 On 13 July 2012 and whilst the 2011 exemption was in place, Transnet issued a request for proposals on the procurement of the 1064 locomotives and informed potential suppliers that the tender documents would be available on 20 July 2012. Transnet's request for


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proposal was issued on the basis of the 2011 exemption;

19.3.5.3 On 16 July 2012, three days after the request for proposals was published by Transnet for the procurement of the 1064 locomotives, National Treasury issued an Instruction Note which imposed minimum local content thresholds and enforced the application of the 90/10 points system;

19.3.6 The procurement of the 1064 locomotives was regarded as one of the largest procurements of equipment in Transnet's History and had an estimated project cost of R32 billion. It was meant to *inter alia*, drive the localization and transformation objectives. In order to achieve that, Transnet had employed a procurement method which allowed for the possibility to exceed the minimum local content threshold in the Instruction Note.

19.3.7 According to Transnet, the Transnet methodology was to increase the weighted scoring for supplier development and Broad-Based Black Economic Empowerment being the 60/20/20 approach with 60% for price, 20% for supplier development and 20% for



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Broad-Based Black Economic Empowerment. According to Transnet, this approach to localization targets was expected to create 30% greater total economic benefit than the traditional 90/10 approach which was required in the PPPFA (90% being price and 10% being and Broad-Based Black Economic Empowerment) and the Instruction Note.

19.3.8 It was the view of the DPE that the Instruction Note was problematic for a number of reasons, namely:-

19.3.8.1 The issuing of the Instruction Note for the rolling stock after the tender invitation had already been advertised, when the CEO of Transnet and myself had announced that the procurement was imminent created the impression that Government did not know what it was doing;

19.3.8.2 According to the DPE team, it was aware that National Treasury was in possession of the relevant information for the Instruction Note from the Department of Trade and Industry seven months before the advertisement and thus, changing the policy related rules for the procurement at

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the last minute created a level of uncertainty in State Owned Companies' procurement that was untenable;

19.3.8.3 Its effect was to reimpose the 90/10 rule from which Transnet had been explicitly exempted in December 2011 and thus DPE questioned whether National Treasury could, in effect, revoke the general exemption that was granted for a period of a year for an individual procurement at its sole discretion;

19.3.8.4 The uncertainty in SOC procurement vis-à-vis the Instruction Note was, according to the DPE, demonstrated by the fact that PRASA fleet procurement had a 15 point supplier development component with National Treasury's approval in the context of the Instruction Note. When Transnet approached National Treasury around the need to include a supplier development points, Treasury denied the request and thus created further uncertainty; and

19.3.8.5 The reimposition of the 90/10 rule in the Instruction Note effectively increased the risk that Transnet would pay opaque and costly premiums for the localization of designated items whilst removing Transnet's ability to incentivize suppliers to localize in areas that were viable but that were excluded from the Instruction Note.

19.3.9 I have requested the Commission to furnish me with a copy of the 2011 exemption which forms part of the documents in the notice of application to which this statement is annexed as it will be important to have regard to it.

19.3.10 The decision memorandum of 5 February 2012 sent to me by the Deputy Director-General: Legal and Governance, Ms Matsietsi Mokholo was processed by the DPE team as follows:-

19.3.10.1 It was prepared and signed by the Strategy Advisor, Mr Edwin Ritchken on 28 February 2013;

19.3.10.2 It was reviewed and supported by (a) Deputy Director-General, Ms Kgomotso



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Modise, Matsietsi Mokholo (b) Deputy Director-General: Legal and Governance, Ms Matsietsi Mokholo (c) Deputy Director-General: Strategic Partnerships, Ms Jacky Molisane who signed it on 28 February 2013, 8 March 2013 and 11 March 2013, respectively;

19.3.10.3 It was signed by the Director-General, Mr Tshediso Matona on 20 March 2013 whilst he indicated his disapproval of the tone of the draft letter which had been prepared;

19.3.10.4 I instructed that the draft letter prepared be amended as it was not cordial; and

19.3.10.5 It was noted by Deputy Minister Mr Magwanishe with a request for a briefing.

19.3.11 I recall that the amended letter in the decision memorandum dated 5 February 2012 was sent to National Treasury but I do not have a copy. The DPE should have a copy and a copy thereof should be procured by the Commission.

19.3.12 The DPE and I also believed that the Instruction Note created problems for Transnet on its ability to extract



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optimal commercial, developmental and transformational values from strategic procurements such as the 1064 locomotives. Furthermore, in order to drive localization and transformation objectives, my view and that of the DPE was that the Transnet methodology and the tender had to be permitted to proceed. In our view, it was possible for Transnet to achieve up to 70% localization for diesel locomotives with the potential price premium associated with cost of localization being estimated to be 9.1% initially and 77% localization for electric locomotives with the potential price premium cost of localization being 8% initially, with a total price premium averaging out at approximately 2% in total.

19.3.13 Based on Transnet's estimates, using a multiplier data published as part of IPAP2 (2011) the benefit to the South African economy would be in the order of R68 billion approximately for an expected total premium on the 1064 locomotives of approximately R400 million resulting in a benefit cost ratio of 170 to 1 in favour of localization.

19.3.14 Furthermore the potential effect of the designation of certain components would be to entrench industry concentration or create single source suppliers.

Transnet believed that based on the analysis conducted for it, the Instruction Note could create a premium of R3 million to R4 million per locomotive. The same analysis demonstrated that allowing Original Equipment Manufacturers (OEMs) some freedom to determine where localization is applied would result in localization price premiums of only 2% to achieve much higher levels localization of more than 70%.

19.3.15 For the reasons mentioned above and in my letter to Minister Gordhan dated 16 April 2013 referred to below, I was persuaded that there were substantial socio-economic and industrial development benefits to be derived from Transnet's locomotive fleet procurement if the tender was allowed to proceed as advertised. I also believed that based on the reasons furnished by Transnet, Minister Ghordan and I would agree on the issue.

19.3.16 I thus instructed Transnet on 7 December 2012 to proceed with the tender so as to give effect to the recommendations in the decision memorandum of 5 February 2012 (MG25), with the intention of:-

19.3.16.1 Removing any uncertainty which may have been created by the Instruction Note

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in respect of procurement in State Owned Companies; and

19.3.16.2 Mitigating the risk which had been mentioned in the said decision memorandum occasioned by the Instruction Note, being that effectively Transnet would pay opaque and costly premiums for the localization of designated items whilst Transnet's ability to incentivize suppliers to localize in areas that are viable but that are excluded from the Instruction Note would be removed.

19.3.17 A further reason for my said instruction to Transnet was the fact that it had been expected that the tender would leverage the socio-economic and industrial development objectives benefits, in line with Government's objectives.

19.3.18 On 16 April 2013, I wrote the letter annexed hereto as "MG26" to Minister Gordhan requesting his agreement that the Transnet tender proceed as advertised.

19.3.19 In order to ensure that the procurement of the 1064 locomotives was effectively leveraged to achieve the broader industrial and socio-economic objectives that



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Government was seeking to promote, I agreed with the process suggested by Minister Gordhan of having senior officials from DPE, National Treasury, Department of Trade and Industry and Department of Economic Development consider terms and conditions for exemptions that could be applied on a case by case basis and that could be used to monitor the Transnet locomotive procurement process as it unfolded.

19.3.20 On 26 April 2013, Minister Gordhan sent me a letter annexed hereto as "MG27", *inter alia*:-

19.3.20.1 Agreeing with me that the Transnet procurement be leveraged to derive substantial socio-economic and industrial development objectives;

19.3.20.2 Indicating that on scrutinization of the Transnet tender published in July 2012, the tender was structured in a manner that was not in conflict with the Instruction Note issued in July 2012; and

19.3.20.3 Agreeing that Transnet proceed with the evaluation of the tender in terms of the criteria stipulated in the request for proposals.



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- 19.3.21 In the premises, the instruction that I issued to Transnet was issued in good faith for the reasons stated above. There was no ulterior motive to my said instruction.
- 19.3.22 I might add that National Treasury agreed in MG27 that Transnet was permitted to proceed with the evaluation of the tender as it (Transnet) had structured, on the basis of the exemption.
- 19.3.23 I have noted in paragraph 5.9.7.30 of the Fundudzi report that an opinion was sought by Transnet from Senior Council, Adv Sonic SC who it seems opined that the PPPFA did not apply to the locomotives tender as the tender was advertised during the period when the exemption from the PPPFA was in force. Thus, besides the merits relating to (a) giving effect to the recommendations in the decision memorandum 5 February 2012 and (b) the socio-economic and industrial development objectives as aforesaid, there seems to be a view from a respected senior counsel, that PPPFA did not apply to the locomotives tender which consequently means that it was legally correct for the 1064 locomotives tender to proceed as it had been structured, despite the Instruction Note.

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19.3.24 Although the said legal opinion was not at my disposal at the time that I instructed Transnet to proceed with the tender and the questions about the possible unlawfulness of the Instruction Note were raised by the DPE team in the decision memorandum dated 5 February 2012, I believe it is important for the Commission to have regard to the said legal opinion of Adv Soni SC in considering this issue and to procure a copy of the said opinion. This is also one of the documents which I have applied that the Commission procure.

19.3.25 It seems to me that Fundudzi elected to make a finding that my instruction to Transnet was unlawful without having had regard to the decision memorandum of 5 February 2012. Furthermore and although the Fundudzi report mentions the opinion of Adv Soni SC, it does not deal with it or indicate that such an opinion is wrong, but the report goes on to conclude that my instruction to Transnet was unlawful.

19.3.26 If the tender was not subject to the PPPFA on the basis that the exemption applied at the time of advertisement as it seems to be the opinion of Adv Soni SC, then the Instruction Note could not apply to it and the tender was correctly proceeded with.

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- 19.3.27 In the premises, I do not accept the finding made in the Fundudzi report that I acted unlawfully in instructing Transnet to proceed with the tender as if the exemption was in place.
- 19.3.28 Although the MNS report in section 2.1 makes no finding against me, my response to the Fundudzi report stated above equally applies to the MNS report and I pray that my response to the Fundudzi be incorporated by reference as a response to the MNS report with the changes required by context.
- 19.3.29 Before I conclude on the topic of the 1064 locomotives, I might add that I and as far as I am aware the DPE team, were far removed from tender process and the appointment of suppliers. This process was left to Transnet with no interference from the DPE team and me. I accepted Transnet's assurance about the business case and its objectives vis-à-vis Government's economic objectives as well as the procurement strategy to achieve that.
- 19.3.30 In May 2014 I received a decision memorandum dated 15 May 2014 annexed hereto as "MG28" from the Deputy Director-General: Transport, Ms Kgomotso

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Modise recommending and requesting that I sign a letter to General Electric South Africa.

19.3.31 According to the said decision memorandum, *inter alia*:-

19.3.31.1 A letter dated 27 March 2014 (appended to the decision memorandum as annexure A) had been received from General Electric South Africa expressing gratitude to me, the DPE and Transnet regarding the transparency, fairness and objectivity of the 1064 tender (the 465 diesel locomotives);

19.3.31.2 General Electric South Africa was one of the four successful companies awarded the 1064 tender;

19.3.31.3 The Transnet's procurement strategy had been designed by it (Transnet) to ensure transparency, fairness and value maximization and would include:-

19.3.31.3.1 Alignment to
Government's socio-



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economic policy
framework;

19.3.31.3.2 Skills development and
job creation;

19.3.31.3.3 Open tender process; and

19.3.31.3.4 Evaluation methodology
that includes weighting for
price (60%), supplier
development (20%) and
BBBEE (20%).

19.3.31.4 The procurement process had been
supervised by the Transnet Board through
the Board Acquisitions and Disposals
Committee made up of independent non-
executive directors;

19.3.31.5 Transnet had confirmed none of the local
or empowerment partners of any of the
bidders failed Transnet's conflict of
interest test and that all the winning
bidders met Transnet's strict
requirements, including technical ability,



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price, BBBEE and localization amongst others; and

19.3.31.6 The procurement of the 1064 locomotives remained a unique opportunity to develop the country's national industry.

19.3.32 The said decision memorandum was processed by the DPE team as follows:-

19.3.32.1 It was prepared and signed by Assistant Director: Transport, Mr Collen Ramoni on 15 May 2014;

19.3.32.2 It was reviewed and supported by (a) Deputy: Transport, Mr Dion Harold (b) Chief Director: Strategic Relationships, Ms Femida Mahomed (c) Deputy Director-General: Transport, Ms Kgomotso Modise who signed it on 15 May 2014 and 16 May 2014, respectively;

19.3.32.3 It was recommended by the Director-General, Mr Tshediso Matona on 19 May 2014 with proposed changes to the draft letter which had been prepared;



19.3.32.4 I had proposed changes to the draft letter on 1 April 2014 on and once amended, I approved the letter on 23 May 2014; and

19.3.32.5 It was noted by Deputy Minister Mr Magwanishe on 24 May 2014.

19.3.33 The letter from General Electric South Africa served as a feedback outside of Transnet to the DPE that Transnet had implemented the 1064 procurement process in a transparent, fair and objective manner as had been assured by it in the procurement strategy and the section 54 PFMA application.

19.3.34 On 23 May 2014, I sent the letter annexed hereto as "MG29" to General Electric South Africa thanking it for the feedback and its commitment to develop our national strategy, including localization and supplier development.

19.3.35 I was left with an impression that the process of procurement of the 1064 locomotives was transparent, fair and objective.

19.3.36 I must add that during the whole procurement process, Transnet had the benefit of lawyers. The DPE had its

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Legal and Governance Unit supervising the PFMA approval process.

19.3.37 It seems to me that Transnet had appointed a law firm, Webber Wentzel to advise it.

19.3.38 The Legal and Governance Unit of the DPE did not advise me not to approve the PFMA applications. I am also not aware of any reservations which may have been expressed by Webber Wentzel to Transnet about the lawfulness or otherwise of the locomotives procurement and the various locomotives agreements.

20. THE HANDOVER WITH FORMER MINISTER BARBARA HOGAN

20.1 I have had regard to the first paragraph of page 13 of the transcript of the hearing of the evidence of former Minister Barbara Hogan on 13 November 2018 annexed to the regulation 10(6) directive ("the transcript").

20.2 I dispute the version of former Minister Barbara Hogan as it appears in the first paragraph of page 13 of the transcript.

20.3 After I was informed by the former President that I would be appointed as the Minister of Public Enterprises during reshuffle of 31 October 2010, I personally telephoned former Minister Barbara Hogan with a view to arrange a handover. Former Minister Barbara Hogan informed me that I should

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attend at her private home for a handover. I indicated to her that it would not make sense to do the handover from her private home and that I was not prepared to attend at her private home for a handover.

20.4 I said so because any handover had to occur at the offices of the DPE where departmental documents are situated and also when a need arises for a particular document to be referred to, same can be obtained from the records of the DPE. Furthermore, the officials of the DPE were based at the DPE offices and any clarification that may have been required from them could be obtained during the handover. Former Minister Barbara Hogan refused to attend at the DPE offices for the handover and as a result, there was no handover from her.

20.5 I might add that although I had requested the handover from former Minister Barbara Hogan which was refused, I accepted that such should not be a major issue because there is no requirement in law that I am aware of, impelling an outgoing Minister to attend to a handover process with an incoming Minister. The decision to attend to the handover process is left to the Ministers involved and is not even a standard practice, in my experience.

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20.6 There was no handover process with my predecessors when I was appointed as the Deputy Minister of Home Affairs in 2004 and Minister of Home Affairs in 2018.

20.7 The handover process was with Minister of Finance in 2017 and Minister of Home Affairs in 2014.

21. THE APPOINTMENT OF BOARD MEMBERS (NON-EXECUTIVE DIRECTORS) TO TRANSNET

21.1 The regulation 10(6) directive requires me to respond to the allegations made that when I became Minister of Public Enterprises, I overhauled the Transnet Board, which, *inter alia*:-

21.1.1 was in disregard of a decision taken at the Transnet AGM in July 2010 to re-appoint all non-executive directors;

21.1.2 was to place Gupta associates in strategic positions, in circumstances where I am alleged to have played a role in appointing Mr Iqbal Sharma and Mr Mafika Mkwanaazi who have been implicated in State Capture; and

21.1.3 resulted in the removal of the only railway specialist, Mr Vijay Raman, who would have sat on the Transnet Board.



- 21.2 At Transnet, at the time, non-executive directors were appointed to the Board by the shareholder representative on, generally, a three-year term which was confirmed annually at the annual general meeting (AGM). As for the appointments themselves, the Board was responsible for the appointment of the managing director (who was referred to as the CEO or GCE), after consultation with the shareholder representative, and the Board appointed the Chief Financial Officer (CFO) and sought concurrence of the shareholder representative.
- 21.3 At Transnet's AGM in July 2010, which was prior to my arrival at the DPE, I was advised that it resolved that the non-executive directors at Transnet be re-appointed for a period of one year, on acting appointments, until the finalization of a review of the Board which was to be conducted by the DPE.
- 21.4 At the said AGM, the following non-executive directors were re-appointed for a one year period:
- 21.4.1 Prof Everingham (as acting chairperson);
 - 21.4.2 Ms Matyumza;
 - 21.4.3 Dr Haste;
 - 21.4.4 Ms Ntshingila;
 - 21.4.5 Mr Hankinson;
 - 21.4.6 Ms Gcaba;
 - 21.4.7 Mr Joubert;

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21.4.8 Ms Ramon; and

21.4.9 Mr Mayo.

21.5 When I arrived at the DPE, the Transnet Board was, in effect, an acting Board, operating on one year appointments that had been made at the above mentioned 2010 AGM. The review conducted by the DPE (which I do not have a copy of and have requested the assistance of the Commission to procure a copy) had revealed that the Transnet Board had a similar problem to the Eskom Board, namely *inter alia*, that majority of the Directors had been serving for a longer period than was permitted.

21.6 In December 2010, I received a decision memorandum dated 8 December 2010 annexed hereto as "MG30" from Acting Director-General, Ms Ursula Fikelepi.

21.7 The said decision memorandum indicated that a board review had been conducted and in light thereof, it recommended the appointment, re-appointment and retirement of the non-executive directors

21.8 The said decision memorandum recommended:-

21.8.1 The re-appointment of Mr Peter Moyo, Ms Nunu Ntshingila and Ms Nolwazi Gcaba as non-executive directors to Transnet;

- 21.8.2 The appointment of Mr Donald Mkhwanazi, Mr Peter Malungani, Mr Israel Skosana, Ms Nazmeera Moola, Mr Michele Fannuchi, Ms Doris Tshepe, Prof Jurgen Schrempp, Mr Iqba Sharma, Ms Tembeka Mnyaka, Ms Ellen Tshabalala and Mr Harry Gazendam as non-executive directors; and
- 21.8.3 The retirements of Ms Christine Ramon, Ms Nomagando Matyumza, Mr Peter Joubert, Mr Michael Hankinson, Prof. Geoffrey Everingham, Dr Norman Haste.
- 21.9 The above mentioned three non-executive directors, namely, Mr Peter Moyo, Ms Nunu Ntshingila and Ms Nolwazi Gcaba were re-appointed for continuity and company stability.
- 21.10 The new non-executive directors were appointed because of their profiles and their expected contribution to the Transnet Board.
- 21.11 I would like to explicitly dispute the allegation or any suggestion that the new non-executive director were incompetent or that their appointment was aimed to weaken Transnet or to place Gupta associates in strategic positions. Among these new non-executive directors were respected



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and leading business people and members of the academia. These new non-executive directors were not appointed for any other purpose other than to advance the genuine objectives of Transnet and Government.

21.12 The said decision memorandum was processed by the DPE team as follows, it was:-

21.12.1 Prepared by and signed Director: Legal, Adv Melanchton Makobe on 8 December 2010;

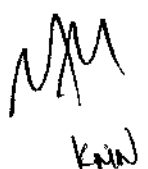
21.12.2 Reviewed and supported by the Acting Deputy Director-General: Transport, Ms Raisibe Lepule on 8 December 2010;

21.12.3 Recommended by Acting Director-General, Ms Usrula Fikilepi on 9 December 2010; and

21.12.4 Approved by me on 9 December 2010.

21.13 Acting in accordance with the said decision memorandum and on 9 December 2010, I issued letters of re-appointments, appointments and retirements for the three non-executive directors mentioned above.

21.14 I would like to explicitly dispute the allegation that these non-executive directors were incompetent or that their appointment was aimed to weaken Transnet or to place

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Gupta associates in strategic positions. Among these non-executive directors were well regarded, highly qualified and successful directors. These non-executive directors were not appointed for any other purpose other than to advance the genuine objectives of Transnet and Government.

21.15 In respect of both Mr Sharma and Mr Mkwana who have been singled out in the regulation 10(6) directive, they were appointed on merit. Mr Mkwana was the former CEO of Transnet and was expected to use his institutional memory to contribute to the Board. Mr Sharma was a former Deputy Director-General at the Department of Trade and Industry and Head of Trade and Investment South Africa (TISA) and was also expected to contribute to the Board.

21.16 It is important however, that the Commission looks at what we knew or could have known at the time when making these appointments. If people we appointed went on to do wrong things later, we cannot be held accountable/responsible unless there is something about their profile which could have been detected at the time we considered their profiles, vetted and appointed them, which showed they were likely to do wrong things.

21.17 I do not recall appointing Mr Raman as the non-executive director to the Transnet Board. There was no "*overhaul of the*

Transnet Board of Directors". The board that I announced on 8 December 2010 after the Cabinet approval consisted of the non-executive directors mentioned in paragraphs 21.8.1 and 21.8.2.

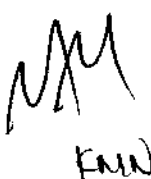
21.18 As at 28 May 2011, there were four vacancies on the Transnet Board, one of which had been reserved for a rail specialist and the other by the resignation of Prof. Schrempp.

21.19 In order to fill the said four vacancies on the Transnet Board, I received a decision memorandum dated 28 May 2011 from Acting Deputy Director-General: Transport, Ms Raisibe Lepule annexed hereto as "MG31".

21.20 In terms of the said decision memorandum, *inter alia*:-

21.20.1 A skills gap analysis had been conducted and it identified a skills gaps in the Transnet Board in the areas of (a) rail, risk management and pipes or ports sectors and (b) risk and audit committee;

21.20.2 The Transnet company secretary had recommended that the risk and audit committee be strengthened by appointing a person with skills in sourcing and purchasing of Information and Communications Technology ("ICT") hardware and software;



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- 21.20.3 The DPE was of the view that given the challenges which Transnet was facing at the time, a non-executive director with skills in ports management would be more valuable to the business and that ICT was not the core business of Transnet;
- 21.20.4 Notwithstanding its view in paragraph 19.9.3 above, the DPE team concluded that the appointment of a rail specialist would provide the DPE with some level of comfort that the Board would be capacitated to deal with the challenges in the keys areas of the business;
- 21.20.5 The challenges which Transnet was facing in the ports were being managed and were not significant. Even though the appointment of an ICT expert had not been as a strategic and core area of Transnet business, the DPE would accede to the recommendation of Transnet's company secretary and appoint an ICT expert; and
- 21.20.6 Mr Nishi Choubey and Ms Yasmin Forbes (proposed by Transnet), who possess rail industry knowledge and ICT sales and marketing respectively, be recommended to Cabinet for appointment.



21.21 The said decision memorandum was processed by the DPE as follows:-

21.21.1 It was prepared by Director: Legal, Mr Vongani Masondo and signed on 26 May 2011;

21.21.2 It was reviewed and supported by (a) Chief Director: Legal, Adv Melanchton Makobe and Acting Deputy Director-General: Transport, Ms Raisibe Lepule and signed by them on 26 May 2011 and 30 May 2011, respectively;

21.21.3 It was recommended by the Director-General, Mr Tshediso Matona on 14 June 2011; and

21.21.4 It was not approved by me but a revised decision memorandum seems to have been prepared and signed by me, a copy of which I do not have. I say so because of the e-mail dated 15 June 2011 from Jumarie Botha to Butie Tsalane which appears at the end of the decision memorandum.

21.22 The decision memorandum (MG31) was partially approved by Cabinet in that it approved the appointment of Mr Nishi Choubey and Ms Yasmin Forbes as non-executive directors. Cabinet did not approve the retirements of Mr Donald Mkhwanazi and Mr Mkwana. For reasons of continuity and

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stability, Cabinet felt that these retirements should not be approved.

22. THE APPOINTMENT OF MR BRIAN MOLEFE AS THE GROUP CHIEF EXECUTIVE OF TRANSNET

22.1 I am not aware of any irregularities relating to the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet in February 2011. It is for this reason that I have requested the Commission to procure for me the recommendation by the Board which led to the appointment of Mr Brian Molefe as well as all correspondence with the non-executive directors who had complained about the said appointment of Mr Brian Molefe.

22.2 It is important for the Commission to have regard to the decision memorandum of the DPE which recommended the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet. I have also applied for the Commission to also procure the said decision memorandum of the DPE in this regard.

22.3 At this stage, I have the benefit of the cabinet memorandum dated 14 February 2011 annexed hereto as "MG32" which was submitted to Cabinet for the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.

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22.4 The cabinet memorandum would have been informed by a decision memorandum of the DPE which would have been informed by the recommendation from the Transnet Board.

22.5 According to the said cabinet memorandum, *inter alia*:-

22.5.1 The Transnet Board undertook a process to fill the vacancy then of the Group Chief Executive, it advertised the position and appointed an Executive Search Company to assist in the search for a suitable candidate. Internal and external searches were conducted simultaneously. Board members were also given an opportunity to nominate individuals that they considered to be suitable for the position. A total of sixty three candidates were considered for the position, after which nine candidates were shortlisted by the Board for interviews; and

22.5.2 A comprehensive interview process was undertaken which resulted in the Board identifying Dr Mandla Gantsho, Mr Brian Molefe and Mr Mzinawe Silinga as the recommended candidates for the position of the Group Chief Executive. The Board indicated that any of the aforementioned candidates were highly suitable for the

A handwritten signature in black ink, appearing to be 'M. Molefe', is located in the bottom right corner of the page.

appointment as the Group Chief Executive of Transnet.

- 22.6 As far as I can recall, the memorandum of incorporation of Transnet stated that Transnet had to recommend three candidate for the position of Group Chief Executive to the shareholder representative. Once the Minister of Public Enterprises approves the appointment of the candidate, he/she then presents the candidate to Cabinet for approval.
- 22.7 Cabinet had the prerogative to approve or reject a candidate.
- 22.8 In the present matter, Transnet had resolved that any of the three above mentioned candidates be recommended for appointment. Based on the facts before me at the time, Mr Brian Molefe was a stellar candidate. He was a former Deputy Director-General at the National Treasury and former Chief Executive of Public Investment Corporation where he had been appointed by the then Minister of Finance, Mr Pravin Gordhan. Mr Brian Molefe was highly regarded in the financial sector at the time.
- 22.9 I am not aware of the Board members who complained about Mr Brian Molefe's appointment.



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- 22.10 Cabinet agreed with me, the DPE and the Board and it approved the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.
- 22.11 Markets reacted positively to Mr Brian Molefe's appointment, as he was regarded as credible, highly skilled and experienced. Furthermore, with his appointment, the profile of the Board (excluding international candidates) would comprise of 67% African, 13% White and 20% Indian with 67% male and 33% female members.
- 22.12 In the premises, I dispute that I was involved in any irregularities in the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.
23. THE ALLEGED ATTEMPTED REMOVAL OF MR MAFIKA MKWANAZI AS CHAIRPERSON OF THE TRANSNET BOARD IN MAY AND JUNE 2011, IN ORDER TO APPOINT MR IQBAL SHARMA AS THE CHAIRPERSON
- 23.1 The decision memorandum dated 28 May 2011 mentioned above, being MG31 is relevant in this regard.
- 23.2 As already stated above, the non-executive directors appointed to the Transnet Board on 13 December 2010, were appointed for a period of three years, subject to annual review by the Minister of Public Enterprises. A review process, which



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included a skills gap analysis was usually done by the DPE team during a period leading to the annual general meeting. In this regard, the relevant annual general meeting of Transnet was scheduled to be held on 24 June 2011.

23.3 In May 2011, I received the decision memorandum (MG31) from the Acting Deputy Director – General: Transport, Ms Raisibe Lepule. The said decision memorandum advised me and recommended the proposed appointment of four new non-executive directors and for Mr Iqbal Sharma to become the chairperson of the Board. I was given the proposed new non-executive directors' profiles and signed the cabinet memorandum seeking the approval of the following appointments:-

23.3.1 Ms Yasmin Forbes, as a non-executive director;

23.3.2 Mr Nishi Choubey, as a non-executive director;

23.3.3 Mr Almir De Sousa, as a non-executive director;

23.3.4 Ms Maphefo Mohuba, as a non-executive director; and

23.3.5 Mr Iqbal Sharma, as chairperson of the Board.

23.4 The said decision memorandum also recommended the retirements of Mr Mafika Mkwanazi and Mr Don Mkhwanazi from the Board at the annual general meeting which was



scheduled for 24 June 2011. The decision memorandum further recommended that both Mr Mafika Mkwanaazi and Mr Don Mkhwanazi be replaced by Mr Iqbal Sharma and Ms Maphefo Mohuba as chairperson and non-executive director, respectively. Mr Iqbal Sharma was already serving on the Board as a non-executive director, after having been appointed in December 2010.

23.5 The reasons for the retirements of Mr Mafika Mkwanaazi and Mr Don Mkhwanazi were given as being that:-

23.5.1 Despite the fact that Mr Mafika Mkhwanazi had demonstrated exemplary leadership capability in his role as the chairperson of the Transnet Board, he should not be re-appointed to the Transnet Board as he was the executive chairperson of the Transnet Board for a limited period following his appointment but had not absolved himself from executive activities since the appointment of the new Group Chief Executive and it was said that he continued to be intimately involved in the management of Transnet. The DPE's view was that there needed to be a clear division of responsibilities between the Group Chief Executive and chairperson, to ensure a balance of power and

authority as well as proper corporate governance; and

23.5.2 Mr Don Mkhwanazi served as a director and/or trustee of various other entities and furthermore, his skills were not scarce as most Transnet Board members were in possession of similar skills. Because of that and notwithstanding the fact that he is an African male (for demographics purposes), it was recommended that he not be re-appointed due to the abundance of the skills that he possessed in the Transnet Board.

23.6 The reason for the proposed appointment of Mr Iqbal Sharma as the chairperson of the Transnet Board was related solely due to his skills and profile which served before me at the time of his proposed appointment. This included the fact that he, *inter alia*:-

23.6.1 was a well-regarded businessman and hailed by the media as "*one of South Africa's most remarkable entrepreneurs*";

23.6.2 was a former Deputy Director-General of Department of Trade and had headed up Trade and Investment South Africa (TISA);



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- 23.6.3 was responsible for having led the development and implementation of the trade and investment policies and strategies;
- 23.6.4 had previously headed up the Trade Policy Division, overseeing South Africa's global economic strategies, managing South Africa's bi-lateral trade relations and negotiations; and
- 23.6.5 worked for large multi-nationals such as PepsiCo and the Bank of America, prior to joining the Department of Trade and Industry.
- 23.7 For the reasons stated above, I did not register any objection to the proposed appointment of Mr Iqbal Sharma as the chairperson of the Transnet Board.
- 23.8 I might add that at the time of the proposed appointment of Mr Iqbal Sharma as the chairperson of the Board, there were no facts before or known to me to the effect that the proposed appointment of Mr Iqbal Sharma:-
- 23.8.1 would weaken the Board (which consisted of eminent and well-regarded persons);
- 23.8.2 would give rise to unlawful activities occurring at Transnet as a result thereof, including *inter alia*, fraud, corruption and State capture (matters



which are being investigated by the Commission); and

23.8.3 was connected to Guptas.

24. THE INTERNATIONAL TRIPS

24.1 The regulation 10(6) requires me to explain four trips, namely:-

24.1.1 A return trip to Hong Kong between 25 July to 7 August 2010 ("the Hong Kong trip");

24.1.2 A return trip to Dubai, UAE between 23 to 31 October 2014 ("the first UAE trip");

24.1.3 A return trip to Dubai, UAE between 28 to 30 November 2015 ("the second UAE trip"); and

24.1.4 A return trip to Beijing, China between 1 to 6 September 2017 ("the China trip").

24.2 I explain the said four trips *seriatim* below.

24.3 The Hong Kong trip

Between July to August 2010, I do not recall travelling to Hong Kong. The trip to Hong Kong that I recall was when I was the Deputy Minister of Home Affairs prior to 2010 and its purpose



was the Departmental visit to assess the use of the smart identity cards with a view for us to introduce it into the country.

24.4 The first UAE trip

24.4.1 I may not remember the exact dates but during this time, I had been married in August 2010 and travelled to Dubai as part of my honeymoon with my wife.

24.4.2 I did not have a meeting with Akash Garg, Ashok Narayan, Sanjay Grover, Gezhinhiyo Vincent Zuma, Salim Aziz Essa, Iqbal Meer Sharma, Mohamed Noor Kapdi and Rajesh Naithani and do not even know most of these people.

24.5 The second UAE trip

24.5.1 I do not recall travelling to Dubai during this period. The only trip that I recall was a State visit to Saudi Arabia via Dubai in March 2016.

24.5.2 I travelled on this trip with the delegation of the President and other Ministers.

24.5.3 I did not have a meeting with Xenia Verbeek, Hamza Farooqui, Soo Young Jeon, Ashok Narayan, Rajesh Naithani, Aidan Essa, Zeenat

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Osmany, Surya Kant Singhala, Angelo Agrizzi, Gavin Joseph Watson, Stefan Nell, Erika Lamprecht, Aman Kant Singhala, Arti Gupta, Kamal Kant Singhala, Maleatlana Joel Raphela, Ronica Ragavan/Govender, Shubhangi Gupta, Varun Gupta and Mosebenzi Joseph Zwane and do not even know most of these people.

24.6 The China trip

- 24.6.1 This trip was for a BRICS summit that was held in Xiamen, China and I travelled via Beijing.
- 24.6.2 I travelled on this trip with my staff, other Ministers and we were accompanying the President.
- 24.6.3 Ms Nomvula Paula Mokonyane was part of the delegation.
- 24.6.4 I did not have a meeting with Jianbao Chen, Zhong Ying Potgieter, Sheila Glodinah Mazibuko, Elias Sekgobelo Magashule, Sphillife Macolm Mabaso, Mbana Peter Thabethe and Michael Andrew Thomas Hulley and do not know most of these people.



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24.7 In the aforementioned trips, there were no meetings or discussions that I was part of which discussed unlawful activities or sought to perpetuate fraud and/or corruption and/or State capture.

CONCLUSION

25. This statement has been prepared without the benefit of the required documents from the Commission. The required documents from the Commission are important for me to comprehensively respond to the regulation 10(6) directive, thereby to assist the Commission to have regard to all relevant facts and evidence which will assist it in its work.
26. I anticipate that once the required documents from the Commission are received, I may need to supplement this statement.
27. To the extent that there may be questions that flow from my statement, I am more than happy to answer those questions either through a supplementary affidavit or such questions may be put to me during hearing proceedings before the Chairperson.
28. In the interim, I submit that there was no wrongdoing on my part as the shareholder representative in executing my duties as the Minister of Public Enterprises.
29. The China trip occurred when I was the Minister of Finance. I also dispute that there was any wrongdoing by me in that capacity in either relation to the China trip or otherwise.

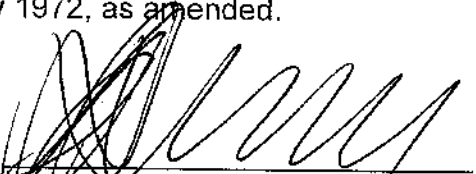


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30. I therefore humbly pray for the relief in the notice of application to which this statement is annexed.


DEPONENT

THUS SIGNED AND SWORN TO before me at SANDTON on this the 4TH day of JANUARY 2021 by the deponent who acknowledges that the deponent knows and understands the contents of this affidavit; that it is the truth to the best of the deponent's knowledge and belief and that the deponent has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


COMMISSIONER OF OATHS

EX OFFICIO:
FULL NAMES:
PHYSICAL ADDRESS:
DESIGNATION:

Mthunzi Mashaba
Commissioner Of Oaths
(Ex Officio)
Practising Attorney
4 Costwold Hill, Woodburn Road, Morningside
PO Box 653243, Benmore 2010
Tel: 011 073 1777 Fax: 086 519 5961

"MG1"

Reginald Tshabalala

From: Shannon S. Van Vuuren <ShannonV@commissionsc.org.za> on behalf of Shannon S. Van Vuuren
Sent: Friday, 04 December 2020 14:04
To: Reginald Tshabalala; Kim Slaffa
Cc: Andre J. Lamprecht; Rachel Niewenhuis; Boipelo B. Ratshikana; Clarence Benjamin
Subject: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION
Attachments: 00. Reg 10.6 Gigaba (30.11.2020).pdf

Dear Mr Tshabalala

RE: MR MALUSI GIGABA ("YOUR CLIENT") // CHAIRPERSON'S DIRECTIVE REGULATION 10(6)

We refer to the attached Regulation 10(6) directive issued by the Chairperson on 30th November 2020.

Please access and download the electronic copies of the annexures to this directive via the below password-protected WeTransfer link.

Link: <https://we.tl/t-fWr0RpJlrA>

The required password will be transmitted to your cell phone number – 082 300 7002

Kindly acknowledge receipt hereof.

Kind regards,

Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

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"MG2"

Reginald Tshabalala

From: Reginald Tshabalala
Sent: Friday, 11 December 2020 12:13
To: 'Shannon S. Van Vuuren'
Cc: 'Andre J. Lamprecht'; 'Rachel Niewenhuis'; 'Boipelo B. Ratshikana'; 'Clarence Benjamin'; 'Kim Slaffa'; 'Yolanda Silindane'
Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

Dear all,

I refer to the reg.10(6) directive by DCJ.

Part of the allegations which my client has been requested to respond to are contained in the Fundudzi report and MNS report. These reports refer to certain annexures which have not been made available to my client and I.

My client and I require the following annexures to the said two reports to enable us to respond to the reg. 10(6) directive:-

1. Fundudzi report

- 1.1 A8 being the section 54 PFMA application by Mr. Mkhwanazi to DPE signed on 24 October 2011;
- 1.2 A9 being the copy of the section 54 PFMA approval by DPE signed on 21 December 2011;
- 1.3 A66 being the locomotive agreement between Transnet and CSR dated 22 October 2012 or 17 March 2014;
- 1.4 A66a being my client's response dated 31 October 2018;
- 1.5 B33 being a copy of the shareholders compact signed on 25 June 2013;
- 1.6 B34 being a copy of the locomotive supply agreement dated 17 March 2014;
- 1.7 B38 being a copy of the letter from Mr. Mkhwanazi to my client signed on 10 April 2014;
- 1.8 B39 being a copy of the memorandum from Kgomoitso Modise advising my client in regard to section 54 of the PFMA dated 19 May 2014;
- 1.9 B40 being a copy of the letter from my client to Mr. Mkhwanazi signed on 23 May 2014;
- 1.10 B44 being a copy of the letter from Mr. Mkhwanazi to Minister Gordhan signed on 10 April 2014;
- 1.11 C6 being a copy of the shareholders' compact for the period 2012/2013;



- 1.12 C7 being a copy of the national treasury application dated 30 April 2013;
- 1.13 C8 being a copy of the exemption granted by Finance Minister dated 7 December 2011;
- 1.14 C12 being a copy of the letter from my client to Mr. Mkhwanazi dated 7 December 2012;
- 1.15 C13 being a copy of the letter from Mr. Mkhwanazi to my client dated 28 December 2012;
- 1.16 C14 being a copy of the letter from Mr. Mkhwanazi to my client dated 15 April 2013;
- 1.17 C15 being a copy of the letter from my client to Minister Gordhan dated 16 April 2013;
- 1.18 C16 being a copy of the letter from Minister Gordhan to my client dated 24 April 2013;
- 1.19 C26 being a copy of the letter from Mr. Mkhwanazi to my client dated 30 April 2013;
- 1.20 C27 being a copy of the letter from Mr. Mkhwanazi to Minister Gordhan dated 30 April 2013;
- 1.21 C28 being a copy of the letter from my client to Mr. Mkhwanazi dated 3 August 2013;
- 1.22 C29 being a copy of the letter from Minister Gordhan to Mr. Mkhwanazi dated 30 October 2013;
- 1.23 C71 being a copy of the E supply agreement signed on 17 March 2014; and
- 1.24 C72 being a copy of schedule 1 attached to the E supply agreement;

2. MNS report

- 2.1 Exhibit 1 Part A dated 30 April 2013 being a letter from Transnet to my client relating to an application for section 54 approval in terms of the PFMA acquisition of 1064 locomotives;
- 2.2 Exhibit 2 Part A dated 30 April 2013 being a letter from Transnet to my client relating to a section 54(2) PFMA notification from board chairperson to National Treasury relating to the acquisition of the 1064 locomotives;
- 2.3 Exhibit 3 Part A dated 7 December 2012 being the correspondence between Transnet and my client regarding the National Treasury's Instruction Note;
- 2.4 Exhibit 4 Part E dated 25 June 2013 being the shareholders' compact for the period 2013/2014;
- 2.5 Exhibit 6 Part E dated 25 June 2013 being the memorandum of incorporation; and
- 2.6 Exhibit 1 Part F dated 16 July 2012 being the National Treasury Instruction Note;

Regards,



Handwritten signature, possibly reading 'Kwadi'.



Reginald Tshabalala

**Attorney, Conveyancer
and Notary Public**

T: +27 11 783 5677

E: reginald@tshabalala.com

www.tshabalala.com

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P O Box 67900
Bryanston 2021
Tel +27 (0) 11 783 5677

Kindly be advised that our offices will close on Friday, 18 December 2020 and reopen on Monday, 11 January 2021.

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From: Reginald Tshabalala <reginald@tshabalala.com>

Sent: Monday, 07 December 2020 08:06

To: 'Shannon S. Van Vuuren' <ShannonV@commissionsc.org.za>; Kim Slaffa <kim@tshabalala.com>

Cc: 'Andre J. Lamprecht' <AndreL@commissionsc.org.za>; 'Rachel Niewenhuis' <RachelN@commissionsc.org.za>;

'Boipelo B. Ratshikana' <BoipeloR@commissionsc.org.za>; 'Clarence Benjamin' <ClarenceB@commissionsc.org.za>

Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

Dear Ms. van Vuuren,

I came right, thank you.

Regards,

[Handwritten signature]
10/11/20

"MG3"

Reginald Tshabalala

From: Clarence Benjamin <ClarenceB@commissionsc.org.za> on behalf of Clarence Benjamin
Sent: Tuesday, 15 December 2020 07:52
To: Shannon S. Van Vuuren; Reginald Tshabalala
Cc: Andre J. Lamprecht; Rachel Niewenhuis; Boipelo B. Ratshikana; Kim Slaffa; Yolanda Silindane
Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

Hi Shannon
The annexures requested by Mr Tshabalala has been collated and ready for transmission.
Attached is the link to the documents. I will WhatsApp the password to you.

<https://we.tl/t-N8CyP3abbH>

Kind Regards
Clarence Benjamin
COMMISSION OF INQUIRY INTO STATE CAPTURE |
Hillside House, 3rd Floor, 17 Empire Road, Parktown, Johannesburg, 2193 | Gauteng | South Africa |
Email: clarenceb@commissionsc.org.za | Mobile: 060 768 7746 | www.sastatecapture.org.za



From: Shannon S. Van Vuuren
Sent: Friday, 11 December 2020 16:07
To: Reginald Tshabalala <reginald@tshabalala.com>
Cc: Andre J. Lamprecht <AndreL@commissionsc.org.za>; Rachel Niewenhuis <RachelN@commissionsc.org.za>; Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>; Clarence Benjamin <ClarenceB@commissionsc.org.za>; Kim Slaffa <kim@tshabalala.com>; Yolanda Silindane <yolanda@tshabalala.com>
Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

Dear Mr Tshabalala

We acknowledge receipt hereof.

We will process your request for annexures and revert as soon as possible.

Kind regards,
Shannon Van Vuuren
Legal Advisor: Operations & Investigative Support
COMMISSION OF INQUIRY INTO STATE CAPTURE
Hillside House, 17 Empire Road, Parktown,
Johannesburg, 2193 | Gauteng | South Africa |

kmw

"MG4"

Reginald Tshabalala

From: Reginald Tshabalala
Sent: Friday, 18 December 2020 13:20
To: 'Shannon S. Van Vuuren'
Cc: 'Andre J. Lamprecht'; 'Rachel Niewenhuis'; 'Boipelo B. Ratshikana'; 'Clarence Benjamin'; 'Kim Slaffa'; 'Yolanda Silindane'
Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

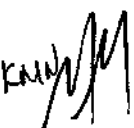
Dear Ms. Van Vuuren,

I have had the opportunity to consider the annexures received from the Commission.

You have repeated annexure C12 being a copy of the letter from my client to Mr. Mkhwanazi dated 7 December 2012 and have not furnished annexure C8 being the exemption by Mr. Gordhan (former Finance Minister) dated 7 December 2011.

My client and I also require your assistance with procuring the following documents which are required for the purposes of responding to the regulation 10(6) directive:-

1. The shareholders compacts between Transnet and Minister of Public Enterprises for the years between 2009 - 2010, 2010 - 2011 and 2011 -2012;
2. The Transnet's memorandum of incorporation which applied between the years 2010 - 2012;
3. The memoranda of the Department of Public Enterprises, the Cabinet memoranda and letters of appointment of the following persons to Transnet:
 - a. Mr. Mafika Mkhwanazi;
 - b. Mr. Brian Molefe; and
 - c. Mr. Vijay Raman
4. The memoranda of the Department of Public Enterprises, the Cabinet memoranda and letters of appointment of the following persons to the Transnet board in 2010 or 2011:
 - a. Mr. Peter Malungani;
 - b. Mr. Israel Skosana;
 - c. Ms. Nazmeera Moola;
 - d. Mr. Michele Fannuchi;
 - e. Ms. Doris Tshepe;
 - f. Mr. Donald Mkhwanazi;
 - g. Ms. Thembekazi Mnyaka;
 - h. Ms. Ellen Tshabalala;
 - i. Mr. Harry Gazendam;
 - j. Mr. Iqbal Sharma;
 - k. Prof. Juergen Schrempp;
 - l. Mr. Peter Moyo;
 - m. Ms. Nolwazi Gcaba; and
 - n. Ms. Nunu Ntshingila.
5. The minutes of the Transnet AGM of July 2010;



6. In respect of the 1064 locomotives project, the section 54(2) PFMA approval by my client;
7. In respect of the 95 locomotives project:-
 - a. Section 54(2) PFMA notifications from Transnet to Treasury;
 - b. Section 54(2) PFMA approvals by Treasury;
8. In respect of the 100 locomotives project:-
 - a. Section 54(2) PFMA approvals by Treasury;
9. In respect of the 359 locomotives:-
 - a. The Transnet board resolution approving the project;
 - b. Section 54(2) PFMA notifications from Transnet to Department of Public Enterprise;
 - c. Section 54(2) PFMA approvals by Department of Public Enterprise;
 - d. Section 54(2) PFMA notifications from Transnet to Treasury; and
 - e. Section 54(2) PFMA approvals by Treasury.

I have noted that the chairperson has directed that my client respond by 4 January 2021. Because of the aforesaid documents that have been requested and the fact that my practice is closing today for the festive season until 11 January 2021, my client is compelled to request an extension until end of January 2021 to respond to the regulation 10(6) directive.

I await to hear from you.

Yours Faithfully,



Reginald Tshabalala

**Attorney, Conveyancer
and Notary Public**

T: +27117835677

E: reginald@tshabalala.com

www.tshabalala.com

1st Floor, 3 Owen Lane
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P O Box 67900
Bryanston 2021
Tel +27 (0) 11 783 5677

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From: Reginald Tshabalala <reginald@tshabalala.com>

Sent: Tuesday, 15 December 2020 11:22

To: 'Shannon S. Van Vuuren' <ShannonV@commissionsc.org.za>; Kim Slaffa <kim@tshabalala.com>; Yolanda Silindane <yolanda@tshabalala.com>

Cc: 'Andre J. Lamprecht' <AndreL@commissionsc.org.za>; 'Rachel Niewenhuis' <RachelN@commissionsc.org.za>; 'Boipelo B. Ratshikana' <BoipeloR@commissionsc.org.za>; 'Clarence Benjamin' <ClarenceB@commissionsc.org.za>

Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

Dear Ms. Van Vuuren,

Thank you. I managed to download the annexures and will let you know if they are not in order.

Regards,



Reginald Tshabalala

**Attorney, Conveyancer
and Notary Public**

T: +27 11 783 5677

E: reginald@tshabalala.com

www.tshabalala.com

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From: Shannon S. Van Vuuren <ShannonV@commissionsc.org.za>

Sent: Tuesday, 15 December 2020 08:20

To: Reginald Tshabalala <reginald@tshabalala.com>; Kim Slaffa <kim@tshabalala.com>; Yolanda Silindane <yolanda@tshabalala.com>

Cc: Andre J. Lamprecht <AndreL@commissionsc.org.za>; Rachel Niewenhuis <RachelN@commissionsc.org.za>; Boipelo

B. Ratshikana <BoipeloR@commissionsc.org.za>; Clarence Benjamin <ClarenceB@commissionsc.org.za>
Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

Dear Mr Tshabalala

Please access and download the requested annexures via the below password-protected WeTransfer Link:

Link: <https://we.tl/t-N8CyP3abbH>

The password has been transmitted to the cell phone number we have on file for you.

Please download the requested annexures at your earliest opportunity as this WeTransfer link is only valid for **7 days**.

Kindly acknowledge receipt.

Kind regards,

Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

Cell: 060 749 5687

Email: shannonv@commissionsc.org.za | www.sastatecapture.org.za



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From: Shannon S. Van Vuuren

Sent: Friday, 11 December 2020 16:08

To: 'Reginald Tshabalala' <reginald@tshabalala.com>

Cc: Andre J. Lamprecht <andrel@commissionsc.org.za>; Rachel Niewenhuis <RachelN@commissionsc.org.za>; Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>; Clarence Benjamin <ClarenceB@commissionsc.org.za>; Kim Slaffa <kim@tshabalala.com>; Yolanda Silindane <yolanda@tshabalala.com>

Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

Dear Mr Tshabalala

We acknowledge receipt hereof.

We will process your request for annexures and revert as soon as possible.

Kind regards,

Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

"MG5"

Reginald Tshabalala

From: Shannon S. Van Vuuren <ShannonV@commissionsc.org.za> on behalf of Shannon S. Van Vuuren
Sent: Friday, 18 December 2020 14:29
To: Reginald Tshabalala; Kim Slaffa; Yolanda Silindane
Cc: Andre J. Lamprecht; Rachel Niewenhuis; Boipelo B. Ratshikana; Clarence Benjamin
Subject: RE: MALUSI GIGABA // CHAIRPERSON'S DIRECTIVE REGULATION 10(6) // STATE CAPTURE COMMISSION

Dear Mr Tshabalala

Thank you for your email.

Our investigators checked and confirm that this is how the annexures are listed in the report. Our investigators have undertaken to try and source the exemption by Mr. Gordhan dated 7 December 2011 from either Fundudzi or Transnet.

Regarding your request for extension:

- The Commission has assisted you and provided you with the requested information, as per your request dated 11 December 2020, further to the documents annexed to the Regulation 10(6) directive.
- The Commission requires a version of the facts, as your client knows them, relevant to the allegations and evidence listed in the Regulation 10(6) directive. Your client is required to answer these allegations as he knows them. The allegations set out in the Regulation 10(6) directive, as well as the documents annexed thereto, is sufficient for your client to provide a version.
- upon filing his affidavit in compliance with the Regulation 10(6) directive, your client must file a request addressed to the Chairperson for his decision wherein your client motivates the filing of a supplementary affidavit in relation to your further request for information below.

Regarding the closing of your offices for the festive season, please address a formal request for indulgence to the Chairperson of the Commission for his decision.

We await to hear from you.

Kind regards,

Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

Cell: 060 749 5687

Email: shannonv@commissionsc.org.za | www.sastatecapture.org.za



"MG6"



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

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

NOTICE IN RE: TRANSNET EVIDENCE

TO : MR MALUSI GIGABA
C/O : TSHABALALA ATTORNEYS
TEL : 011 783 5677
EMAIL : reginald@tshabalala.com

IN TERMS OF THE ORDER GRANTED BY THE CHAIRPERSON OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION"), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 On Thursday, 13 August 2020, the Commission's Legal Team presented the evidence of a witness referred to as **Witness 3** at its hearing held at the Old Council Chamber of the Municipality of the City of Johannesburg, 158 Civic Boulevard Braamfontein, Johannesburg.
- 2 The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct.
- 3 Please find attached:
 - 3.1 **Annexure A:** The Order granted by the Chairperson which records the terms upon which the evidence of the witness was permitted to be heard.
 - 3.2 **Annexure B:** A transcript of the evidence of the witness presented at the hearing.

4 The relevant redacted affidavit, as per order 2.2 of Annexure A, will be sent to you as soon as possible.

5 In accordance with the provisions of Rule 3.4 of the published Rules of the Commission, if you wish to:

5.1 give evidence yourself;

5.2 call any witness to give evidence on your behalf; or

5.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

6 An application referred to in paragraph 5 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness's evidence insofar as it implicates you. The affidavit must identify what parts of the witness's evidence are disputed or denied and the grounds on which they are disputed or denied.

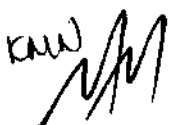
7 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.

8 In the event that you believe that you have been prejudiced, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

9 Please take note that even if you do not make an application under Rule 3.4:

9.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the evidence; and

9.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to



appear before the Commission to give evidence which has a bearing on a matter being investigated.

- 10 Any response or affidavit in regard to this notice must be sent to Advocate André Lamprecht and Ms Shannon van Vuuren at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 26th DAY OF AUGUST 2020



MS K B SHABALALA
Acting Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State



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


In the *Ex Parte* application of:

**ESAIAS PETRUS LEONARD on behalf of
those persons listed in Annexure 'A'
to the application**

Applicant

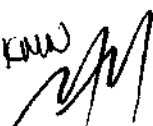
**ORDER made by Deputy Chief Justice Zondo, the Chairperson of the
Commission, on 13 August 2020.**

1. It is recorded that this application was heard without prior notice to affected parties and failure to give notice is hereby condoned.
 - 1.1 It is recorded that leave was previously granted for the hearing of the application in private whereafter the application on behalf of the person referred to in these proceedings as Witness 3 was postponed pending the delivery of a supplementary affidavit and judgment in respect of the application on behalf of Witness 1 and Witness 2 was reserved.
 - 1.2 It is recorded that the supplementary affidavit in respect of Witness 3 has now been delivered.
2. Having previously heard argument on behalf of the applicant and considered the papers, the following order is made.



- 2.1 Condonation is hereby granted that there has been no compliance with Rule 3 of the Rules of the Commission with regard to furnishing statements or affidavits to any person implicated by the evidence of the witnesses to be referred to as Witness 1, Witness 2 and Witness 3. (The three witnesses in Annexure A to the application.)
- 2.2 The Commission's Legal Team must, as soon as possible after the evidence of the three witnesses has been heard, take necessary steps to ensure that the Acting Secretary of the Commission, furnishes all implicated persons with the appropriately redacted affidavits and the transcript of the evidence that will be heard from these three witnesses.
3. The three witnesses are permitted to give evidence to the Commission in accordance with the following directives:
 - 3.1 The three witnesses will not be present in the hearing room at any time.
 - 3.2 For the purpose of the three witnesses [giving evidence], a separate location (*"the protected witness location"*) will be provided.
 - 3.3 The three witnesses will each give their evidence from the protected witness location.
 - 3.4 No camera will be permitted in the protected witness location.
 - 3.5 An audio link from the protected witness location will be provided so that the evidence can be heard in the hearing room when the evidence is given.
 - 3.6 No persons other than the Chairperson (if and when he considers it appropriate), the relevant evidence leaders, those necessary to assist or protect each of the three witnesses when they give evidence or any other person permitted specifically by the Chairperson will be permitted to enter the protected witness location.
 - 3.7 The Commission's Safety and Security Advisor who is the Head of Security for the Commission, or, in his absence, another person specifically designated by the Chairperson will have the responsibility of controlling access to the protected witness location in terms of this order and of

- ensuring that only the three witnesses and other persons permitted in terms of paragraph 3.6 above enter it.
- 3.8 Subject to the usual rules applicable to the conduct of the Commission's proceedings:
- (a) members of the public, including the media, may be present in the hearing room in such numbers as may be directed by the Chairperson.
 - (b) sound reaching the hearing room via the audio link from the protected witness location may be broadcast and the proceedings in the hearing room may be filmed and broadcast.
- 3.9 No photograph or video or other image of the three witnesses may be taken, published or broadcast.
- 3.10 No person may photograph or publish any photograph or other image of any person engaged in and/or responsible for the protection of the three witnesses when they give evidence.
- 3.11 It is recorded that in the presence of the Chairperson, the oath was administered to each one of the three witnesses earlier today.
4. To protect the identities of the three witnesses, the three witnesses shall be respectively referred to as:
- 4.1 Witness 1.
 - 4.2 Witness 2.
 - 4.3 Witness 3.
5. The names and initials of the three witnesses shall be redacted from all affidavits and documentation presented in evidence.
6. Further redactions and corrections, when necessary, shall be made to the affidavits of the three witnesses, which will serve to prevent members of the public from readily identifying the witnesses.



7. During the course of the testimony of each of the three witnesses, their voices may be electronically distorted so that they would not be ordinarily recognisable.
8. Nobody shall directly or indirectly disclose the identity of the three witnesses.
9. Annexure 'A' to the application shall be removed from the application papers and shall be placed in a sealed envelope and kept in safekeeping by the Commission and not be made available for public disclosure at all.
10. Once the evidence of the three witnesses has been given, a transcript of the evidence together with the relevant redacted and corrected affidavit of the witness, as contemplated in 5 above, will be made available to the implicated parties. To the extent that I have made an order covering this earlier on, this will fall away.
11. This order may be amended or supplemented by the Chairperson at any time if, in his opinion, that is necessary to ensure the protection of the three witnesses or any other person in connection of the evidence of the three witnesses or to ensure fairness to any implicated person.

DATED AT PARKTOWN ON THIS 26th DAY OF August 2020.



**Acting Secretary
Chairperson of the Commission**


KUN

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

13 AUGUST 2020

DAY 250



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A handwritten signature in black ink, appearing to be 'M. M. M.' with 'KMN' written below it.

I, the undersigned, hereby certify that, ***in as far as it is audible***, the foregoing is a ***VERBATIM*** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

158 CIVIC BOULEVARD, BRAAMFONTEIN

13 AUGUST 2020

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers

the 1990s, the number of people in the world who are illiterate has increased by 100 million. The number of illiterate people in the world is now 1 billion, and the number of illiterate people in the United States is 100 million. The number of illiterate people in the United States is 100 million, and the number of illiterate people in the United States is 100 million.

[Signature]

13 AUGUST 2020 – DAY 250

PROCEEDINGS RESUME ON 13 AUGUST 2020

CHAIRPERSON: Good morning Mr Hulley, good morning everybody.

ADV HULLEY SC: Good morning DCJ – sorry good morning Chairperson.

CHAIRPERSON: Yes.

ADV HULLEY SC: Mr Chair this morning's proceedings is in relation to the matter of Brigadier Ncube who was implicated as you may recall by Mr Robert McBride who
10 was at – at IPID.

Mr McBride implicated Brigadier Ncube as part of what he referred to as the Mabula Team. General Mabula is to testify next week on Thursday and quite coincidently it seems that Mr – General Mabula happens to be represented by the same firm of attorneys and the same counsel as Brigadier Ncube.

Late yesterday I had a discussion with my learned friend who appears on behalf of Brigadier Ncube and who appears also on behalf of General Mabula – Mr Joubert of
20 the Johannesburg Bar.

We discussed the convenience of postponing the matter until next week so that – because it all deals with mostly the same issues.

As you might recall Mr Chair insofar as next week's proceedings are concerned Brigadier Ncube – sorry

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Brigadier Mabula has been implicated not only by Mr McBride but also by General Booysen and the evidence in relation to Brigadier – sorry in relation to General Mabula will deal with that evidence as well in other words General Booysen's evidence as well.

What we – or insofar as today's proceedings are concerned we have agreed with the other side that it would make sense to postpone the matter until next week not only because of the convenience factor as far as the
10 different witnesses are concerned and for the sake of continuity of the evidence but also because of certain logistical difficulties that have arisen on the part of the commission's preparation of the bundles and so forth.

Some of the bundles may as we speak right now not yet have been made available to the other side but it is appropriate that they should consider the bundles and certainly do so in consultation with their client.

In those circumstances Mr Chairperson with your leave we would ask that the matter be postponed until it is
20 the 21 August, I believe next Thursday. Mr McBride is in attendance this morning and I have discussed the matter with him, I have discussed the matter with his attorney – or with his attorney and his counsel and it is convenient for everybody if we postpone the matter until next Thursday.

CHAIRPERSON: Okay let me hear from counsel from

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Brigadier Ncube. They will just sanitise first.

ADV JOUBERT: We have no objection Chair.

CHAIRPERSON: Yes, yes.

ADV JOUBERT: With the arrangements and the proposals.

CHAIRPERSON: Yes. No thank you. Thank you. And – okay there was counsel for Mr McBride as well is it not? You confirm that you are fine with the arrangements? Okay thank you.

I would have preferred that we continue. I was
10 going to hear argument about it being convenient that we postpone the matter to Thursday and I might have been persuaded that that is what we should do.

But the fact that there have been logistical and administrative challenges relating to the bundles from the commission's side counts strongly in favour of a postponement.

I have been kept up to date about the challenge. I know that it is not the fault of the legal team but it is unfortunate but it is going to be addressed. It is a pity that
20 we find ourselves in this situation.

I know that counsel for – regarding – they indicated that although their preference was going to be that the matter be postponed to next week if I decided that we should proceed they – they would do their best to proceed.

So – but I think that the issue of the challenges



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from within the commission outweigh everything in regard to the bundles. So I will postpone the hearing of the evidence of Brigadier Ncube and the cross-examination of Mr McBride that was going to take place today. It will now take place next Thursday when another implicated person was going to – to give evidence and I think cross-examine as well – General Mabula?

ADV HULLEY SC: That is correct Chair.

CHAIRPERSON: Yes. So we will postpone the hearing of
10 Mr Ncube's evidence and the cross-examination of Mr McBride to next Thursday at ten o'clock.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Thank you. I am going to adjourn but the commission will resume its sitting at twelve o'clock to hear certain evidence from witnesses whose identity at this stage is not to be disclosed. So the commission will resume at twelve – twelve o'clock. We adjourn.

ADV HULLEY SC: Thank you Mr Chair.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: I made some amendments to the draft order but I will read the whole order into the record and later on ...[indistinct] or that can be arranged.

1. It is recorded that this application was heard

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without prior notice to affective parties and failure to give notice is hereby condoned.

That is 1.

10 1.1. It is recorded that leave was previously granted for the hearing of the application in private whereafter the application on behalf of the person referred to in these proceedings as Witness 3 was postponed pending the delivery of a supplementary affidavit and judgment in respect of the application on behalf of Witness 1 and Witness 2 was reserved.

1.2. It is recorded that the supplementary affidavit in respect of Witness 3 has now been delivered.

2. Having previously heard argument on behalf of the applicant and considered the papers, the following order is made.

20 2.1. Condonation is hereby granted that there has been no compliance with Rule 3 of the Rules of the Commission with regard to furnishing statements or affidavits to any person implicated by the evidence of the witnesses to be referred to as Witness 1, Witness 2 and Witness 3. (The three witnesses in Annexure A to the application.)

2.2. The Commission's legal team must, as soon as possible, after the evidence of the three witnesses has been heard, take necessary steps to ensure that



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the acting Secretary of the Commission, when she has all implicated persons with the appropriately redacted affidavits and the transcript of the evidence that will be heard from these three witnesses.

In case you are looking at the draft order Mr Pretorius. My 3 would be the previous 2.1.

3. The three witnesses are permitted to give evidence to the Commission in accordance with the following directives.

10 3.1. The three witnesses will not present in the hearing room at any time.

3.2. For the purpose of the three witnesses, a separate location (the protected witness location) will be provided.

3.3. The three witnesses will each give their evidence from the protected witness location.

3.4. No camera will be permitted in the protected witness location.

20 3.5. An audio link from the protected witness location will be provided so that the evidence can be heard in the hearing room when the evidence is given.

3.6. No persons, other than the Chairperson (if and when he considers it appropriate), the relevant evidence leaders, those necessary to assist or



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protect each of the three witnesses when they give evidence or any other person permitted specifically by the Chairperson will be permitted to enter the protected witness location.

10 3.7. The Commission's Safety and Security Advisor who is the Head of Security for the Commission, or in absence another person specifically designated by the Chairperson, will have the responsibility of controlling access to the protected witness location in terms of this order and of ensuring that only the three witnesses and other persons permitted in terms of paragraph 3.6 above enter it.

3.8. Subject to the usual rules applicable to the conduct of the Commission's proceedings:

- a. Members of the public, including the media, may be present in the hearing room in such numbers as may be directed by the Chairperson.
- b. 20 Sound reaching the hearing room via the audio link from the protected witness location may be broadcast and the proceedings in the hearing room may be filmed and broadcasted.

3.9. No photograph or video or other images of the three witnesses maybe taken, published or broadcast.



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3.10. No person may photograph or publish any photograph or other image of any person engaged in and/or responsible for the protection of the three witnesses when they give evidence.

3.11. It is recorded that in the presence of the Chairperson, the oath was administered to each one of the three witnesses earlier today.

10 4. To protect the identities of the three witnesses, the three witnesses shall be respectively referred to as:

4.1. Witness 1.

4.2. Witness 2.

4.3. Witness 3.

5. The names and initials of the three witnesses shall be redacted from all affidavits and documentation and presented in evidence.

No, I think 5 should read the names and initials of the three witnesses shall be redacted from all affidavits and documentation presented in evidence.

20 6. Further redactions and corrections, when necessary, shall be made to the affidavits of the three witnesses, which will serve to prevent members of the public from readily identifying the witnesses.

7. During the course of the testimony of each of the three witnesses, their voices may be

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electronically distorted so that they would not be ordinarily recognisable.

8. Nobody shall directly or indirectly disclose the identity of the three witnesses.

9. Annexure A to the application shall be removed from the application papers and shall be placed in a sealed envelope and kept in safekeeping by the Commission and not be made available for public disclosure at all.

10 10. Once the evidence of the three witnesses has been given, a transcript of the evidence together with the relevant redacted and corrected affidavit of the witness, as contemplated in 5 above, will be made available to the implicated parties to the extent that I may have made an order covering this earlier on, this will fall away.

11. This order may be amended or supplemented by the Chairperson at any time if, in his opinion, that is necessary to ensure the protection of the three
20 witnesses or any other person in connection of the evidence of the three witnesses or to ensure fairness to any implicated person.

That is the order. So.

ADV PRETORIUS SC: Thank you, Chair. We will prepare a typed draft.

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CHAIRPERSON: Yes.

ADV PRETORIUS SC: And hand it up in due course.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I am told that there may be one or two numbers that needed adjustment.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But that would be in order.

CHAIRPERSON: Yes. Ja, no. As I said also. I think the 10 may be a repeat of an earlier one.

10 **ADV PRETORIUS SC:** Yes, Chair.

CHAIRPERSON: ...to the extent that it is... the numbering might have to change.

ADV PRETORIUS SC: Yes, but it will be consistent with what you have just put on record.

CHAIRPERSON: Ja. Yes. Yes, okay. Thank you.

ADV PRETORIUS SC: Chair, may we then, in accordance with those directions, call Witness 1?

CHAIRPERSON: Yes.

20 **ADV PRETORIUS SC:** Good morning Witness 1. Are you available?

WITNESS 1: Yes, I am available Chair. [slight distortion present]

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: Just to repeat what I said earlier on. All the three witnesses have taken the oath. So there will be no

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oath administered now.

ADV PRETORIUS SC: Yes. Just for the record then, Witness 1, you have identified yourself to the Chair and you confirm that you have taken the oath.

WITNESS 1: Yes ...[indistinct] [distortion present]

ADV PRETORIUS SC: Okay. Witness 1, you have before you an affidavit. It is marked Exhibit BB14A. Do you have that in front of you?

WITNESS 1: That is correct.

10 **ADV PRETORIUS SC:** Will you go to page ...[intervenes]

CHAIRPERSON: I wonder whether we should test whether we can hear clearly what he is saying. I am not sure that I can hear quite clearly.

I hear the voice but the actual words... I do not know whether you want to just ask him something and we listen so that if there is something that can be done to improve that, it can be done.

ADV PRETORIUS SC: Alright. Witness 1, can you hear us clearly?

20 **WITNESS 1:** Yes, I can.

CHAIRPERSON: Oh, that was better.

ADV PRETORIUS SC: And if you would speak very slowly, please? Because your voice has been distorted and for us to hear you, you would have to speak very slowly and clearly. Is that in order?


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WITNESS 1: Yes.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: Alright. Please go to page 21 of Exhibit BB14A.

CHAIRPERSON: Shall we first Mr Pretorius what bundle this will be called?

ADV PRETORIUS SC: Yes, Chair. The three statements are included in a bundle marked Exhibit BB14 which is part of the sequence of that particular category of evidence. The
10 bundle is now Transnet 1.

CHAIRPERSON: Okay I think let us call the bundle, Bundle Transnet 1 and then, of course, the statements will be exhibit... each one will have its own exhibit number.

ADV PRETORIUS SC: Yes, thank you Chair.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: Witness 1, will you please go to page 21. You will see a signature that has been redacted but do you recall attesting to this affidavit?

WITNESS 1: Yes, Chair.

20 **ADV PRETORIUS SC:** Right. As far as you are concerned and subject to any corrections and redactions that we might make during the course of your evidence, are the contents of this affidavit true and correct?

WITNESS 1: Yes, Chair.

ADV PRETORIUS SC: Chair, may we then admit Exhibit



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BB14A?

CHAIRPERSON: The affidavit of the witness, Witness 1, appear in the bundle of Transnet 1 at page 1, is admitted and is to be marked as Exhibit BB14?

ADV PRETORIUS SC: Yes, Chair.

ADV PRETORIUS SC: As Exhibit BB14. Ja.

AFFIDAVIT OF WITNESS 1 IS ADMITTED AND MARKED AS EXHIBIT BB14

ADV PRETORIUS SC: Witness 1, you are employed in the
10 Transnet Group in a senior security position. Am I correct?

WITNESS 1: That is correct, Chair. [distortion present]

ADV PRETORIUS SC: And you have been employed in one or other capacity in the Security Division of Transnet since when?

WITNESS 1: 1989 Chair.

ADV PRETORIUS SC: 1989? Is that correct?

WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: You have done relevant training, which we need not detail, but as referred to in your affidavit
20 in paragraphs 4 and 5.

WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: Right. If we go over the page to page 1005, you will see there that the duties of a Close Protection Officer or the duties entailed in Close Protection are set out. Briefly, will you tell the Chair what these duties


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are?

WITNESS 1: [Indistinct] [distortion present] The duties of a Close Protection Officer is to provide security(?) ...[indistinct]

CHAIRPERSON: Hang on Witness 1.

ADV PRETORIUS SC: They are going to reduce the distortion Chair.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: If you will just pause for a moment
10 Witness 1. We are going to try and adjust the distortion so that you can be heard at all.

WITNESS 1: [No audible reply]

COMMISSION TEAM MEMBER: Please try and speak with Witness 1.

ADV PRETORIUS SC: Witness 1, if you would speak very slowly, please?

WITNESS 1: [Indistinct] [distortion present]

CHAIRPERSON: Do you want Witness 1 to say something so that you hear whether it is fine now or...?

20 **COMMISSION TEAM MEMBER:** [No audible reply]

CHAIRPERSON: Witness 1, just say something so that we can hear whether you are clearly audible.

WITNESS 1: Ja, I have just said that ...[intervenes]

CHAIRPERSON: Ja.

WITNESS 1: [Indistinct] is to protect a ...[indistinct]

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[distortion present] and then it is to make sure that the principles takes place in a safe environment.

ADV PRETORIUS SC: I do not know if that is sufficient Chair. We are in communication with the technicians.

CHAIRPERSON: Yes, I think when he started the sentence, it seemed fine and then later one it was not fine.

ADV PRETORIUS SC: Yes, it did not improve at all.

CHAIRPERSON: The transcribers are making signs. I do not know whether they want him to say something?

10 **COMMISSION TEAM MEMBER:** [No audible reply]

CHAIRPERSON: Just say something Witness 1 again. Just say one sentence. Any sentence.

COMMISSION TEAM MEMBER: We are just trying to reconnect the call. Chair, sorry.

CHAIRPERSON: H'm.

COMMISSION TEAM MEMBER: There we go. Witness 1, can you please say something?

WITNESS 1: [No audible reply]

CHAIRPERSON: Just say, "I am giving evidence today".

20 **WITNESS 1:** I am giving evidence today.

ADV PRETORIUS SC: It is a little better.

CHAIRPERSON: Yes, but ...[intervenes]

ADV PRETORIUS SC: What I have done Chair is try to communicate with the technicians in order to lower the amount of distortions involved.



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CHAIRPERSON: H'm. But I want him to just repeat because the first few words are clear but then towards the end of the sentence it seems to...

ADV PRETORIUS SC: H'm.

CHAIRPERSON: Just say again Witness 1: "Today I am giving evidence".

WITNESS 1: Today I am giving evidence.

CHAIRPERSON: That...I think that was better.

ADV PRETORIUS SC: Yes, and again, Witness 1, as slow
10 as you can manage.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Perhaps you could start again and tell the Chair what Close Protection involves?

WITNESS 1: Close Protection [distortion present] in all
...[indistinct] [distortion present]

ADV PRETORIUS SC: No, Chair it is not sufficient.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: If you would just pause there Witness
1?

20 CHAIRPERSON: Ja.

ADV PRETORIUS SC: We either going to have to remove the distortion or lower it to a degree that you can be heard because you are breaking up.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Chair ...[intervenes]

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CHAIRPERSON: Do you want me to adjourn?

ADV PRETORIUS SC: Let us take a five minute break.

CHAIRPERSON: Yes. I will take a five minute adjournment.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: We will take the lunch adjournment just to allow whatever needs to be done to be done. We could come back at quarter to but maybe we should just make it

10 two. Mr Pretorius?

ADV PRETORIUS SC: Quarter to two is fine.

CHAIRPERSON: Quarter to two is fine?

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: And I guess we could go beyond four o'clock as well.

ADV PRETORIUS SC: Please if we could.

CHAIRPERSON: Ja. Okay. We will resume at quarter to two. We adjourn.

ADV PRETORIUS SC: Thank you.

20 **REGISTRAR:** All rise.

INQUIRY RESUMES

CHAIRPERSON: Have the problems been sorted out?

ADV PRETORIUS SC: Yes so far so good Chair.

CHAIRPERSON: Then we can – we can proceed.

ADV PRETORIUS SC: Yes thank you Chair. Witness

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number 1 can you hear me?

WITNESS 1: Chair I can hear you.

ADV PRETORIUS SC: Good thank you. If you would speak slowly please. You were dealing with the meaning of close protection and what close protection involved. Would you tell the Chair please?

WITNESS 1: Yes. Close protection referred as for security and risk mitigation measures taken to ensure the safety of a VIP or individuals who may be exposed to elevated personal risk because of their employment.

ADV PRETORIUS SC: And what do the duties involve?

WITNESS 1: The duties of a [indistinct 00:01:50] is to make sure that you do the advance which is called reconnaissance before you take your boss or your principle to the venue. You make sure that you have the alternative routes, the primary, the secondary and the contingency route in case of emergency.

ADV PRETORIUS SC: The other duties very briefly?

WITNESS 1: The other duties is to drive the principle around to his or her meetings or to the other operational venues. The other duties of a protection officer is to make sure that the principles meetings take place in a safe environment.

ADV PRETORIUS SC: Right. How many close protection officers are employed in the various divisions of Transnet?



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WITNESS 1: At present we have 19 protectors.

ADV PRETORIUS SC: Yes and as a senior protection person within Transnet you performed several duties, they are listed in paragraph 8 of your affidavit. We need not deal with them now but if you would just tell us please in terms of the Transnet Group Executive Protection Policy who is entitled to close protection services?

WITNESS 1: The Group Chief Executive and the Group Financial Officer of Transnet they are entitled to the close
10 protection unconditionally. But with the other executives of Transnet there will have to be risk around them and then the threat and risk assessment will be conducted to mitigate their risk or also to find out that there is a risk before we can deploy a close protector.

ADV PRETORIUS SC: Thank you. Did you perform close protection duties and act as a driver for any Transnet executive officer?

WITNESS 1: Yes I have done that [indistinct 00:04:24] for the then GCE Mr Brian Molefe.

20 **ADV PRETORIUS SC:** So did you act as a close protection officer and as a driver or either one of them?

WITNESS 1: For both of them Chair.

ADV PRETORIUS SC: You mean both protection and driving?

WITNESS 1: That is correct Chair.



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ADV PRETORIUS SC: And for what period?

WITNESS 1: For a period of four years – almost four – let me see – yes four years, almost four years because I started working with Mr Molefe in 2011 until July 2014.

ADV PRETORIUS SC: And at that time where was the Transnet head office?

WITNESS 1: At that time the Transnet head office was at the Carlton Centre in Johannesburg CBD.

ADV PRETORIUS SC: Would you briefly describe your
10 duties then in protecting and driving for Mr Molefe?

WITNESS 1: In protecting and driving Mr Molefe I would pick him up at his residence every morning and take him to the office at the Carlton and also to the other venues of his meetings. Then later I will take him home after the completion of his daily duty.

ADV PRETORIUS SC: Alright. Would you receive any information from Mr Molefe's office in regard to your duties for the following week or Mr Molefe's diary for the following week?

20 **WITNESS 1:** Yes I would receive it from Mr Molefe's PA.

ADV PRETORIUS SC: Alright.

WITNESS 1: The diary for the whole week. That also helps me – it gives me time to plan for the week and to know about his whereabouts at least a day before.

ADV PRETORIUS SC: Alright. During the period that you

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protected and drove for Mr Molefe were you at any stage assisted by a colleague?

WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: So...

WITNESS 1: That is correct.

ADV PRETORIUS SC: Your duties – thank you – your duties in regard to Mr Molefe came to an end I think you said towards the end of 2014?

WITNESS 1: Yes it was at the end of July 2014.

10 **ADV PRETORIUS SC:** Right during that period what vehicles were used to transport Mr Molefe? You can read from the affidavit.

WITNESS 1: The vehicle that we used to transport Mr Molefe when he first joined Transnet the first car that – it was a BMW X5 it was silver in colour and the registration number WCG426GP.

ADV PRETORIUS SC: Yes go on please.

WITNESS 1: And ...

ADV PRETORIUS SC: Yes go on if you could just read the
20 list.

WITNESS 1: And then the second car was a BMW 320D registration number BW96ERGP. The other car was the Mercedes Benz E350 registration number BH58HNGP. And then the other car was an A8 registration number CR37NPGP. All those cars – all those cars had logbooks,



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log sheets so that we can log all our trips because it is official titles.

ADV PRETORIUS SC: And the description of the motor vehicle and the registration number where did you get that information from?

WITNESS 1: I have records because I have driven those cars.

ADV PRETORIUS SC: Okay.

WITNESS 1: I still remember those cars I used.

10 **ADV PRETORIUS SC:** Yes. Now the logbooks that you have just referred to what happens to them generally once they have been used?

WITNESS 1: Generally, in the office of the Chief Executive because of auditing reasons we file and keep all the logbooks for the official, the [indistinct 00:09:39]

ADV PRETORIUS SC: Right and your own logbooks or the logbooks that you kept?

WITNESS 1: Can you repeat that again please?

ADV PRETORIUS SC: What happened to the logbooks that
20 you kept?

WITNESS 1: I still have all of them.

ADV PRETORIUS SC: Okay. Right in paragraph 19 of your affidavit you refer to certain trips to an address in Johannesburg. Would you tell – or addresses in Johannesburg please tell the Chair about that.



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WITNESS 1: There in paragraph 19 during the period of performing CPO duties for Mr Brian Molefe I transported him on various occasions to the Gupta residence in Saxonwold Johannesburg. The Michael Angelo Hotel in Sandton. The Protea Hotel Fire and Ice in Melrose Arch and the offices of Sahara Computers in Midrand. Where he attended his meetings.

ADV PRETORIUS SC: With whom did he meet?

WITNESS 1: He was meeting a gentleman by the name of
10 Ajay Gupta.

ADV PRETORIUS SC: Right. And where did he meet Ajay Gupta at all these places or at only one or other of these places?

WITNESS 1: In – okay in all of those places that I have mentioned above.

ADV PRETORIUS SC: Right. Were these meetings recorded in Mr Molefe's diary?

WITNESS 1: No they were not recorded in Mr Molefe's diary.

20 **ADV PRETORIUS SC:** Why not, do you know?

WITNESS 1: I have no idea.

ADV PRETORIUS SC: Right. In paragraph 20 you set out in a table a summary of logbook entries. Before we go to the logbook copies attached if we could just go through the table that appears on page 8 and 9 as well as on page 10. What



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happened on the 18 July 2011?

WITNESS 1: On the 18 July 2011 we visited Saxonwold where the Gupta's used to stay.

ADV PRETORIUS SC: Right and the time of arrival and time of departure where is that information recorded?

WITNESS 1: It is recorded on my logbook.

ADV PRETORIUS SC: Alright. We are not going to deal with every copy but I will ask you questions at the end of your evidence in regard to the table. When you say

10 Saxonwold what do you mean by that?

WITNESS 1: It is the residence where the Gupta' lived.

ADV PRETORIUS SC: In Saxonwold?

WITNESS 1: Yes.

ADV PRETORIUS SC: Alright. And on the 19 July 2011 what happened?

WITNESS 1: On the 19 July 2011 we also visited the Gupta's.

ADV PRETORIUS SC: Where?

WITNESS 1: In Saxon.

20 **ADV PRETORIUS SC:** In Saxon?

WITNESS 1: Yes.

ADV PRETORIUS SC: Is that the correct description – Saxon?

WITNESS 1: Yes.

CHAIRPERSON: What does Saxon refer to? Is it a place

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different from Saxonwold or?

WITNESS 1: No, no it is not it is the same place as Saxonwold.

CHAIRPERSON: Oh.

ADV PRETORIUS SC: Thank you. So it is not a correct description of the suburb is it? The correct description as I understand and you say you that later is Saxonwold.

WITNESS 1: Yes.

ADV PRETORIUS SC: Yes okay. And are the times there
10 times extracted from your logbook?

WITNESS 1: Yes they are.

ADV PRETORIUS SC: Alright on the – over the page please on the 29 July 2011 what happened?

WITNESS 1: On the 29 July 2011 we visited the Gupta residence again.

ADV PRETORIUS SC: When you say we visited in relation to all these visits who visited?

WITNESS 1: It is my – I was driving – I transported Mr Molefe.

20 **ADV PRETORIUS SC:** Mr Molefe okay and are the times then on page 9 Transnet 1 page 9 in the top of the column adjacent to the entry 29 July with the first entry 29 July are those also extracted from your logbook?

WITNESS 1: That is correct.

ADV PRETORIUS SC: And the next entry 29 July 2011?



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CHAIRPERSON: Hang on, hang on one second Mr Pretorius. I do not think for the record we have indicated that when it comes to page numbers you will be referring to the black numbers on the top left corner.

ADV PRETORIUS SC: Yes. For the record.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: That is correct we will refer to the black numbers in the top left-hand corner. The witness is aware of that though.

10 CHAIRPERSON: Yes. It is just that in the meantime when you were saying page 9 I was looking all over because I did not see the black numbers.

ADV PRETORIUS SC: Okay Chair. Yes apparently, I am aware of the fact that those must really be on the right-hand side but we did not have time to do it here.

CHAIRPERSON: Ja, no, no that is fine. It is just that for the reader of the transcript later.

ADV PRETORIUS SC: Yes.

20 CHAIRPERSON: It is important to always say it at the beginning of the day or ja.

ADV PRETORIUS SC: No, no point taken Chair. The second witness number 1 the second 29 July entry what happened on that day?

WITNESS 1: On that day on the 29th we visited Michael Angelo the hotel in Sandton.



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ADV PRETORIUS SC: Right and the times related to that visit are they also extracted from your logbook records?

WITNESS 1: That is correct.

CHAIRPERSON: Yes well we will go to a logbook as an example in due course. When you say we visited, who visited?

WITNESS 1: I transported Mr Molefe.

CHAIRPERSON: Right.

WITNESS 1: To Michael Angelo Hotel.

10 **ADV PRETORIUS SC:** Yes. On the 3 August 2011 what happened?

WITNESS 1: I transported Mr Molefe to the Gupta residence.

ADV PRETORIUS SC: Again, in Saxonwold?

WITNESS 1: Yes.

ADV PRETORIUS SC: And are the times there reflected in the logbook?

WITNESS 1: That is correct.

ADV PRETORIUS SC: On the 24 August 2011?

20 **WITNESS 1:** We visited Saxonwold. I transported Mr Molefe to Saxonwold.

ADV PRETORIUS SC: And again, the times are reflected in the logbook?

WITNESS 1: That is correct.

ADV PRETORIUS SC: On the 14 September 2011 what



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happened?

WITNESS 1: I transported Mr Molefe to Saxonwold.

ADV PRETORIUS SC: At the times reflected in the logbook and in the table, is that correct?

WITNESS 1: That is correct.

ADV PRETORIUS SC: What happened on the 19 October 2011?

WITNESS 1: On the 19 October 2011 I transported Mr Molefe to Saxonwold number 26.

10 **ADV PRETORIUS SC:** Is that a different address from the other addresses?

WITNESS 1: That is correct.

ADV PRETORIUS SC: And the times reflected there – where are they recorded?

WITNESS 1: Yes they are. Yes they are correct.

ADV PRETORIUS SC: Right. As recorded in the logbook?

WITNESS 1: That is correct.

ADV PRETORIUS SC: On the 9 November 2011

20 **CHAIRPERSON:** I am sorry Mr Pretorius I may have missed this if you dealt with it. Witness number 1 when in this table you indicate that – you indicate Saxonwold. Do you know the owners of the residence or house that you are referring to? And if you do?

WITNESS 1: That – correct Chair I know.

CHAIRPERSON: Ja. Whose house was that?

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WITNESS 1: It was for the Gupta brothers.

CHAIRPERSON: Yes. So whenever in this table you refer to Saxonwold are you referring to that house?

WITNESS 1: That is correct Chair.

CHAIRPERSON: And where you say Saxon number 26 is that another house of theirs or is that another house in Saxonwold that does not refer to them?

WITNESS 1: It was their – it was their other house in Saxonwold.

10 **CHAIRPERSON:** Okay alright.

ADV PRETORIUS SC: On the 9 November 2011 what happened?

WITNESS 1: On the 9 November 2011 I transported Mr Molefe to Sandton Michael Angelo Hotel.

ADV PRETORIUS SC: Right. And the relevant times in the table are they extracted from your logbook?

WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: Right. And on the 24 November 2011 what happened?

20 **WITNESS 1:** On the 24 November 2011 I transported Mr Molefe to Melrose Arch Hotel.

ADV PRETORIUS SC: Alright is that Melrose Ark or Melrose Arch?

WITNESS 1: Sorry it is Melrose Arch.

ADV PRETORIUS SC: Sorry you did not come through

A handwritten signature in black ink, appearing to be 'M. K. N.' or similar, located in the bottom right corner of the page.

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there. It is what place?

WITNESS 1: It is Melrose Arch.

ADV PRETORIUS SC: Melrose Arch.

WITNESS 1: Yes.

ADV PRETORIUS SC: And again, the times reflected there on the table are they extracted from your logbook?

WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: On the 21 February 2012 what happened?

10 WITNESS 1: In February 21st 2012 I transported Mr Molefe to Saxonwold at the Gupta residence.

ADV PRETORIUS SC: Right. And the times reflected there in the table are those also extracted from your logbook?

WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: Over the page 12 March 2012.

WITNESS 1: Yes Chair I am on that page.

ADV PRETORIUS SC: Where did you go and with whom?

WITNESS 1: I transported Mr Molefe to Midrand, Sahara offices.

20 ADV PRETORIUS SC: Do you know those offices?

WITNESS 1: Yes I know those offices.

ADV PRETORIUS SC: Right. You describe them as Midrand Sahara, is that...

WITNESS 1: Yes they – yes they were owned by the Gupta's.

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ADV PRETORIUS SC: Right.

WITNESS 1: Chair.

CHAIRPERSON: So is it Sahara at Midrand or in Midrand? Midrand is just to describe the place where they are allocated, is that right?

WITNESS 1: Yes it is the area of the offices.

CHAIRPERSON: Yes. It is not part of the name of the premises?

WITNESS 1: It was called Sahara Computers.

10 **CHAIRPERSON:** Yes so what I mean is although you wrote here Midrand Sahara Midrand was not part of the name of the offices, is that right?

WITNESS 1: No, no Midrand is the area it is not part of Sahara offices.

CHAIRPERSON: Yes. Okay.

ADV PRETORIUS SC: Then on the 28 May 2012 what happened?

WITNESS 1: on the 28 May 2012 we visited – I transported Mr Molefe to Saxonwold.

20 **ADV PRETORIUS SC:** Again, the Gupta residence?

WITNESS 1: That is correct yes.

ADV PRETORIUS SC: You say so later but we will get there. And the times there reflected are they an accurate extract from your logbook?

WITNESS 1: That is correct.

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ADV PRETORIUS SC: On the 5 September 2012 what happened?

WITNESS 1: I transported Mr Molefe to Saxonwold to the Gupta residence.

ADV PRETORIUS SC: Right. Mr Molefe?

WITNESS 1: Yes.

ADV PRETORIUS SC: Right and then on the – at the times reflected in the table do they coincide with the times in your logbook?

10 **WITNESS 1:** That is correct.

ADV PRETORIUS SC: And finally, on the 12 September 2012 what happened?

WITNESS 1: On the 12 September I transported Mr Molefe to Saxonwold to the Gupta residence.

ADV PRETORIUS SC: At the times there reflected?

WITNESS 1: That is correct.

ADV PRETORIUS SC: Right you do make a note in your affidavit where you say Saxonwold, Saxon, Saxonwold one word, Saxon number 26 and Saxon number 1 are references
20 to the Gupta residence at Saxonwold Johannesburg. Saxon number 1 what address is that?

WITNESS 1: It is number 1 where the Gupta residence was.

ADV PRETORIUS SC: Alright. And you say there Michael Angelo and Sandton Michael Angelo are references to the Michael Angelo Hotel in Sandton Johannesburg?

Handwritten signature and initials, possibly 'KUN'.

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WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: You also say Melrose Arch Hotel refers to the Protea Hotel Fire and Ice Hotel in Melrose Arch Johannesburg?

WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: And Midrand Sahara you say refers to the offices of Sahara Computers Pty Limited in Midrand Johannesburg, correct?

WITNESS 1: That is correct Chair.

10 **ADV PRETORIUS SC:** After September 2012 did you have any other occasion to transport Mr Molefe to the Gupta Saxonwold residence?

WITNESS 1: No, no because we – I had another colleague joined to come and help me because the hours were very long for me so I had to request another [indistinct 00:24:44] to come and help me.

ADV PRETORIUS SC: Alright. This table that appears on pages 8 to 10 have you checked the information on this table with the records in your logbook which are annexed to the –
20 to your affidavit?

WITNESS 1: Yes.

ADV PRETORIUS SC: So by – just by way of example – and before we go there to one by way of example is the information in this table reflected accurately as extracts from your logbook?

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WITNESS 1: That is correct.

ADV PRETORIUS SC: The documents at W1 number 1 to W1 number 15 what are those documents? If you could just have a look at them, check them please?

WITNESS 1: Yes I have opened that is the logbook.

ADV PRETORIUS SC: And are those the logbook extracts or pages referred to in the table?

WITNESS 1: That is correct.

ADV PRETORIUS SC: For example if we go to page 26
10 which is W1 02 – annexure W1 02 that is the last entry on page 8.

WITNESS 1: Yes, page 26 [distortion present] I am on page 26.

ADV PRETORIUS SC: You are on page 26?

WITNESS 1: That is correct.

ADV PRETORIUS SC: Which is the entry that is relevant for your evidence?

WITNESS 1: The entry, it is okay. Is... okay. The
19th of July 2011, I transported Mr Molefe to Saxon World
20 with car registration number BH 58 HH(?) GP. That was 315 Mercedes-Benz.

ADV PRETORIUS SC: Right. And the times, they are not very clear. Are those in the right-hand columns?

WITNESS 1: They are. They are clear. We arrived at the Guptas at 18:00 and we left at 18:40.

Handwritten signature and initials, possibly 'KMN'.

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ADV PRETORIUS SC: So you would leave the previous destination and you would arrive at 18:00 if that is the right-hand column next to the name Saxon.

WITNESS 1: Next to ...[intervenes]

ADV PRETORIUS SC: And then you would leave at 18:40, which is the time you would start driving and that is in the fourth line. Is that right?

WITNESS 1: That is correct, yes.

ADV PRETORIUS SC: Alright. So you say you have
10 checked all the entries on this table with the entries in your log... they coincide. And it is an accurate record in the table as reflected in the logbook?

WITNESS 1: That is correct.

ADV PRETORIUS SC: If we move to paragraph 23 of your affidavit. Did Mr Molefe tell you anything about the trips to the Gupta residence?

WITNESS 1: Paragraph 23?

ADV PRETORIUS SC: Yes.

WITNESS 1: Can you repeat your question Chair?

20 **ADV PRETORIUS SC:** Did Mr Molefe tell you why you were going to the Gupta's residence or why he was going to the Gupta's residence?

WITNESS 1: No, no, no. He did not tell me.

ADV PRETORIUS SC: Did he mention any names?

WITNESS 1: He only mentioned the name of a person that

A handwritten signature in black ink, appearing to be 'KAW' or similar, located in the bottom right corner of the page.

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he was going to [distortion present] there because we on our arrival at the main gate, the security officers would ask me who are we visiting. Then Mr Molefe will just tell them that we are here to see Ajay.

ADV PRETORIUS SC: Is that Ajay?

WITNESS 1: He never told me why?

ADV PRETORIUS SC: [laughs] Sorry, the connection is not very good. When you say AJ, can you spell it please?

WITNESS 1: Yes, it is Alpha ...[indistinct] Alpha Yankee. It
10 is A-J-A-Y.

ADV PRETORIUS SC: Thank you. How long did these visits last, the visits to Saxon World?

WITNESS 1: Between 20-minutes and 45-minutes.

ADV PRETORIUS SC: Alright. And then, in relation to the offices of Sahara Computers, did you come to learn who Mr Molefe was visiting?

WITNESS 1: Yes, Chair.

ADV PRETORIUS SC: Who was he visiting?

WITNESS 1: He was visiting Mr Ajay Gupta.

20 **ADV PRETORIUS SC:** Alright. And what would happen at the hotels to which you transported Mr Molefe?

WITNESS 1: At the hotels... as the CPO, we will look for the parking first. Parking the vehicle and then I will escort him to the restaurant.

ADV PRETORIUS SC: Alright. So he would visit at the

A handwritten signature in black ink, appearing to be 'MM' with 'KUN' written below it.

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restaurants, would he?

WITNESS 1: Yes.

ADV PRETORIUS SC: You detail some occasions later in your evidence. Now in paragraph 26, you say that:

“When Mr Molefe visited the Gupta residence, he sometimes carried something with him...”

What was that?

WITNESS 1: Mr Molefe would be carrying a light-brown leather backpack, a bag.

10 **ADV PRETORIUS SC:** Alright. Would you look at page 55, please? Annexure WU1(16)?

WITNESS 1: [No audible reply]

ADV PRETORIUS SC: Where did you get this picture from? It is a picture of what appears to be a backpack but it is not in colour.

WITNESS 1: I downloaded it. I Googled it and downloaded it.

ADV PRETORIUS SC: You downloaded it from the internet?

WITNESS 1: Yes.

20 **ADV PRETORIUS SC:** And ...[intervenes]

WITNESS 1: Yes, that is correct.

ADV PRETORIUS SC: How does that relate to the backpack you have described in paragraph 26 of your statement?

WITNESS 1: That is correct.

ADV PRETORIUS SC: How does it... what is it



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...[intervenes]

WITNESS 1: It is the same as that one.

ADV PRETORIUS SC: So you say the picture is the same as the picture that... of the... the picture of the backpack on page 55 ...[intervenes]

WITNESS 1: Yes.

ADV PRETORIUS SC: ...shows the same backpack or a similar backpack to the backpack that Mr Molefe used to carry with him to the Gupta residence?

10 **WITNESS 1:** That is correct.

ADV PRETORIUS SC: What colour was the backpack because on page 55, it is not in colour but it looks black. Is that correct?

WITNESS 1: Yes, it was light-brown.

ADV PRETORIUS SC: Light-brown. Okay.

WITNESS 1: That is correct.

ADV PRETORIUS SC: Were there occasions when Mr Molefe would go to the Gupta residence without his leather backpack?

20 **WITNESS 1:** Yes.

ADV PRETORIUS SC: What would happen on these occasions?

WITNESS 1: [distortion present] to go in without his backpack but when we leave and we will just... he will come with a brown sports bag.

A handwritten signature in black ink, appearing to be 'MM' with 'KNN' written below it.

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ADV PRETORIUS SC: Alright. And could you tell from the look of the bag whether it was filled with anything or whether it was empty?

WITNESS 1: I would not know exactly what the content was but the bag was filled up with something.

ADV PRETORIUS SC: Alright. What happened on the 18th of January 2012?

WITNESS 1: On the 18th of January 2012, Mr Molefe instructed me to deliver a bag to Mr Ajay at Safa... sorry, at
10 Sahara Computer Offices in Midrand.

ADV PRETORIUS SC: Did you do that?

WITNESS 1: [No audible reply]

ADV PRETORIUS SC: Is... can you hear me Witness 1?

WITNESS 1: Yes, Chair.

ADV PRETORIUS SC: Did you do that? Did you
...[intervenes]

WITNESS 1: Yes, I did that. I delivered the bag to Mr Ajay.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: The bag that you delivered that day, was it
20 the same as the bag that we have seen at page 55 or was it different?

WITNESS 1: It was not. It [distortion present]

CHAIRPERSON: It was not the same?

WITNESS 1: No,.

CHAIRPERSON: Oh. How was that one? Are you able to



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describe it? Or is there a picture of it?

WITNESS 1: It was a leather bag but it was a bit dark-brown. It was not a light-brown bag. It was like... it was [distortion present]

ADV PRETORIUS SC: Can you go to page 58, please?

WITNESS 1: Yes. Chair, I am on page 58.

ADV PRETORIUS SC: Yes, do you see the picture on page 58?

WITNESS 1: That is correct.

10 ADV PRETORIUS SC: What is depicted there? What do we see there on page 58?

WITNESS 1: It is a leather light-brown... it is a leather brown bag.

ADV PRETORIUS SC: Right.

WITNESS 1: The same as the bag as Mr Molefe used to sometimes come out when he [distortion present] of the Guptas.

ADV PRETORIUS SC: Alright.

20 CHAIRPERSON: Was the bag that he gave you to deliver to Mr Ajay Gupta similar to the one at page 58?

WITNESS 1: Yes.

CHAIRPERSON: Okay.

WITNESS 1: And the [distortion present]

CHAIRPERSON: Just repeat that.

WITNESS 1: I am saying, even the sides is similar.

A handwritten signature in black ink, appearing to be 'AM' with 'KUN' written below it.

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CHAIRPERSON: Even the sides were similar.

WITNESS 1: Yes, yes.

CHAIRPERSON: Oh, okay.

ADV PRETORIUS SC: If you look at page 60, please. Then we are looking at the black numbers.

WITNESS 1: I am at page 60 Chair.

ADV PRETORIUS SC: Yes. You see there is an extract from a logbook what appears to be an extract from a logbook?

WITNESS 1: Yes.

10 **ADV PRETORIUS SC:** Do you recognise this page?

WITNESS 1: Yes, I recognise.

ADV PRETORIUS SC: What entry is relevant to the evidence you are giving now in relation to the 18th of January 2012?

WITNESS 1: On my log sheet, I recorded that I delivered the bag at Midrand at Sahara offices.

ADV PRETORIUS SC: Yes. The last entry on the page against the date 18th of January 2012, says Midrand Sahara as the destination.

20 **WITNESS 1:** Yes.

ADV PRETORIUS SC: Is that correct?

WITNESS 1: Yes, that is correct.

ADV PRETORIUS SC: And then it says, "reason for use" and the entry there appears to be to deliver a bag. Do you see that?

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WITNESS 1: That is one. That is correct. Yes, I can see that.

ADV PRETORIUS SC: And the other details, what are they?

WITNESS 1: On the same page?

ADV PRETORIUS SC: Yes, just straight along that line.

WITNESS 1: Oh, the other detail... okay the other details. I went to... okay, to Centurion Standard Bank to collect his fuel card. I was instructed by him to go and collect his fuel card.

10 **ADV PRETORIUS SC:** Oh. No, it is ...[intervenes]

WITNESS 1: It is [distortion present] entry of Midrand Sahara ...[intervenes]

ADV PRETORIUS SC: Right.

WITNESS 1: ...at the back(?) [distortion present]

ADV PRETORIUS SC: Okay and then the last entry, 18th of January 2012, Midrand Sahara to deliver a bag. The number 31337, what is that?

WITNESS 1: Are the kilometres [distortion present] that I was using. On my arrival, that was the kilometres

20 ...[indistinct] [distortion present]

ADV PRETORIUS SC: Okay. And then the time?

WITNESS 1: The time of arrival was 11... was 11:13. I left Centurion the Standard Bank at 10:50 and arrived in Sahara Computers in Midrand at 11:13.

ADV PRETORIUS SC: Alright. So those times reflect the

A handwritten signature in black ink, appearing to be 'K. M. K. M. K.', located in the bottom right corner of the page.

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time of the trip in question. Is that correct?

WITNESS 1: That is correct.

ADV PRETORIUS SC: Alright. Did you ever meet Mr Ajay Gupta at any other place or on any other occasion that you recall?

WITNESS 1: Yes, I did meet with him in 2012 at the ANC Conference in Bloemfontein.

ADV PRETORIUS SC: Alright. You see him there, did you?

WITNESS 1: Yes, I saw him there.

10 **ADV PRETORIUS SC:** Who was he with?

WITNESS 1: He was mister... he was with Mr Brian Molefe.

ADV PRETORIUS SC: Alright. If you would go to page 62, please?

WITNESS 1: I am on page 62 Chair.

ADV PRETORIUS SC: Who is the person in that photograph?

WITNESS 1: The person on the photograph is Mr Ajay Gupta.

20 **ADV PRETORIUS SC:** Alright. During your visits to the Gupta residence, did you see any other members of the executive ...[intervenes]

CHAIRPERSON: I am sorry Mr Pretorius. Witness 1, a lot of people have said that they could not tell the one brother from another among the Gupta brothers, especially Mr Ajay Gupta and, I think, Mr Atul Gupta. Are you certain that the

Handwritten signature and initials, possibly 'KM' or 'KW', in the bottom right corner.

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picture at page 62 is a picture of Mr Ajay Gupta and not Atul Gupta?

WITNESS 1: I am definitely sure Chair.

CHAIRPERSON: Okay alright.

ADV PRETORIUS SC: On the occasions that you drove Mr Molefe to the Gupta residence, did you recognise any other government officials or members of the executive there?

WITNESS 1: Yes, I have met with the former Public Enterprise Minister, Malusi Gigaba. I have seen him at the
10 Gupta residence one day. And the other gentleman ...[intervenes]

ADV PRETORIUS SC: Anyone else?

WITNESS 1: [No audible reply]

ADV PRETORIUS SC: Anyone else?

WITNESS 1: Can you repeat? And ...[intervenes]

ADV PRETORIUS SC: Did you see anybody else there besides Mr Gigaba?

WITNESS 1: It was Mr Siyabonga Mhlango.

ADV PRETORIUS SC: Mhlango? Yes. Alright.

20 **CHAIRPERSON:** I am sorry. Mr Siyabonga who?

WITNESS 1: Mhlango.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: If one goes on then in your statement to paragraph 32, you describe an incident that happened in or near the main boardroom at the Carlton Centre. Is that

A handwritten signature in black ink, appearing to be 'K.M.W.' or similar, located in the bottom right corner of the page.

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the main Transnet boardroom?

WITNESS 1: Yes, the boardroom is on the 49th floor.

ADV PRETORIUS SC: Right. What happened on that occasion that you described in paragraph 32 and following.

WITNESS 1: there was a meeting at the boardroom and my principal ...[intervenes]

CHAIRPERSON: Sorry, did you say paragraph 32 or 42?

ADV PRETORIUS SC: [No audible reply]

CHAIRPERSON: Mr Pretorius?

10 ADV PRETORIUS SC: Yes, 32.

CHAIRPERSON: 32. Okay alright.

ADV PRETORIUS SC: Did I say 42?

CHAIRPERSON: Okay.

ADV PRETORIUS SC: 32.

CHAIRPERSON: Continue Witness 1.

ADV PRETORIUS SC: What happened on that occasion
Witness 1?

20 WITNESS 1: Okay. Usually when there are meetings in the
... on the 49th floor in the big boardroom, I would position
myself next to the door so that I stop anyone who can come
in and interrupt the meetings.

While I was standing there, Mr Molefe just came to me at the board to say, "No, look. Go to my bag and go and collect my cell phone in my bag in the office".

As instructed [distortion present] his office

A handwritten signature in black ink, appearing to be 'MM' or 'KNW' with a stylized flourish.

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...[intervenes]

CHAIRPERSON: This was at the Carlton Centre or where was it?

WITNESS 1: It was in the Carlton Centre. Yes, Chair.

CHAIRPERSON: Okay. Continue.

WITNESS 1: I went as instructed to go and collect the cell phone. When I opened his light-brown leather backpack to take out a cell phone, I was surprised to see the bag that was more half with the bundles of two hundred notes. I then

10 ...[intervenes]

ADV PRETORIUS SC: With R 200,00 notes?

WITNESS 1: Yes.

ADV PRETORIUS SC: Right.

WITNESS 1: I then called his PA [distortion present] PA and showed her the cash in the bag and said... I just said: "Look, you should make sure that nobody comes in here because should something get... should this money get lost, it will be me and you who will have to be answerable. So just make sure". I called the PA. The PA came and then I

20 showed her the money.

ADV PRETORIUS SC: Right. The light-brown leather backpack that you refer to ...[intervenes]

WITNESS 1: Yes?

ADV PRETORIUS SC: ...is that the same backpack that you mentioned earlier as a light-brown leather backpack or a

A handwritten signature in black ink, appearing to be 'KAW' or similar, located in the bottom right corner of the page.

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different one?

WITNESS 1: It is the same one.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: You mention in paragraph 32 about how much money you saw there in relation to the size of the bag. Do you want to tell me exactly how much? Not in terms of what the amount was but how much money was in the bag that you saw? You do say in paragraph 2.

WITNESS 1: Difficult for me to say – to give you the
10 exact amount but ...[intervenes]

CHAIRPERSON: No, no, no, I am not saying say the amount.

WITNESS 1: It was ...[intervenes]

CHAIRPERSON: Was it like a quarter in the bag, was it full, was it half in the bag? Are you able to ...[intervenes]

WITNESS 1: It was half.

CHAIRPERSON: H'm?

WITNESS 1: It was half a bag, Chair.

CHAIRPERSON: And the bag we are talking about is the
20 leather backpack similar one that we saw earlier on, is that right?

WITNESS 1: That is correct.

CHAIRPERSON: And when you saw this money on the day was that still close to the day when Mr Molefe had instructed you to deliver a bag to Mr Ajay Gupta or this

A handwritten signature in black ink, appearing to be 'M. KUN' or similar, located in the bottom right corner of the page.

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was a completely different day, on another day, if some other time?

WITNESS 1: It was a different day, I cannot call the period how far was that.

CHAIRPERSON: Oh, okay.

WITNESS 1: But a different day, yes.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: Just to assist the Chair, if you were to take those 200 notes out of the bag and put them
10 on a table without flattening the pile at all, how high would that pile be? You can just tell me in centimetres, more or less.

WITNESS 1: I would say 30 centimetres.

ADV PRETORIUS SC: 20 centimetres.

WITNESS 1: 30, yes.

ADV PRETORIUS SC: 30?

WITNESS 1: Yes, 30, 30.

ADV PRETORIUS SC: Okay. And the backpack you are referring to, that is the same backpack that you referred to
20 in paragraph 26, am I correct?

WITNESS 1: That is correct.

ADV PRETORIUS SC: Alright, the one depicted on page 55.

CHAIRPERSON: Not 26, ja. Page 55, witness 1, is that the type of bag that had the money that you saw on that

A handwritten signature in black ink, appearing to be 'K. M. K. K.', is located in the bottom right corner of the page.

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day?

WITNESS 1: Yes, Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Alright. Did Mr Molefe return from the meeting at any stage on this day and did you speak to him?

WITNESS 1: Yes, Chair, upon his return from the meeting, when he got into his office, I approached him about the fact that he was carrying that backpack I
10 considered a safety risk for both of us.

CHAIRPERSON: Did you say you approached him?

WITNESS 1: Yes, I asked him about the other cash ...[intervenes]

CHAIRPERSON: Oh, okay.

WITNESS 1: I said it is – ja, it is risky for him to travel with that kind of money, it is risky for both of us. Mr Molefe was visibly upset, sorry ...[intervenes]

CHAIRPERSON: Sorry, he was?

WITNESS 1: He was ...[intervenes]

20 **CHAIRPERSON:** I am sorry Witness 1, you approached Mr Molefe because you were concerned about the amount of cash that you had seen in the bag, is that right?

WITNESS 1: Yes and our safety, yes.

CHAIRPERSON: Because you thought it posed a threat to the safety of both of you.



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WITNESS 1: Yes, yes.

CHAIRPERSON: And what did you say to him when you approached him?

WITNESS 1: I just said I noticed that there is money in your bag when you asked me to go and collect your [indistinct – jump in recording] and I said I think it is a security risk to carry such amount because if we were to stopped at may the road block maybe, you know, the cops will ask us about this and then also it is a security risk
10 because maybe where you got it from, if you got it from the bank, you will never know, you might be marked, someone one to rob us, then that puts our life at risk and he was very upset with my comment.

ADV PRETORIUS SC: Did he say anything to you?

WITNESS 1: Yes, he said it is none of my business what is in his bag.

ADV PRETORIUS SC: Alright. Did you ever have occasion to run errands on behalf of Mr Molefe to the banks?

20 **WITNESS 1:** Yes, yes, I deposit money for him at ABSA bank, at the Carlton, Nedbank and Standard Bank at the Carlton Centre in various accounts.

ADV PRETORIUS SC: And did these trips to the bank involve similar dates in the month?

WITNESS 1: Yes, usually I would make deposits between

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the 28th of the month and the – between the 28th and the 5th.

ADV PRETORIUS SC: Right. And what did you deposit? Cheques or cash?

WITNESS 1: No, I used to deposit cash.

ADV PRETORIUS SC: Sorry, what did you deposit?

WITNESS 1: Cash.

ADV PRETORIUS SC: Cash.

WITNESS 1: Not – yes.

10 **ADV PRETORIUS SC:** And the amounts that you deposited, what did they amount to, what were they?

WITNESS 1: The amounts were between 5 000 and 20 grand.

ADV PRETORIUS SC: Alright, and who gave you the money?

WITNESS 1: At times you will hand over the money to his PA and ask the PA to give me the money and go and deposit to the bank but also at times he will call me and say just come through, take this money and go and deposit
20 in the bank for me.

ADV PRETORIUS SC: Alright. Now prior to your giving evidence, have you ever been threatened?

WITNESS 1: Yes, I have.

ADV PRETORIUS SC: On page 13 you describe what is called the first threat. Tell the Chair about that please?



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WITNESS 1: Yes. I received on Monday 9 June 2019 at 21.20, I received a threat, a message on my official phone.

ADV PRETORIUS SC: Sorry, before you go there. Go back to page 13 please? Are you at page 13?

WITNESS 1: That is correct.

ADV PRETORIUS SC: And under the heading: First Threat you describe an incident that happened during 2018.

WITNESS 1: That is correct, Chair, that is correct.

10 **ADV PRETORIUS SC:** Just very briefly, what did you do at the time of the incident or what had you just done at the time of the incident?

WITNESS 1: It was after I was interviewed by the investigators from Fundudzi Forensic Services.

ADV PRETORIUS SC: Right you were interviewed by Fundudzi Forensic Services and what happened after that?

WITNESS 1: After that I received a telephone call and a male with an African accent – I received a call on Transnet cellular phone. He stated: We know where you live. And
20 then he dropped the phone.

ADV PRETORIUS SC: Did you approach Fundudzi Forensic Services to ask them whether they had told anyone that you had been interviewed by them?

WITNESS 1: Yes, I did.

ADV PRETORIUS SC: And what were you told?



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WITNESS 1: The investigator said he has never shared my statement or my meetings with anyone.

ADV PRETORIUS SC: Did that particular matter end there?

WITNESS 1: That is correct.

ADV PRETORIUS SC: Over the page on page 14 you refer and testified to what you say in the heading is the second threat. What happened on that day that you have spoken about earlier, 9 June 2019?

10 **WITNESS 1:** On the 8 April 2019 and again on 4 June 2019 I was interviewed by investigators from the Judicial Commission of Inquiry and ...[intervenes]

ADV PRETORIUS SC: That is this Commission, the State Capture Commission, is it?

WITNESS 1: That is correct, yes.

ADV PRETORIUS SC: Yes. And what happened on Monday 9 June 2019/

WITNESS 1: On the Monday the 9 June 2019 at 21.20 I received a short message from ...[intervenes]

20 **ADV PRETORIUS SC:** It is an SMS, is it?

WITNESS 1: Cellular number.

ADV PRETORIUS SC: Right and did you keep that message or a printout of that message?

WITNESS 1: Yes, I did.

ADV PRETORIUS SC: And what did the message read?

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WITNESS 1: It said:

"Witness 1, if you know what is good for you, I command you not to give any further evidence to the Zondo Commission or else just know that we are watching your every move. We even know where you stay, so watch out and be warned."

ADV PRETORIUS SC: Now when you say Witness 1, as being part of the message service, I understand it was actually your name in the message, is that correct?

10 **WITNESS 1:** That is correct.

ADV PRETORIUS SC: Alright.

WITNESS 1: That is correct.

ADV PRETORIUS SC: Did you report that threat to the South African Police Service?

WITNESS 1: Yes, I reported the abovementioned threat at the police.

ADV PRETORIUS SC: If you go to page 64 what is that that appears on that page?

WITNESS 1: 64. Okay, I am just paging through, Chair.

20 **ADV PRETORIUS SC:** Remember we are with the black numbers.

WITNESS 1: Yes. Oh yes, that is the message that I received.

ADV PRETORIUS SC: That is the message you have just referred to is it?

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WITNESS 1: That is correct, yes.

ADV PRETORIUS SC: And then you talk again at paragraph 45 of the third threat. Briefly, what happened there?

WITNESS 1: In paragraph 45 I received a threat, it was on the 13 January 2020 in my first day back at the office after returning from annual leave. I received a threat via SMS on my work cellular phone at 10.52.

ADV PRETORIUS SC: And are you able to read the
10 threat?

WITNESS 1: Yes.

ADV PRETORIUS SC: If you look at page 66, what is that on page 66?

WITNESS 1: Yes, the SMS that I had received reads as follows:

20 "We are fully aware that you are about to give evidence at the Zondo Commission again and you have intimidated other CPO's bodyguards to give a testimony as well. As we are sorry to inform you that you are being used and you are on your own. If you love your life I advise you to resign and disappear. We have exposed MNS and Bobo and Bobo is next and who do you think you are? You are on your own. Stop it with your moronic Superman behaviour. We are watching your every

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move, your conversations, so act sensibly and give this matter your most urgent attention. When we are done with you, your family will not find a piece of you."

ADV PRETORIUS SC: Right, did you again report that incident and threat to the South African Police Service?

WITNESS 1: That is correct, Chair, I did.

ADV PRETORIUS SC: Then in paragraph 50 you relate and incident where you were followed by what you describe
10 as suspect vehicles or you relate incidents, rather. The first incident being at paragraph 51. It is not necessary to go to all the detail there but what did you see on the 24 June 2019 when you were travelling on the M1 South?

WITNESS 1: I was followed by a Polo, a grey Polo – sorry, with no registration plates.

ADV PRETORIUS SC: Just look at the heading, was it grey or white? What is your recollection? Look at the heading on page 16.

WITNESS 1: Yes, it was grey, it was a grey, the VW Polo.

20 **ADV PRETORIUS SC:** So white is incorrect, is it?

WITNESS 1: Sorry, sorry, sorry, sorry. On page 12, paragraph 50.

ADV PRETORIUS SC: No, look, we are on page 16, black numbers.

WITNESS 1: Ja. Okay, on 15 ...[intervenes]

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ADV PRETORIUS SC: Okay, no, no, no, you are quite right, let me not interfere with your evidence. You tell the Chair what you have in paragraph 50.

WITNESS 1: Okay, since I received an SMS discussed in paragraph 42 above:

“I noticed on three occasions that I was being followed by two different vehicles, namely a white VW Polo twice.”

And then page 16:

10 “And a grey VW Polo once, both without registration plates.”

ADV PRETORIUS SC: Alright and I do not think it is necessary to go into the detail but from the nature of the incidence incurred what did you conclude? What did you think was happening?

WITNESS 1: You know, as a trained security person I thought that I was under surveillance, I was being followed.

ADV PRETORIUS SC: Right, did you – will you go to
20 paragraph 59, that is the second instance of being followed. Did you keep any notes or make any notes of that incident?

WITNESS 1: Yes, on paragraph – oh ja, yes, yes, I did.

ADV PRETORIUS SC: And if we go to page - just bear with me for a moment, to page 69, is there anything on this

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– what is this page, at page 69?

WITNESS 1: On page 69, I made a note on the official – on the logbook of the official vehicle that I am using for official duties when I was followed by the white Polo. I made ...[intervenes]

ADV PRETORIUS SC: Where is that entry?

WITNESS 1: Yes.

ADV PRETORIUS SC: Where is that entry on page 69?

WITNESS 1: It is on the – it is the last line of the log
10 sheet. It was the 24/06/19 when I made a note, that white Polo, that is when I was followed by the white Polo.

ADV PRETORIUS SC: Is that in the bottom left hand corner? You have got White P there.

WITNESS 1: That is correct, Chair.

ADV PRETORIUS SC: And the next ...[intervenes]

CHAIRPERSON: I am sorry. The note you made does not say you were followed by a car but you made a note that – I do not know if there is VTH and then TE and then P. Is that the note you are referring to?

20 **WITNESS 1:** Yes, Chair.

CHAIRPERSON: That seems to me like a code, code language for something or an abbreviation. Is it VTH and if it is, what does it represent? Of course, if it represents – well, if you are able to say without...

WITNESS 1: Chair, I wrote White P, meaning the white

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Polo.

CHAIRPERSON: Oh, that is white P.

WITNESS 1: Yes.

CHAIRPERSON: Oh, okay. And what does P represent?

WITNESS 1: Polo, a Polo, a white Polo.

CHAIRPERSON: Oh, did you make that – did you write that on the same day?

WITNESS 1: Yes. When I got home, I wrote that on the same day and then I then informed my superiors and also
10 the Zondo Commission investigators.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And then the third instance of being followed, is that paragraph 60 and following? Is that another occasion on which you concluded that you had been followed as you described in your statement?

WITNESS 1: That is correct Chair.

ADV PRETORIUS SC: Alright, let's go to W124, that's on page 73, it's not very clear but what is this picture that we see on page 23?

20 **WITNESS 1:** That is the picture of the Polo that followed me that day, I managed to take a pic of it.

ADV PRETORIUS SC: Yes and on page 75, what is that?

WITNESS 1: Yes it is a picture of the same car that followed me.

ADV PRETORIUS SC: Yes, but it seems, and did you

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take these – how did you take these pictures?

WITNESS 1: The car, I took the pictures, I was driving on the far extreme lane and the car was behind me. What I did when we approached the traffic lights I quickly swerved and moved, to the middle lane and the guy was forced to drive past me, and I slowed down and quickly took a pic of the car, and the two occupants they turned and looked at me and then I just, and then I drove off when they turned, I proceeded straight.

- 10 **CHAIRPERSON:** When I look at the picture at page 75 it looks as if to me there was somebody or there were two people, I don't know whether appearing through the roof of the car, protruding through the roof of the car, that's not what happened is that right.

WITNESS 1: Yes Chair there were two occupants in the car, driver and the other person, the passenger.

CHAIRPERSON: But they were seated in the car, they were not, you could not see them as if they used the sunroof to appear through the roof of the car?

- 20 **WITNESS 1:** No they didn't use the sunroof, that other person was standing across, he was standing on the road, he wasn't out on the – ja.

CHAIRPERSON: Oh, okay, alright.

ADV PRETORIUS SC: Right, at paragraph 65 and following you relate precautions taken for your own safety,

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these incidents that you have referred to did you report them?

WITNESS 1: Paragraph 65, let me just go there.

ADV PRETORIUS SC: Paragraph 65 and following.

WITNESS 1: In regards the drugs received.

ADV PRETORIUS SC: Well let me just put the question to you like this, since these incidents occurred have you taken any precautions in regard to your safety?

WITNESS 1: Yes, I have Chair.

10 ADV PRETORIUS SC: And do you relate these and your security concerns on pages 18, 19 and 20.

WITNESS 1: Yes Chair.

ADV PRETORIUS SC: Those have been fully canvassed in the application for you to give evidence in the manner you have today.

WITNESS 1: Yes Chair.

ADV PRETORIUS SC: Is there anything else you wish to add, that I may have missed?

WITNESS 1: No Chair.

20 ADV PRETORIUS SC: Thank you Chair that is the evidence.

CHAIRPERSON: Thank you very much witness one for your evidence we appreciate that you have made yourself available to assist the Commission, even when there may have been threats to your safety and that of your family,

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we appreciate that you made yourself available, thank you very much.

WITNESS 1: You are welcome Chair.

CHAIRPERSON: Yes, you are excused for purposes of these proceedings, thank you very much. Mr Pretorius?

ADV PRETORIUS SC: Thank you witness one. Chair may we call then witness number two.

CHAIRPERSON: Yes, you may call him.

ADV PRETORIUS SC: We will take a minute or so to clear
10 the hearing venue and to bring witness number two in to the room.

CHAIRPERSON: I wonder whether we should take a five minutes break while that is done.

ADV PRETORIUS SC: Sure, thank you Chair.

CHAIRPERSON: We will take a five minutes adjournment.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Yes, let's continue.

ADV PRETORIUS SC: Thank you Chair, may we call witness number 2?

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Yes, witness number 2 can you

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hear me?

WITNESS 2: Yes I can Chair.

ADV PRETORIUS SC: Right, you have in front of you a pile of documents marked Exhibit BB14b. Is that correct?

WITNESS 2: Yes, Chair.

ADV PRETORIUS SC: Would you go to page 80 and I am referring to the numbers in the top left hand corner, the black numbers.

WITNESS 2: Yes, same page.

10 **ADV PRETORIUS SC:** Do you recognise this document?

WITNESS 2: Yes, I do.

ADV PRETORIUS SC: Is this an affidavit that you attested to?

WITNESS 2: Yes, Chair.

ADV PRETORIUS SC: If you go perhaps to page 92 you will see that there is a space for a signature which appears to have been redacted or blacked out. Do you recall signing this affidavit?

WITNESS 2: Yes, I can recall.

20 **ADV PRETORIUS SC:** Subject to any corrections we may have to make and subject to certain deletions or redactions are the contents of this affidavit as far as you are aware true and correct?

WITNESS 2: They are true Chair.

ADV PRETORIUS SC: Right. Chair may we then admit

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this affidavit and its annexures as Exhibit BB14b?

CHAIRPERSON: The affidavit of witness 2 appearing at page 80 – from page 80 to page 93 in bundle Transnet 1 is admitted and will be Exhibit 14b. Is that right?

ADV PRETORIUS SC: 14b, BB14b.

CHAIRPERSON: Oh, Exhibit BB14b?

ADV PRETORIUS SC: Correct Chair, thank you.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: Witness number 2 are you
10 employed as a security officer in the Transnet Group?

WITNESS 2: Correct Chair.

ADV PRETORIUS SC: There was a break in your employments and we may talk about that later. But were you previous employed as a close protection officer and personal driver in the Transnet Group?

WITNESS 2: Correct Chair.

ADV PRETORIUS SC: Who did you protect and drive for?

WITNESS 2: Mr Siyabonga Gama.

ADV PRETORIUS SC: You broke up there slightly
20 Siyabonga who?

WITNESS 2: Gama.

ADV PRETORIUS SC: Gama, thank you. And what office did Mr Gama hold at the time?

WITNESS 2: It was the Parktown office which is Transnet Freight Rail before he assumed the groups CEO's



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position.

ADV PRETORIUS SC: And then did you later also act as his CPO and driver when he had left Transnet Freight Rail and joined Transnet?

WITNESS 2: Yes, correct.

ADV PRETORIUS SC: And in what capacity was he employed at Transnet when you served him?

WITNESS 2: As a group CEO.

CHAIRPERSON: Did he occupy a different position at
10 some stage while you were his close protector prior to being the group CEO?

WITNESS 2: Yes, Chair he was just a CEO for the TFR division which is Transnet Freight Rail.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Do you have qualifications as a close protection officer and are you trained in that profession?

WITNESS 2: Correct Chair.

ADV PRETORIUS SC: What were your duties in providing
20 CPO services to Mr Gama?

WITNESS 2: It was in the capacity of protecting him in person and any related and official matters including driving him from point A to point B and vis-a-vie.

ADV PRETORIUS SC: Did you do this on a daily basis?

WITNESS 2: Yes, Chair.

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ADV PRETORIUS SC: And did you...[intervenes]

WITNESS 2: But...[intervenes]

ADV PRETORIUS SC: I am sorry I interrupted you.

WITNESS 2: As the team grew there would be alternation where sometimes when you are not on duty you conducting administration work or you are on a day off.

ADV PRETORIUS SC: And would someone stand in for you on those days?

WITNESS 2: Yes, correct.

10 **ADV PRETORIUS SC:** And did you ever transport Mr Gama on private trips?

WITNESS 2: Can you please repeat Chair?

ADV PRETORIUS SC: Did you ever transport Mr Gama on private trips?

WITNESS 2: Yes, I did.

ADV PRETORIUS SC: Did you have any responsibility in regard to the maintenance of Mr Gama's private vehicles?

WITNESS 2: Correct.

ADV PRETORIUS SC: What were those

20 **WITNESS 2:** Maintenance that included making sure that they go for regular services on due dates and making sure that they are kept clean and just general maintenance and keeping up with the day to day running of a vehicle.

ADV PRETORIUS SC: Over the period that you served Mr Gama do you know which vehicles he used?

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WITNESS 2: Correct.

ADV PRETORIUS SC: What were those vehicles?

WITNESS 2: There was a BMW S56V, a Mercedes S500, a Mercedes S65, a Range Rover Evoque and lastly a Mercedes Benz SL63.

ADV PRETORIUS SC: Did you have an occasion to photograph any of these vehicles?

WITNESS 2: Yes, Chair.

ADV PRETORIUS SC: Look at page 95 if you would.

10 **WITNESS 2:** Confirmed about page 85.

ADV PRETORIUS SC: What is that picture?

WITNESS 2: It is a picture of a Range Rover Evoque.

ADV PRETORIUS SC: Right, Mr Gama's is it? As you say in paragraph 9.2.

WITNESS 2: Yes, Chair.

ADV PRETORIUS SC: And then page 97?

WITNESS 2: Correct.

20 **CHAIRPERSON:** Okay I think let us clarify that the picture of a car that appears at page 95 witness 2 whose car was that taken a picture of there?

ADV PRETORIUS SC: Witness number 2 the picture shown on page 95 whose car is shown there?

WITNESS 2: That is the Range Evoque that belong to Mr Gama.

ADV PRETORIUS SC: Okay you broke up there the Range

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Rover Evoque, is that correct?

WITNESS 2: Range Rover Evoque, yes.

ADV PRETORIUS SC: Is that the same as the Range Rover sport?

WITNESS 2: No it is not the same as the Range Rover sport it is a Evoque.

ADV PRETORIUS SC: Alright because if you look at paragraph 9.4.2.

WITNESS 2: Yes.

10 **ADV PRETORIUS SC:** The vehicle described there is a Range Rover sport, must that be corrected?

WITNESS 2: That needs to be corrected a Range Rover sport is different from a Range Rover Evoque.

ADV PRETORIUS SC: Okay. How do you spell that word is it evoke or vogue?

WITNESS 2: Evoque, V.O.Q.U.E.

ADV PRETORIUS SC: Alright. In any event to whom did that car belong?

WITNESS 2: To Mr Gama.

20 **ADV PRETORIUS SC:** Alright and was that a fully armoured vehicle?

WITNESS 2: It was a fully armoured vehicle.

ADV PRETORIUS SC: Let us go to page 97 if we may briefly, what is shown there?

WITNESS 2: I am on page 97.



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ADV PRETORIUS SC: Yes, what do we see there in that picture?

WITNESS 2: A Mercedes SL63.

ADV PRETORIUS SC: To whom did that belong?

WITNESS 2: To Mr Gama.

ADV PRETORIUS SC: Okay, right let us go to paragraph 9.5 there you list some other vehicles. Just tell us the names of those vehicles please?

WITNESS 2: The BMW X5, The Range Rover
10 Evoque...[Intervenues]

ADV PRETORIUS SC: Sorry we – para 9.5 on page 83.

WITNESS 2: 9.?

ADV PRETORIUS SC: 9.5 on page 83 you list further other vehicles.

WITNESS 2: The Land Rover Discovery.

ADV PRETORIUS SC: Right.

WITNESS 2: That was the vehicle that we used in the early days I joined in...[intervenues]

ADV PRETORIUS SC: Alright we do not have to give the
20 life history of each vehicle let us just name the vehicles if you would please.

WITNESS 2: The Land Rover Discovery, a Lexus 4x4, a Lexus Sedan, a BMW 320 and lastly a Mini Cooper.

ADV PRETORIUS SC: Right did you keep a log book of daily trips undertaken by Mr Gama?



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WITNESS 2: I did not.

ADV PRETORIUS SC: Why not?

WITNESS 2: Because these were private vehicles.

ADV PRETORIUS SC: In paragraph 10 you talk of occasions where you transported Mr Gama. Tell the Chair of these occasions please. How many occasions and where did you transport Mr Gama?

WITNESS 2: The trips we made it were to Saxonwold on number 1 Saxon 5 which later I was aware that it was
10 the Gupta's residence.

ADV PRETORIUS SC: How many occasions did you transport Mr Gama there as you recall?

WITNESS 2: If my memory serves me well, I had three trips or four.

ADV PRETORIUS SC: Okay so three or four trips?

WITNESS 2: Yes.

ADV PRETORIUS SC: Okay and were these trips recorded in a diary?

WITNESS 2: They were never recorded in a diary.

20 **ADV PRETORIUS SC:** And when you arrived at the Gupta residence in Saxonwold what would happen?

WITNESS 2: I would drop him off and get a parking space and sit in the vehicle.

ADV PRETORIUS SC: Right.

WITNESS 2: Whilst I wait for him.

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ADV PRETORIUS SC: Whilst waiting for him in the parking area on the occasions you have referred to, did you have an occasion to see anyone else, an official of Transnet?

WITNESS 2: Yes.

ADV PRETORIUS SC: Who was that?

WITNESS 2: I have, Mr Brian Molefe.

ADV PRETORIUS SC: Anyone else?

WITNESS 2: That was one occasion and also Mr Thami Jiyane on a different visit.

ADV PRETORIUS SC: Mr Thami Jiyane?

WITNESS 2: Yes, Chair.

ADV PRETORIUS SC: His first name what is his full first name?

WITNESS 2: Thamsanqa Jiyane.

ADV PRETORIUS SC: Did Mr Jiyane ever make a remark to you that you connected with his visits?

WITNESS 2: Yes, he once made a remark to me and mentioned that I am exposed to the shady stuff that they do in Zulu though.

ADV PRETORIUS SC: Okay do you recall the Zulu words the Chair is an expert.

CHAIRPERSON: Ja, just tell me what he said in eSiZulu?

WITNESS 2: [speaking in vernacular]...

CHAIRPERSON: Okay. It is similar to what has been



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translated there as shady stuff. It might not be exactly the same, it might have a wider meaning but I think for present purposes we can accept that that translation is not far from it.

ADV PRETORIUS SC: Good. In paragraph 14 witness number 2 you speak of an occasion where you as you have told the Chair observed Brian Molefe. Did he arrive on his own or was he driven there by anybody?

WITNESS 2: No he was on his own driving himself. ..

10 **ADV PRETORIUS SC:** What car was he driving can you recall?

WITNESS 2: An Audi S8.

ADV PRETORIUS SC: Right and do you know what position Mr Gama held at that time?

WITNESS 2: Yes, Mr Gama was assuming the position of a group CEO of Transnet.

ADV PRETORIUS SC: Of Transnet do you say?

WITNESS 2: Mr Gama, Mr Molefe was already at Eskom.

20 **ADV PRETORIUS SC:** Oh I see my apologies. Mr Molefe what position did he occupy at the time?

WITNESS 2: I assume a group CEO at Eskom.

ADV PRETORIUS SC: Alright. In paragraph 15 and following you relate an incident that occurred as you say during about November 2016 on an occasion related to a



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visit to the Gupta residence. Would you tell the Chair about that please?

WITNESS 2: On one occasion with the visits to the Gupta residence Mr Gama came to the vehicle and alerted me that somebody will approach me bringing something to me I must open up the back side of the vehicle and put it in there. A few minutes later which could have been ten minutes or so...[intervenes]

ADV PRETORIUS SC: Before you go on sorry - witness
10 number 2 - before you go on where had Mr Gama come from when he told you this?

WITNESS 2: From within the residence.

ADV PRETORIUS SC: Right continue please?

WITNESS 2: And in a space of about ten minutes a relative of the Gupta family walked right up to me as I was sitting in the vehicle and made contact with and handed me a suitcase that I placed in the boot of the vehicle.

ADV PRETORIUS SC: Are you able to describe from memory that suitcase?

20 **WITNESS 2:** I can try Chair but I – as I have a picture in my memory of it.

ADV PRETORIUS SC: Right please look at page 99.

WITNESS 2: I am on page 99.

ADV PRETORIUS SC: And what is that that you see in the picture?

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WITNESS 2: It is a travelling case.

ADV PRETORIUS SC: Right. And how does it relate?

WITNESS 2: It relates – its relation is similar to the one that I had received from this gentleman at the Gupta's residence. He handed me a similar case branded – with the brand Polo on it that I placed at the back of the car.

ADV PRETORIUS SC: Right. Did Mr Gama return from the residence at any stage?

WITNESS 2: Yes he did.

10 **ADV PRETORIUS SC:** Well before we get there. You say that Mr Gama came out of the residence, told you that you should expect a person who would be bringing a bag to you, that happened but after Mr Gama came out did, he go back into the residence or did he go any other place?

WITNESS 2: Yes he came out to alert me and then went back. Then the gentleman walked out.

ADV PRETORIUS SC: Right.

WITNESS 2: With yes.

ADV PRETORIUS SC: The gentleman walked out of the –
20 out of what place?

WITNESS 2: The residence.

ADV PRETORIUS SC: Right.

WITNESS 2: The front door of the residence.

ADV PRETORIUS SC: Right and had Mr Gama returned to the residence at that stage?

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WITNESS 2: Yes Chair.

ADV PRETORIUS SC: Did Mr Gama ultimately come out of the residence?

WITNESS 2: Yes.

ADV PRETORIUS SC: And what happened then?

WITNESS 2: And then we drove through to the corner of Grayston and Rivonia which is the Maslow Hotel.

ADV PRETORIUS SC: And what did you do then and what did Mr Gama do?

10 **WITNESS 2:** I dropped him off. I dropped him off at the entrance and a few minutes later Mr Tommy Jiyane [?] arrived and upon his arrival I walked in to check where they were positioned. They were sitting in the bar lounge within the Maslow Hotel and....

ADV PRETORIUS SC: I am sorry to interrupt you witness number 2. Let us just get the sequence right. You dropped Mr Gama at the entrance to the hotel, what did you do then?

WITNESS 2: And then I went back and sat inside the vehicle for a few minutes.

20 **ADV PRETORIUS SC:** Right and then what happened?

WITNESS 2: And then I spotted Mr Tommy Jiyane arriving and walking in. And then a few minutes later I followed by also making my way into the hotel.

ADV PRETORIUS SC: And what did you see in the hotel?

WITNESS 2: I spotted them sitting in the bar lounge having

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drinks.

ADV PRETORIUS SC: Right and a few minutes later what happened?

WITNESS 2: I was called by Mr Jiyane and he handed me his vehicle key when Mr Gama told me to transfer a suitcase to Mr Jiyane's vehicle.

ADV PRETORIUS SC: So Mr Gama gave you an instruction did he?

WITNESS 2: Yes he did.

10 **ADV PRETORIUS SC:** What was that instruction?

WITNESS 2: The instruction was me to transfer the suitcase into Mr Jiyane's vehicle.

ADV PRETORIUS SC: Right who gave you the suitcase? Can you recall?

WITNESS 2: The Gupta relative of..

ADV PRETORIUS SC: Yes. No I am talking about in the hotel now, in the Maslow Hotel. Can you recall who handed you the suitcase?

20 **WITNESS 2:** Well no-one handed me the suitcase. The suitcase was still in the Range Rover which is Mr Gama.

CHAIRPERSON: It was in the boot.

ADV PRETORIUS SC: Oh I see I am sorry. Thank you. Well what happened between you and Mr Jiyane then?

WITNESS 2: Mr Jiyane handed me his vehicle key so I can make the transfer of the suitcase.



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ADV PRETORIUS SC: Alright and you say the suitcase was still in the Range Rover of Mr Gama?

WITNESS 2: Yes.

ADV PRETORIUS SC: Yes I am sorry I confused you with my question. It is clear from your statement that that was ...

CHAIRPERSON: And the instruction was for you to take the suitcase from Mr Gama's car and take it where?

WITNESS 2: Into Mr Jiyane's car.

CHAIRPERSON: Okay.

10 **ADV PRETORIUS SC:** Right what did you do having received this instruction?

WITNESS 2: I – as instructed I went to the Range Rover and took the suitcase from the boot to Mr Jiyane's vehicle which was also parked closer to the entrance.

ADV PRETORIUS SC: Can you remember what vehicle it was?

WITNESS 2: It was a white Mercedes Benz GL Class.

ADV PRETORIUS SC: And what did you do with that suitcase?

20 **WITNESS 2:** I conducted an inspection and opened it up.

ADV PRETORIUS SC: What did you see in the suitcase?

WITNESS 2: Inside the suitcase there was stacked bundles of cash. The top layer contained R50.00 notes and R100.00 notes.

ADV PRETORIUS SC: Right. Was the bag full, half full,

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partly full can you give an estimate to the Chair please?

WITNESS 2: It was full – fully filled.

ADV PRETORIUS SC: Right. You inspected the suitcase. You noticed what the suitcase contained and you have described what it contained to the Chair, what did you do then?

WITNESS 2: I then zipped it up and placed it where I was instructed to, locked the vehicle and took back the key.

ADV PRETORIUS SC: Did you say anything to either Mr
10 Gama or Mr Jiyane in relation to what you had seen inside the suitcase?

WITNESS 2: No Chair.

ADV PRETORIUS SC: You go in your statement to describe certain incidents that took place at Melrose Arch. Would you tell the Chair about that please? Or about those incidents.

WITNESS 2: On the trips to the Melrose Arch we – I would transport Mr Gama on most occasions drop him off at the African Pride Hotel with an instruction that I must go to the residence part of Melrose Arch and meet a gentleman that I
20 somehow got acquainted to that handed me on one occasion a plastic bag.

ADV PRETORIUS SC: Alright we will come to the detail in a moment Witness number 2. This gentleman did you come to learn his name?

WITNESS 2: Yes.



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ADV PRETORIUS SC: What was his name?

WITNESS 2: I conducted my own finding only to confirm that it was the gentleman that was being mentioned in the news as Mr Essa.

ADV PRETORIUS SC: How do you spell that? How do you spell that name?

WITNESS 2: Essa would be E-s-s-a.

ADV PRETORIUS SC: Right. Would you look please at page 101?

10 **WITNESS 2:** I am on page 101.

ADV PRETORIUS SC: There is a photograph there who is that in the photograph?

WITNESS 2: It is the very same gentleman that I have identified as Mr Essa.

ADV PRETORIUS SC: Right is he the same person with whom you engaged at Melrose Arch?

WITNESS 2: Correct Chair.

ADV PRETORIUS SC: On the occasions that you are going to tell the Chair about now?

20 **WITNESS 2:** Correct.

ADV PRETORIUS SC: Right. You describe an incident that occurred on the 13 June 2017 would you tell the Chair about that incident please?

WITNESS 2: On the 13 June 2017 Mr Gama asked me to collect a parcel from Mr Essa at Melrose Apartments and

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thereafter once I have collected, he came up at the front door of the African Pride Hotel in Melrose Arch.

ADV PRETORIUS SC: Having received that instruction what did you do?

WITNESS 2: I drove to the apartment side parking and waited to receive the package. Upon Mr Essa walking towards me I met him at the back of the vehicle, opened up and received the package and stored it in the boot of the vehicle.

10 **ADV PRETORIUS SC:** Right. Please look at page 103?

CHAIRPERSON: I am on page 103.

ADV PRETORIUS SC: What do you see in that photograph?

WITNESS 2: A striped plastic bag.

ADV PRETORIUS SC: And how does that bag shown there relate to the story you are now telling us?

WITNESS 2: Correct Chair confirms and relates to the detail that I have just mentioned.

ADV PRETORIUS SC: Right. So the bag that Mr Essa brought to you is it similar to the bag depicted in the
20 photograph?

WITNESS 2: Correct.

ADV PRETORIUS SC: What did you do with the bag?

WITNESS 2: I placed it in the back compartment of the car which is the boot, secured it and drove towards the front of the hotel and picked up Mr Gama.

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ADV PRETORIUS SC: Right. Now did you stay with the vehicle for the next few hours?

WITNESS 2: Yes.

ADV PRETORIUS SC: Right. What happened after you had collected Mr Gama at the entrance of the hotel?

WITNESS 2: I transported Mr Gama to Bryanston.

ADV PRETORIUS SC: Right. Sorry I have just been alerted to the fact that you have described the person who handed the bag to you as Mr Essa. Can you recall his first name or
10 did you know his first name or do you know his first name?

WITNESS 2: Salim.

ADV PRETORIUS SC: Say that again please?

WITNESS 2: Salim.

ADV PRETORIUS SC: Salim. Okay let us go back to...

WITNESS 2: Yes Chair.

ADV PRETORIUS SC: I am sorry. You wanted to say something I interrupted you.

WITNESS 2: No I was confirming the first name as Salim.

ADV PRETORIUS SC: Right thank you. Alright let us go on
20 with the events of that evening. You collected Mr Gama at the entrance of the hotel to which you have referred.

WITNESS 2: Yes.

ADV PRETORIUS SC: Let us just look at annexure W2 06 we can – page 105. What do we see here?

WITNESS 2: We see a timeline that was captured by my

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movements through Google Map.

ADV PRETORIUS SC: And captured on what device?

WITNESS 2: A cell phone device.

ADV PRETORIUS SC: Yes. And in the middle of that page one sees Melrose Arch and a time?

WITNESS 2: Yes Chair.

ADV PRETORIUS SC: How do we interrupt those references? What do they mean?

WITNESS 2: The references confirm the detail that I have
10 just given.

ADV PRETORIUS SC: Okay.

WITNESS 2: To the commission.

ADV PRETORIUS SC: Right. So you collected Mr Gama what happened then?

WITNESS 2: I collected Mr Gama and then we proceeded to Bryanston.

ADV PRETORIUS SC: Right and at Bryanston did you meet a person?

WITNESS 2: Yes a close friend of his.

20 **ADV PRETORIUS SC:** Right. And if one looks at W2 06 what do you see there on page 105? Am I correct?

WITNESS 2: Yes Chair.

ADV PRETORIUS SC: What does that show you page 105?

WITNESS 2: It shows me a pattern of my movements.

ADV PRETORIUS SC: Sorry let us go to 106 we have been

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to 105.

WITNESS 2: Yes.

ADV PRETORIUS SC: Let us go to page 106 what do we see there?

WITNESS 2: That was the 13 June 2017.

ADV PRETORIUS SC: Yes and in the shaded area two thirds the way down the page.

WITNESS 2: Yes.

ADV PRETORIUS SC: There appears to be an address,
10 what place was that?

WITNESS 2: That was the residence in Bryanston, Sandton.

ADV PRETORIUS SC: Right. The address to which you drove?

WITNESS 2: Yes Chair.

ADV PRETORIUS SC: The exact address? Oh, I see yes at the bottom of the page.

WITNESS 2: Correct.

ADV PRETORIUS SC: Right. Let us just go back to paragraph 25. I understand your records confirm that you
20 went from Melrose Arch to an address – was it Sandton or Bryanston?

WITNESS 2: It is Bryanston.

ADV PRETORIUS SC: At the bottom of the page.

WITNESS 2: Yes it written as in Bryanston. I think it falls under the area Sandton. But it is Bryanston.

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ADV PRETORIUS SC: Yes okay good. Let us go to the next paragraph, paragraph 25. At this address in Bryanston, Sandton what happened?

WITNESS 2: After arriving at the residence, I waited in the vehicle for a few hours. At some point, Mr Gaba came out of the residence and asked me to open up the back of the vehicle and pull out the plastic bag that we had collected earlier. He opened it up and started the cash that was stacked inside ...[intervenes]

10 **ADV PRETORIUS SC:** Alright. Did you ...[intervenes]

WITNESS 2: ...cut it in half.

ADV PRETORIUS SC: I am sorry. Before you go on Witness 2. Did you see inside the bag?

WITNESS 2: Yes, as he opened it, I identified ...[intervenes]

ADV PRETORIUS SC: Do you remember the denomination or did you notice the denomination?

WITNESS 2: Yes, they were R 200,00 notes.

ADV PRETORIUS SC: And again, was the bag half-full, complete full?

20 **WITNESS 2:** It was a quarter full.

ADV PRETORIUS SC: A quarter full? Right.

WITNESS 2: Yes.

ADV PRETORIUS SC: And what did you observe or what did you do when the bag had been opened?

WITNESS 2: I observed him splitting the cash into two, half-

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half, calculating it in stacks and later handed me what I confirmed later when I got home, which was R 50 000,00 ...[intervenes]

ADV PRETORIUS SC: During this ...[intervenes]

WITNESS 2: ...that he ...[intervenes]

ADV PRETORIUS SC: I am sorry, Witness 2. During this process, were you able to estimate how much money was in the bag?

WITNESS 2: I presume it could have been a million rand.

10 **ADV PRETORIUS SC:** Alright. And how did you calculate or conclude that it was a million rand approximately?

WITNESS 2: Because he... because in the calculation when he was putting the stacks and dividing them, I kind of assisted him ...[intervenes]

ADV PRETORIUS SC: Thank you.

WITNESS 2: ...in the calculation.

ADV PRETORIUS SC: Alright. What did he do with the money that was left over after giving you the R 50 000,00?

WITNESS 2: He handed me ...[intervenes]

20 **CHAIRPERSON:** I am sorry Mr Pretorius and Witness 2. Why did he give you R 50 000,00? Did he say why he was giving you that money?

WITNESS 2: He never specifically said. He just gave it to me. I assumed it was just thank you.

CHAIRPERSON: It was ...[intervenes]

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WITNESS 2: Or ...[intervenes]

CHAIRPERSON: Was it... it was not money that he was going to ask you to give back to him at any stage?

WITNESS 2: No, Chair.

CHAIRPERSON: Did you... was your understanding that he was just giving you the money for you to use it as you so fit?

WITNESS 2: Can you please repeat Chair?

CHAIRPERSON: Was it your understanding that he was giving you the money so that it would be your money which
10 you could use as you so fit?

WITNESS 2: That was my understanding Chair.

CHAIRPERSON: He did not say anything in particular about the purpose of the R 50 000,00, did he?

WITNESS 2: He did not give an instruction. So he just handed it to me and I thanked him.

CHAIRPERSON: And he never asked for it back?

WITNESS 2: Never Chair.

CHAIRPERSON: Okay alright. Yes, you may continue Mr Pretorius.

20 **ADV PRETORIUS SC:** You say, Witness 2, that he divided the money and he gave you R 50 000,00. What happened to the one million rand, approximately, that had been divided?

WITNESS 2: What... he placed it in a sports bag and took it back into the residence and the rest, the remainder, we took it with to his residence in Kyalami, Midrand.

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ADV PRETORIUS SC: What did you do with the money that was given to you?

WITNESS 2: I used it for myself or the project of building.

ADV PRETORIUS SC: Right. What were you building?

WITNESS 2: I was building my residence.

ADV PRETORIUS SC: Alright. At the bottom of page 86 ...[intervenes]

CHAIRPERSON: One second Mr Pretorius. After you... after Mr Gama had given you that money, R 50 000,00. Did
10 you keep it as cash without putting it into your bank account or did you first put it into your bank account before you used it?

WITNESS 2: I never placed... I did not put it in my account Chair. I used it as I was in the process of building my residence. So it was cash on hand.

CHAIRPERSON: Okay alright. So you used it as cash until it was finished?

WITNESS 2: Yes, Chair.

CHAIRPERSON: Yes, okay.

20 **ADV PRETORIUS SC:** Good. Witness 2, on page 86, at the bottom of the page, paragraph 27, you relate another incident that you say occurred on the 13th of July 2017. What happened on that occasion?

WITNESS 2: On that occasion, it was the same *modus operandi* of me dropping him off at the hotel, driving to the

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apartments and parking at the residence parking and receiving the package from Mr Essa.

ADV PRETORIUS SC: Alright. What did this package look like?

WITNESS 2: It was a wrapped plastic bag.

ADV PRETORIUS SC: Right. Different or similar to the one that you described earlier.

WITNESS 2: No, it was not of that magnitude.

ADV PRETORIUS SC: Not as big?

10 **WITNESS 2:** It could have been a carry bag with a stack of notes and folded.

ADV PRETORIUS SC: Right. So you went to... with Mr Gama to Melrose Arch, did you?

WITNESS 2: Yes, I did Chair.

ADV PRETORIUS SC: And did you meet anyone together with Mr Gama in Melrose Arch?

WITNESS 2: I dropped him off at ...[indistinct] [distortion present] He went into the hotel.

ADV PRETORIUS SC: Alright?

20 **WITNESS 2:** His instruction(?) [distortion present] was, I must go to the residence's parking area.

ADV PRETORIUS SC: Right?

WITNESS 2: And Mr Essa will come to me.

ADV PRETORIUS SC: And did that happen?

WITNESS 2: That transpired Chair.

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ADV PRETORIUS SC: Was Mr Essa alone or he was accompanied by anyone?

WITNESS 2: He was always alone.

ADV PRETORIUS SC: Right. I am just a little confused as to the sequence of events. You say that Mr Gama went into the hotel?

WITNESS 2: Yes, I dropped him off at the front entrance of the hotel ...[intervenes]

ADV PRETORIUS SC: And when mister ...[intervenes]

10 **WITNESS 2:** ...he went inside.

ADV PRETORIUS SC: And did Mr Essa come to meet you?

WITNESS 2: I drove up, say ...[indistinct] [distortion present] metres because the main(?) entrance, it is part of the same building of the hotel.

ADV PRETORIUS SC: Alright. Because I must point out to you ...[intervenes]

WITNESS 2: Perhaps(?) there is ...[intervenes] [distortion present]

ADV PRETORIUS SC: In paragraph 27, you say:

20 "Approximately in 30-minutes later, Gama walking with Essa returned with the plastic bag..."

It seems to differ from what you are saying now. I know it is a detail but what was the position?

WITNESS 2: [No audible reply]

ADV PRETORIUS SC: Have a look at paragraph 27.

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WITNESS 2: That was one of the events that took place. I maybe... I may have mixed the occasions. Just to correct. Yes, the statement is correct. On one occasion, he had walked into the apartments and walked out with Mr Essa.

ADV PRETORIUS SC: Right. And on the particular occasion that we are talking about on the 13th of July, what happened after Mr Gama and Mr Essa came out of the residence or the apartment?

WITNESS 2: They walked out together(?) [distortion present] and he came out with a plastic bag that was folded. I had to open the boot and it was placed at the back of the car. And ...[intervenes]

ADV PRETORIUS SC: Where did you ...[intervenes]

WITNESS 2: ...after we ...[indistinct] [distortion present]

ADV PRETORIUS SC: Right. The plastic bag, you say, was put in the boot of the vehicle. What did you do then?

WITNESS 2: We drove through to ...[indistinct] [distortion present] Went into that particular address and we proceeded into that residence.

ADV PRETORIUS SC: That was the residence in Sandhurst, you say?

WITNESS 2: In Sandhurst, yes.

ADV PRETORIUS SC: Yes. Okay and who went into the residence at that address?

WITNESS 2: Yes.

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ADV PRETORIUS SC: Who went inside?

WITNESS 2: Mr Gama.

ADV PRETORIUS SC: And where were you?

WITNESS 2: I remained with the vehicle.

ADV PRETORIUS SC: And did you do anything whilst you were waiting at the vehicle?

WITNESS 2: Yes, I inspected... I conducted an inspection and confirmed what was in the plastic bag.

ADV PRETORIUS SC: Alright. What did you see in the
10 plastic bag?

WITNESS 2: There was a stack of R 200,00 notes.

ADV PRETORIUS SC: Right. Were you able to estimate approximately how much was contained in that plastic bag?

WITNESS 2: I would not want to... I am not sure how much it was but it was not less than a hundred thousand.

ADV PRETORIUS SC: Alright. Okay let us go to paragraph 29, where you refer to certain records which appeared to be a printout of Google Maps. WU207 on page 108. What is depicted here?

20 **WITNESS 2:** It is the top line from Google Map confirming the detail that I had just mentioned.

ADV PRETORIUS SC: The date at the top of the page is 13 July 2017 and there are certain records which appear beneath that. Where does this picture come from?

WITNESS 2: It comes from the record within my old fault

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device.

ADV PRETORIUS SC: Right. Your cell phone, is that right?

WITNESS 2: Correct Chair.

ADV PRETORIUS SC: Okay and what does it tell us? Just briefly.

WITNESS 2: It tells of the timelines, the events that I just mentioned.

ADV PRETORIUS SC: Alright. It shows Melrose Arch and then in the shaded part an address.

10 **WITNESS 2:** Yes.

ADV PRETORIUS SC: And is that address close to the residence you visited or Mr Gama visited?

WITNESS 2: Yes.

ADV PRETORIUS SC: Okay.

WITNESS 2: Yes, Chair.

ADV PRETORIUS SC: Were you ever accused of any acts in relations to money that ...[intervenes]

WITNESS 2: I was Chair.

ADV PRETORIUS SC: What was the accusation?

20 **WITNESS 2:** It came to my attention at a later stage that he mentioned to my senior managers that I stole money from him.

ADV PRETORIUS SC: Right. You refer at the bottom of page 87 to two other occasions where you say you discovered cash. What were those events? Will you please

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tell the Chair?

WITNESS 2: One event, it was when I would conduct the maintenance of the vehicles at his residence in Midrand. I discovered two hundred notes, R 200,00 notes in one of the vehicles in the back boot.

And on another ...[intervenes]

ADV PRETORIUS SC: Alright. Just before you go on, you say in the back boot.

WITNESS 2: Yes.

10 **ADV PRETORIUS SC:** Was it just laying in the boot? Has it... had it been concealed? What did you see?

WITNESS 2: One, it was concealed in the spare wheel component.

ADV PRETORIUS SC: Right. And what vehicle was this?

WITNESS 2: An SL 63.

ADV PRETORIUS SC: And just tell the Chair again. What did you find in the spare wheel compartment?

WITNESS 2: R 200,00 notes.

20 **ADV PRETORIUS SC:** Can you estimate from memory how much was contained in that spare wheel compartment on that occasion?

WITNESS 2: It was nothing more than hundred thousand.

ADV PRETORIUS SC: Alright. Was there any other occasion?

CHAIRPERSON: I am sorry. You intend saying nothing

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more or do you intend saying nothing less than hundred thousand? You said nothing more.

WITNESS 2: I would assume it was not more than hundred thousand.

CHAIRPERSON: Okay thank you.

ADV PRETORIUS SC: You relate another incident in paragraph 36 that apparently occurred on the 20th of April 2017. What happened on that occasion.

WITNESS 2: There was an official meeting in Centurion that
10 was initiated by the former office of the minister then. And there were SOE's, CEO's. And upon arrival, I dropped him off, made sure that he was secured, went and parked the car, conducted an inspection and I discovered in the back of the Range Rover in a red medical kit bag that there were R 200,00 as well.

ADV PRETORIUS SC: Can you estimate once more, please? Approximately how much you saw on that occasion?

WITNESS 2: Again, a hundred thousand.

ADV PRETORIUS SC: You relate some further incidents
20 on page 88 in paragraph 40 and following. What happened on that occasion? You say sometime during June 2016. But before we go there perhaps for completeness sake would you look at W209?

WITNESS 2: Yes.

ADV PRETORIUS SC: At page 112. There appears what

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appears to be a similar printout of Google Maps or a map application, am I correct? Page 112?

WITNESS 2: Yes, Chair, on 112.

ADV PRETORIUS SC: Under the date 20 April 2017.

WITNESS 2: Yes.

ADV PRETORIUS SC: What does that printout tell us?

WITNESS 2: It tells us and confirms what I have just mentioned, it is a printout of the timeline.

ADV PRETORIUS SC: Right, that you were in Centurion
10 at a stage?

WITNESS 2: Yes.

ADV PRETORIUS SC: Alright. Let us go on to the incident referred to in paragraph 40 and following. What happened on that occasion?

WITNESS 2: On that particular occasion we were – head back to his residence after work and we stopped at the entrance of Beaulieu College which is situated in Midrand, Kyalami. And we met up with Mr Jiyane there who handed a box that can occupy two to four bottles of wine that was
20 sealed with Sellotape. He handed that box to Mr Gama. I put it at the back of the vehicle.

ADV PRETORIUS SC: Right. From what you saw – and I stress from what you saw, could you tell what was contained in the box? And I stress from what you saw.

WITNESS 2: What I saw, it was a box. As I mentioned,

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that was made for wine but upon feeling it, with the weight, it did not contain wine.

ADV PRETORIUS SC: Did you see what it did contain?

WITNESS 2: No, I did not see but I can confirm that the packaging could have been of paper or notes and also based on the conversation I overheard that it had to be transferred or given to somebody over the weekend.

ADV PRETORIUS SC: Alright. I think we should be clear here, witness 2, you did not see what was in the box.

10 **WITNESS 2:** Correct.

ADV PRETORIUS SC: You concluded from what you heard at the time and from what the box felt like, particularly its weight, that it might contain paper or paper notes. Do I understand you correctly?

WITNESS 2: Correct, Chair.

ADV PRETORIUS SC: What was the conversation that drew you to that conclusion?

WITNESS 2: I picked up from the coding or code dialect between him and the other person on the other hand that
20 transaction had to be confirmed and the content that was within the box had to be given to that person by weekend.

ADV PRETORIUS SC: Let us go on then to the incident described in paragraph 42 and following. What happened during the course of that incident?

WITNESS 2: I went to the residence in Midrand and

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collected a Mercedes Benz, S65 of the premises which was a loan from a dealership for that specific week or weekend.

ADV PRETORIUS SC: What happened?

WITNESS 2: I proceeded to Woodmead Centre and met up with a former colleague.

ADV PRETORIUS SC: Colleague of whom?

WITNESS 2: Excuse me, Chair?

ADV PRETORIUS SC: You say you met up with a former colleague.

10 **WITNESS 2:** Yes.

ADV PRETORIUS SC: And colleague of who? Whose colleague?

WITNESS 2: My colleague, a former colleague in the line of work.

ADV PRETORIUS SC: Right.

WITNESS 2: The colleague had a close associate or friend of Mr Gama's that had to be transferred into the Mercedes Benz that I was driving with an instruction that I had to meet up with Mr Gama whom I had left in the office.

20 The instruction was to meet up on the N17 highway.

ADV PRETORIUS SC: Did you travel to the N17 highway with the colleague or associate of Mr Gama?

WITNESS 2: Yes, I travelled with the associate of Mr Gama.

ADV PRETORIUS SC: Right. And what happened, did

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you go to the N17 highway?

WITNESS 2: Yes, we met up just past the first tollgate as you enter N17 from November 3.

ADV PRETORIUS SC: Right. And what happened on the highway?

WITNESS 2: There was Mr Jiyade that also was present. I handed over the vehicle to Mr Gama whom was dropped off by a colleague of mine as well and I handed the car over to him. Mr Jiyade walked from his vehicle with a
10 package that he handed to Mr Gama.

ADV PRETORIUS SC: Again, did you have an occasion to observe what was in this package?

WITNESS 2: No, Chair.

ADV PRETORIUS SC: Because you say in your statement – well, let me not lead you on this. Did you observe anything or did you make any conclusions? If you drew any conclusions please tell the Chair what conclusions and why you drew them?

WITNESS 2: As per the norm it came to my attention or I
20 was aware that Mr Gama was on a weekend away and as per the norm and with the previous – on previous occasions that I had experienced, I concluded that it was a packet of cash notes.

ADV PRETORIUS SC: So from the circumstances and your experience that was your conclusion but did you see

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anything in that packet or package?

WITNESS 2: The content that was inside, I did not see.

ADV PRETORIUS SC: Right. Was there anything else that led you to that conclusion that occurred at the time?

WITNESS 2: As I mentioned, Chair, that through experience and norm, that is where I could draw my conclusion from.

ADV PRETORIUS SC: On page 90, witness 2, you deal with the current breakdown in the relationship between
10 yourself and Mr Gama. Would you tell the Chair please briefly what happened in this regard?

WITNESS 2: The relationship became strained because I could not execute instructions from a third party that was an associate of Mr Gama which he was not happy about and subsequently it ended up me being accused of witchcraft.

ADV PRETORIUS SC: Witchcraft in what sense? What was the content of the accusation?

WITNESS 2: Yes, supposedly there was a video where I
20 was picked up sprinkling something in the residence in Bryanston of which that video has never surfaced to this day.

ADV PRETORIUS SC: Right. Is it correct that you sprinkled a substance in and around the residence of Mr Gama?

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WITNESS 2: No, Chair.

ADV PRETORIUS SC: What happened after you had been accused of this action?

WITNESS 2: With the accusations piling up and victimisation that took place I resorted to exit out by resigning but that was somehow rejected and a case was put together and somehow there was a dismissal in fabrication, I guess, because I never attended or responded at the action.

10 **ADV PRETORIUS SC:** You say you took steps to resign from Transnet?

WITNESS 2: Yes.

ADV PRETORIUS SC: When was that?

WITNESS 2: That was 2017 in November.

ADV PRETORIUS SC: Right. And you say that you were then learnt of disciplinary proceedings that had been conducted. Obviously, they were conducted in your absence, am I correct?

WITNESS 2: Correct, Chair.

20 **ADV PRETORIUS SC:** And what was the outcome of those disciplinary proceedings?

WITNESS 2: A dismissal.

ADV PRETORIUS SC: Did you subsequently approach Transnet about this "dismissal"?

WITNESS 2: Right, Chair.

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ADV PRETORIUS SC: What was the outcome of your approach to Transnet?

WITNESS 2: An investigation was conducted and the outcome yielded results that were in my favour by reinstatement.

ADV PRETORIUS SC: Right, so it must have been considered that you had been unfairly dismissed and you were reinstated, am I correct?

WITNESS 2: Correct, Chair.

10 **ADV PRETORIUS SC:** You go on in your affidavit at page 91 and 92 to set out your concerns about your personal security. Did you believe that your personal security was under threat?

WITNESS 2: Right, Chair, to this day that has been confirmed with a few events since my departure in 2017 and after my reinstatement. There has been a few occasions where I have experienced incidents specifically soon after I left Transnet in 2017. On two occasions I noticed drones by my residence. I have had text sent to
20 me threatening me since I have been back at Transnet being persuaded not to give evidence whether it be in this Commission or during my interview before I was reinstated.

ADV PRETORIUS SC: Right, were these threats directed directly to you or to someone else?

WITNESS 2: They were directed to me, Chair. I had

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reported them even with the security cluster which is SAPS and on occasion information was leaked through Transnet after my interview with the institution and it leaked through a personal assistant to the former HR manager.

ADV PRETORIUS SC: Alright, I am just looking at your affidavit, witness 2, at page 91 and 92. You do not mention any threat there being made to you directly. Is there any reason for that?

WITNESS 2: Those were developments, Chair, that I
10 experienced a few weeks ago after I had made this statement.

ADV PRETORIUS SC: Right. Thank you, is there anything else you wish to tell the Chair that I have not covered?

WITNESS 2: Everything seems to be in order till this moment so I think all is in order.

ADV PRETORIUS SC: Thank you, witness 2. I do not have any further questions.

CHAIRPERSON: Thank you, Mr Pretorius. Thank you,
20 witness 2, thank you for coming to give evidence even within the circumstances that you have described in terms of safety, yourself and your colleagues, we appreciate that you decided that you wanted to come to the Commission and assist the Commission and tell it what you know and what you observed during those years. Thank you very

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much for coming to give evidence, we appreciate it. Thank you very much and you are excused.

WITNESS 2: Thank you, Chair.

CHAIRPERSON: You are ready for the third witness, witness 3?

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Ja, let us go ahead.

ADV PRETORIUS SC: May I assume that we are going to finish witness 3?

10 CHAIRPERSON: Yes, I think we ...[intervenes]

ADV PRETORIUS SC: I would ask that we do.

CHAIRPERSON: Ja, I think we should finish, ja.

ADV PRETORIUS SC: Thank you, if we might just take two minutes to make the arrangements for one witness to be moved out and the other to be moved in.

CHAIRPERSON: Ja, no that's five minutes adjournment.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

20 INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are we ready?

ADV PRETORIUS SC: Yes Chair, thank you. May we call witness number 3?

CHAIRPERSON: Yes.

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ADV PRETORIUS SC: Witness number 3 can you hear me? Hello witness number 3, can you hear me?

WITNESS 3: Yes, loud and clear.

ADV PRETORIUS SC: Good, you have a bundle of documents before you, marked Exhibit BB14C, am I correct?

WITNESS 3: That's correct.

ADV PRETORIUS SC: Would you go to page 115, I'm referring to the black numbers in the top left-hand corner
10 of the document.

WITNESS 3: Okay.

ADV PRETORIUS SC: Do you recognise that document?

WITNESS 3: Yes I do.

ADV PRETORIUS SC: Is it an affidavit?

WITNESS 3: Yes, it is.

ADV PRETORIUS SC: Is it your affidavit?

WITNESS 3: Yes Chair.

ADV PRETORIUS SC: Please go to page 132, there's a space for a signature at the bottom of that page which has
20 been redacted, do you recall signing this affidavit?
Witness number 3?

WITNESS 3: Yes, I recall signing it.

ADV PRETORIUS SC: You recall signing this affidavit?

WITNESS 3: That's correct.

ADV PRETORIUS SC: As far as you are aware, and

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subject to any corrections we might have to make and subject to any further redactions that we might have to make, are the contents of this affidavit true and correct?

WITNESS 3: Yes, they are a true reflection.

ADV PRETORIUS SC: Right, Chair, may this Exhibit be entered onto the record?

CHAIRPERSON: The affidavit of witness number 3 appearing at page 115 of Bundle Transnet 1 will be admitted and marked as Exhibit BB14C.

- 10 **ADV PRETORIUS SC:** Thank you Chair. Witness number 3 are you employed in a senior security position in the Transnet Group?

WITNESS 3: That's correct Chair.

ADV PRETORIUS SC: Right, on page 116 and 117 there's a table which shows your previous employment, I don't want to go into any detail there for reasons which we have made clear to the Chair but if we can go to paragraph 4, did you have some experience as an employee of South African Police Service?

- 20 **WITNESS 3:** That's correct Chair.

ADV PRETORIUS SC: And, were you, in fact, during 2004 a member of the VIP Protection Unit of the South African Police Service?

WITNESS 3: That's correct Chair.

ADV PRETORIUS SC: And you describe, in paragraph 6

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the duties of a Close Protection Officer, were you trained as a Close Protection Officer?

WITNESS 3: That's correct Chair.

ADV PRETORIUS SC: Briefly what are the duties of a Close Protection Officer?

WITNESS 3: Normally, I will be assigned to an Executive or a Minister in this regard for driving and making sure that he's personally safe.

ADV PRETORIUS SC: Yes, during 2005 were you
10 assigned as a Close Protection Officer to any particular Minister or Deputy Minister?

WITNESS 3: Yes, I was Chair.

ADV PRETORIUS SC: To whom were you assigned?

WITNESS 3: Then, Deputy Minister Gigaba.

ADV PRETORIUS SC: Right, during the period – well first, during which period were you assigned as a Close Protection Officer to Deputy Minister Gigaba?

WITNESS 3: Late 2004 until 2007, late.

ADV PRETORIUS SC: Okay, and did you ever have
20 occasion to accompany Deputy Minister Gigaba to any entity related to the Gupta family?

WITNESS 3: Yes, back then I accompanied him to the Sahara Business residence in Midrand.

ADV PRETORIUS SC: Right, when did you resign from the South African Police Services and as Close Protection

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Officer for Deputy Minister Gigaba?

WITNESS 3: 2008, as a VIP Protector.

ADV PRETORIUS SC: Right, how did you come to be involved with Deputy Minister Gigaba, could you just relate it please, you deal with that at paragraph 10 of your statement and following, you deal with your appointment at Transnet and your secondment to the Department of Public Enterprises?

WITNESS 3: In 2013, I was called by a Major from the
10 DPE at the Minister's office to come and have a meeting with him, the Manager and the Minister, regarding some position to – backup position at the Minister's entourage.

ADV PRETORIUS SC: Right, did you attend the meeting?

WITNESS 3: Yes, I did Chair.

ADV PRETORIUS SC: And what did you learn at that meeting?

WITNESS 3: I was told about the third level on the Minister's side and that we would be required to have – give support on a backup, on the main cover of the
20 Minister.

ADV PRETORIUS SC: Right, so you were required – it wasn't very clear, do I understand you correctly, you say, you would be required to provide close protection and vehicle backup duties?

WITNESS 3: That's correct Chair.

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ADV PRETORIUS SC: What does vehicle backup mean?

WITNESS 3: It means we would drive behind the main car.

ADV PRETORIUS SC: Okay, at that time, who were you employed by?

WITNESS 3: At that time, I was not employed.

ADV PRETORIUS SC: I'm sorry that didn't come through, just speak slowly please, you were employed by whom?

WITNESS 3: At that time of the meeting I was not
10 employed Chair.

ADV PRETORIUS SC: But, as I understand it, you were seconded after that meeting that you've just told the Chair about, to the Department of Public Enterprises, am I correct?

WITNESS 3: That's correct.

ADV PRETORIUS SC: And your duties were to perform close protection duties for Deputy Minister Gigaba and vehicle backup support, am I correct?

WITNESS 3: Ja but for the backup he was now a full
20 Minister for DPE.

CHAIRPERSON: I just want to clear up something, I thought Mr Pretorius asked whether you were seconded, and I thought you said yes but I thought you said you were not employed at the time of that meeting, is that correct? If you were seconded you would have been employed



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somewhere and then you were asked to go and work elsewhere but if you were unemployed at the time you would not be seconded. Were you employed at the time you received that call?

WITNESS 3: Chair when I received the call to come and have a meeting for this backup position, I was not employed.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Alright, so let's just summarise to
10 get it clear, perhaps the dates are not clear. When Mr Gigaba was the Deputy Minister of Home Affairs and you were assigned to act as his Close Protection Officer, I understand that to be during 2005, is that correct?

WITNESS 3: That's correct Chair.

ADV PRETORIUS SC: And it was after that and before our resignation from SAPS in 2008 that you, together with Deputy Minister Gigaba visited Sahara Computers in Midrand on a number of occasions, is that correct?

WITNESS 3: That's correct Chair.

20 **ADV PRETORIUS SC:** And then, you say in April 2013 you received a call from an official in the Department of Public Enterprises and you had the meeting with Mr Gigaba, who was then Minister for Public Enterprises, am I correct?

WITNESS 3: That's correct Chair.

ADV PRETORIUS SC: Alright and you took up that



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position as a backup driver as well as a Close Protection Officer, correct?

WITNESS 3: That's correct.

ADV PRETORIUS SC: And after July 2013 in serving Minister Gigaba as he was at that time, you were employed by the Department of Public Enterprises, is that correct?

WITNESS 3: I was at Transnet.

ADV PRETORIUS SC: Sorry, you say you were in Transnet at that time?

10 **WITNESS 3:** Yes, June 2013 I was employed by Transnet and July the 1st 2013 I was seconded then to the Minister of DPE.

ADV PRETORIUS SC: Alright, so in July 2013 you were employed by Transnet or at that time you were employed by Transnet, is that correct?

WITNESS 3: That's correct Chair.

ADV PRETORIUS SC: And then from the 1st of July you were employed by the Department of Public Enterprises in order to serve Minister Gigaba?

20 **WITNESS 3:** Yes, Chair I was employed for the services of Minister Gigaba.

CHAIRPERSON: There may be some confusion, as I understand you witness 3, you are saying as at the end of June you were employed by Transnet but with effect from the beginning of July you went to DPE, is that correct, or

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did I misunderstand you?

WITNESS 3: That's correct Chair.

CHAIRPERSON: Did you go to DPE on a secondment or did you end your employment with Transnet and started a new employment at DPE or are you not sure?

WITNESS 3: Thanks Chair, I was employed by Transnet and July 1st, I was seconded to DPE.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Yes, well it's clearly put in the
10 table that we didn't deal with, because it details your employment in a way that, perhaps, could identify you but let's look at page 116, witness number 3 there you see part of the table of your employment history. Could you go to item 3 on page 116 please, are you there witness number 3?

WITNESS 3: Yes Chair.

ADV PRETORIUS SC: It says there,

"Transnet, May 2013, security training course during first month,

20 Does that indicate that you were employed by Transnet in May 2013 and underwent a security training course?

WITNESS 3: Thank you Chair, it's 2013 June I was employed 2013, June by Transnet.

ADV PRETORIUS SC: Oh, so should May read June

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then?

WITNESS 3: Thanks Chair.

ADV PRETORIUS SC: Okay...[intervenes].

CHAIRPERSON: Oh, I'm sorry, or is the position that, during May you received training for purposes – in preparation for you taking up employment at Transnet in June?

WITNESS 3: Chair, I was employed June 1st, and I underwent training for the whole duration of June, then
10 July 1st, I was then seconded to DPE.

CHAIRPERSON: And in May 2013, that is now the month before June, were you employed, were you not employed by Transnet?

WITNESS 3: No May 2013 I was not yet employed by Transnet.

CHAIRPERSON: And you did not undergo the training that, that table reflect you underwent in May 2013, is that right?

WITNESS 3: It should be June 2013, the training.

20 **CHAIRPERSON:** Oh, so where it says May it should be June 2013?

WITNESS 3: That's correct Chair.

CHAIRPERSON: Okay, thank you.

ADV PRETORIUS SC: And how long, witness number 3, did your secondment to the Department of Public

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Enterprise last, when did it come to an end?

WITNESS 3: 2013, December.

ADV PRETORIUS SC: So, during the period, July to December 2013 you were serving Minister Gigaba, is that correct?

WITNESS 3: That's correct.

ADV PRETORIUS SC: In paragraph 21 of your affidavit, witness number 3, you relate certain visits that took place, would you tell the Chair about those please?

10 **WITNESS 3:** Thank you Chair, from July to December I can recall I escorted the Minister as part of his convoy to a scheduled visit to the Gupta residence in Saxonwold.

ADV PRETORIUS SC: On, approximately how many occasions did you do that?

WITNESS 3: Six to seven times.

ADV PRETORIUS SC: Right and on those occasions did you drive a backup vehicle or did you drive with Minister Gigaba?

20 **WITNESS 3:** The six times I was on the backup and only once to make it seven, I drove the Minister himself, I was just alone.

ADV PRETORIUS SC: Were any of these visits recorded in the Minister's diary?

WITNESS 3: Yes, they were Chair, they were handed over to witness 1.

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ADV PRETORIUS SC: Alright...[intervenes].

WITNESS 3: Sorry, Chair, and on this particular day where I drove him alone, he said I shouldn't record the journey on the log book so I didn't record that event.

ADV PRETORIUS SC: Did you have access to the Minister's diary as a Close Protection Officer?

WITNESS 3: Yes, we do.

ADV PRETORIUS SC: Yes, and paragraph 21.1 you say, and I don't understand your evidence, now, to be this, that
10 none of these visits were recorded in the Ministers diary. So, what was the position?

WITNESS 3: Okay, normally he will just inform us as and when he wants us to go, he will inform us to go there.

ADV PRETORIUS SC: So, were they, or were they not recorded in the Minister's diary?

WITNESS 3: They were not recorded at all.

ADV PRETORIUS SC: And did you record these trips in the log book of your vehicle?

WITNESS 3: He informed us, we shouldn't record this
20 information on the log book, so we didn't.

ADV PRETORIUS SC: Did he give a reason for telling you not to record them in his log book in your vehicle log book?

WITNESS 3: No reason was given to us.

ADV PRETORIUS SC: Right.

CHAIRPERSON: What types of trips did he say you

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should not record in the log book, was it trips to particular destinations or only trips to a particular destination, one destination?

WITNESS 3: Only for the – that is in question now, he would say we shouldn't record that.

CHAIRPERSON: Which address is that, is that the Gupta residence?

WITNESS 3: Yes Chair.

CHAIRPERSON: That was the only – those are the only
10 trips he said you must not record?

WITNESS 3: That's correct Chair.

CHAIRPERSON: Okay. Did he say that from the beginning before you could even record the first one or you did record some but you had to stop after he told you not to record them?

WITNESS 3: Can you repeat Chair, repeat that?

CHAIRPERSON: When he told you not to record those trips to the Gupta residence was it at a time when you had already recorded some but then you did not record others
20 because of the instruction or did he tell you not to record them before you could even record the first one?

WITNESS 3: I was told that trip that we should not record so then as and when we go the second time I should not record because I was instructed not to.

CHAIRPERSON: Okay, alright.



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ADV PRETORIUS SC: When you were part of the convey which visited the Saxonwold residence of the Gupta's what did you do? Did you – when Minister Gigaba visited where were you during those visits?

WITNESS 3: Normally as in when we arrive, I would wait in the car then he will jump out quickly and get into the premises.

ADV PRETORIUS SC: Right were you able to observe whether there were any other people present outside the residence?

WITNESS 3: In normal [indistinct 00:01:44] I saw Mr Brian Molefe and later I saw Matsela Koko of Eskom, Mr Ben Ngubane, Linda Mabaso our chair then within the premises as well.

ADV PRETORIUS SC: Alright. Did you see any other convoy at that time or around that time?

WITNESS 3: There was the convoy of the President of the Republic leaving the premises as we enter in one occasion.

ADV PRETORIUS SC: Who was he President at the time?

20 **WITNESS 3:** Mr Jacob Zuma.

ADV PRETORIUS SC: Alright. In paragraph 2 you talk of certain incidents involving Minister Gigaba. Would you tell the Chair about those incidents please?

WITNESS 3: At some point the Minister would carry a large sum of cash with him and I wish to highlight the following

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instances in this regard. One day I was present with the Minister and when he opened the boot of the car of the official vehicle to take out money to buy lunch for us.

ADV PRETORIUS SC: Who is us?

WITNESS 3: The convey, the backup guys and the two of SAPS officials with him.

ADV PRETORIUS SC: Right.

WITNESS 3: Inside the boot it was a bag which he opened and there was some stack of bundles of money inside.

10 **ADV PRETORIUS SC:** Right.

WITNESS 3: With R200.00 notes.

ADV PRETORIUS SC: Are you able to say where that money came from?

WITNESS 3: I could not tell that time but as – as we make some visits then I could connect the dots to say the money came from the Saxonwold residence.

ADV PRETORIUS SC: How can you say that?

WITNESS 3: Because at some point as we went to the premises he would go to the Gupta's and we will go to
20 Sandton he would use to pay cash for his tailored suits.

CHAIRPERSON: Let us go back to the money you saw in the bag. Was it just loose cash or was it tied in any way?

WITNESS 3: It was 200 bundles stacked in rubber bands full in there. Only R200.00 notes.

CHAIRPERSON: Yes. And about how much space did it



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take in the bag if you are able to say about half, about a quarter or was it full?

WITNESS 3: It was quarter.

CHAIRPERSON: About a quarter of the bag?

WITNESS 3: Yes Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: What type of bag was it?

WITNESS 3: It was a sports bag.

ADV PRETORIUS SC: On that particular occasion where
10 had you been on that day? Can you recall? Witness 3 did
you hear my question?

WITNESS 3: Not clearly Chair.

ADV PRETORIUS SC: Alright. You have just told the Chair
of an occasion where you saw a bag in the boot of Mr
Gigaba's official vehicle and you say Minister Gigaba opened
that bag and you could see stack of R200.00 notes in that
bag right?

WITNESS 3: Yes.

ADV PRETORIUS SC: Correct?

20 WITNESS 3: That is correct.

ADV PRETORIUS SC: Right now I asked you earlier
because your statement says nothing in relation to where
that bag came from. Are you able to say where that money
came from through any observation that you made not any
opinion that you might have but through any observation

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from what you saw? Did you see where that bag came from?

WITNESS 3: No I cannot say where it came from Chair.

ADV PRETORIUS SC: I am sorry.

WITNESS 3: I cannot tell you where it came from Chair.

ADV PRETORIUS SC: Okay.

CHAIRPERSON: That is because you do not know how it came to the car not because you do not want to tell us? You do not know how the bag that had money came into the car, is that right?

10 WITNESS 3: Yes that is correct Chair.

CHAIRPERSON: Yes.

WITNESS 3: That is correct Chair I do not know.

CHAIRPERSON: Yes okay.

ADV PRETORIUS SC: And nor does your statement say where it came from. You have expressed an opinion earlier in your evidence but I just wanted to establish that according to your statement and what you say now you do not know the history of that bag and how that money came to be in the bag and the bag came to be in the boot of the Minister, we
20 are correct?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: Okay. You say that you were present when Mr Gigaba went shopping in Sandton City for tailored suits. Do you recall that incident or those incidents?

WITNESS 3: Yes I do recall Chair.

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ADV PRETORIUS SC: Did Mr Gigaba buy suits and pay for them?

WITNESS 3: Yes he did buy a couple of suits and paid cash.

ADV PRETORIUS SC: He paid cash right?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: Right. And when he ate at restaurants where you were able to observe how did he pay for meals and drinks?

WITNESS 3: He paid cash Chair.

10 **ADV PRETORIUS SC:** Right. You move on in...

CHAIRPERSON: I am sorry. Do you – are you able to say roughly about how many times you may have seen him pay cash at restaurants because obviously somebody may pay cash on a particular day. Is it something that appeared to be common that whenever he was at a restaurant, he paid cash or you saw him once or twice pay cash at a restaurant?

WITNESS 3: Certain times he will pay cash.

CHAIRPERSON: And other times?

WITNESS 3: I would not have seen how he paid.

20 **CHAIRPERSON:** You said certain times so I thought maybe you know of other times when he did not pay cash, he did not use cash, is that right?

WITNESS 3: Chair around the times if I can recall well three times that I saw him paying cash.

CHAIRPERSON: Yes. And altogether do you have an idea

A handwritten signature in black ink, appearing to be 'M. K. M.' or similar, located in the bottom right corner of the page.

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about how many times you might have taken him to a restaurant or you do not know?

WITNESS 3: It is a couple of times but only three times I saw him paying cash.

CHAIRPERSON: Yes and on other times you did not see how he paid?

WITNESS 3: That is correct Chair.

CHAIRPERSON: Okay alright. Yes Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. Where were you
10 employed during January 2014?

WITNESS 3: I was employed by Transnet in the Carlton Centre.

ADV PRETORIUS SC: And in July 2014 were you given certain duties to perform?

WITNESS 3: Yes I was the CPO for the CFO Mr Anoj Singh then.

ADV PRETORIUS SC: The Chief Financial Officer Mr Anoj Singh?

WITNESS 3: That is correct.

20 **ADV PRETORIUS SC:** Were you a driver as well?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: Right. And what was your practice in relation to Mr Singh were you his personal driver? In other words how did you operate with him as his driver?

WITNESS 3: Yes I was his close protector. I would drive



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him around. I will run his diary as well.

ADV PRETORIUS SC: What vehicles did you drive for Mr Singh? I am on page 123 of your affidavit paragraph 35.

WITNESS 3: The white Mercedes C220 and the white Mercedes as well E350.

ADV PRETORIUS SC: Sorry you broke up there. A white Mercedes?

WITNESS 3: The white Mercedes the C220.

ADV PRETORIUS SC: Yes.

10 **WITNESS 3:** And the white Mercedes E350.

ADV PRETORIUS SC: Okay white Mercedes C220 and a white Mercedes E350.

WITNESS 3: That is correct.

ADV PRETORIUS SC: Can you remember the registration numbers?

WITNESS 3: Yes the C220 it was DT77MMGP.

ADV PRETORIUS SC: And the 350 can you recall that registration number?

WITNESS 3: It was DN87KFGP.

20 **ADV PRETORIUS SC:** Did you say KFGP?

WITNESS 3: KF that is correct.

ADV PRETORIUS SC: Right. Did you keep logbooks of trips undertaken in these vehicles?

WITNESS 3: Yes I did Chair. I would hand them over to Witness 1.

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ADV PRETORIUS SC: Right. Have you subsequently attempted to obtain these logbooks in order to substantiate the trips undertaken for Mr Singh?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: And what was the result of your efforts?

WITNESS 3: I was told that the logbooks could not be located.

ADV PRETORIUS SC: Did you ever drive Mr – or sorry not –
10 did you ever drive him but did Mr Singh ever use a private vehicle?

WITNESS 3: Yes he did with his blue BMW M3.

ADV PRETORIUS SC: Right and when would he use that vehicle as you recall?

WITNESS 3: Normally on [indistinct 00:13:45] and on Monday morning he will bring it at the Carlton Centre and the Monday afternoon I will drive him with the Mercedes back home.

ADV PRETORIUS SC: Okay. Right in paragraph 38 you
20 relate some incidents in relation to your duties serving Mr Singh. Tell the Chair about what you say in paragraph 38 and following please?

WITNESS 3: At some point I transported Mr Singh to the Gupta residence in Saxonwold.

ADV PRETORIUS SC: On approximately how many

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occasions do you think you did that?

WITNESS 3: More than ten times Chair.

ADV PRETORIUS SC: And upon arrival at the Gupta residence what would happen?

WITNESS 3: I would park the parking and Mr Singh would jump out of the car into the premises.

ADV PRETORIUS SC: And how long did he remain in the premises?

WITNESS 3: But mostly it would...

10 **ADV PRETORIUS SC:** I am sorry I interrupted you.

WITNESS 3: Sorry, Chair. Mostly it will take 20-minutes to 30-minutes.

ADV PRETORIUS SC: Alright. And during that time, Mr Sing would be inside the Gupta Residence, I presume?

WITNESS 3: That is correct Chair.

CHAIRPERSON: I just note that Witness 1 also said, I think, Mr Brian Molefe used to stay inside the Gupta residence 20-minutes to 30-minutes if I am not mistaken. And I see here, it is also 20-minutes to 30-minutes.

20 I do not know if I am mistaken about the time that Witness 1 said Mr Molefe used to stay there. Whether...I do not think he went before that.

I think he also said, maybe 20-minutes to 30-minutes or something.

ADV PRETORIUS SC: It was slightly different but in any

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event, the record will show.

CHAIRPERSON: Ja. Yes. I think the 20-minutes seems to be common.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: And do you have any recollection of incidents that happened after the meetings, when Mr Sing emerged from the residence?

WITNESS 3: At some point, he would leave the residence
10 into the car with a bag full and would it put into the boot of the car.

ADV PRETORIUS SC: H'm.

WITNESS 3: A sports bag.

ADV PRETORIUS SC: Did you ever have an occasion to see what was contained in a bag that Mr Singh brought out of the residence of the Gupta's?

WITNESS 3: I have seen that Chair later on, not on the day.

ADV PRETORIUS SC: Alright. What happened? Please tell the Chair.

20 **WITNESS 3:** As ...[intervenes]

ADV PRETORIUS SC: I am sorry. We are at paragraph 41 of your statement.

WITNESS 3: That is correct Chair. He would come with a sports bag into the car from the Gupta residence and he would open the bag which he had collected earlier at the

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Gupta residence inside the boot of his vehicle to give me some money to buy some lunch and I saw some ...[indistinct] [distortion present] of money of hundred notes and two hundred notes inside the bag.

ADV PRETORIUS SC: Right. How often did this happen?

WITNESS 3: [No audible reply]

ADV PRETORIUS SC: Did it happen once, several times?

WITNESS 3: More than once Chair.

CHAIRPERSON: More than once, can be two times. It can
10 be five times. It can be twenty times. Are you able to give a much closer estimate?

WITNESS 3: Plus-minus, ...[indistinct] [distortion present]
Chair.

CHAIRPERSON: Plus-minus six times?

WITNESS 3: Yes, Chair.

ADV PRETORIUS SC: Alright. I may have confused you with my question where you may not have been following my question Witness 3. How many times did he emerge from the Gupta residence with a sports bag that looked as if there
20 was material or something inside the bag?

WITNESS 3: It is more than once, like I said Chair.

ADV PRETORIUS SC: Right. How many times did you see money, actually observed money, in the bag?

WITNESS 3: Okay, that is six to seven times Chair.

ADV PRETORIUS SC: How many?



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WITNESS 3: Six to seven times.

ADV PRETORIUS SC: You saw money six to seven times?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: Well, look at paragraph 41 of your statement. Please have a look at that.

WITNESS 3: [No audible reply]

ADV PRETORIUS SC: Your evidence now does not seem to accord with what you say in paragraph 41 because in paragraph 41 you say:

10 "My suspicion that the bags contained money was confirmed when on one occasion he opened the bag which he had earlier collected from the Gupta residence inside the boot of our vehicle to give me some money to buy lunch.

When he opened the bag, I could clearly see that the bag was stacked with one hundred and two hundred rand notes..."

Now, you are saying, as I understand ...[intervenes]

WITNESS 3: That is correct.

20 ADV PRETORIUS SC: ...that that happened six times.

WITNESS 3: No, that is correct Chair. I might have missed it. That is correct Chair.

ADV PRETORIUS SC: So what is the position? How many times did you see Mr Singh emerged from the residence with a bag?

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WITNESS 3: [Indistinct] [distortion present] occasion Chair.

ADV PRETORIUS SC: I am sorry?

WITNESS 3: In... one occasion Chair.

CHAIRPERSON: Did you see him only once emerging from the Gupta residence with a bag? Let us forget about what was in the bag. Just imagine from the Gupta residence with a bag. Was it only once that you saw him or was it more than once?

WITNESS 3: It was once(?) [distortion present] Chair.

10 CHAIRPERSON: H'm?

WITNESS 3: [No audible reply]

CHAIRPERSON: What is the answer?

WITNESS 3: Chair, I only ...[indistinct] [distortion present] the money that we collected from the Gupta residence. That is once that I saw the money.

CHAIRPERSON: Okay.

WITNESS 3: But in two instances, we have collected the bag from the Gupta residence.

ADV PRETORIUS SC: Alright.

20 CHAIRPERSON: Okay, let us take it step-by-step. Just listen to my question. How many times, if you are able to tell me, did you take Mr Singh to the Gupta residence? Just taking him there.

Do not think about whether you saw a bag with or without money. Just, how many time, do you think, you took

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him there if you are able to estimate?

WITNESS 3: It is more than ten occasions Chair.

CHAIRPERSON: More than ten occasions. Alright. Of those more than ten occasions, how many times do you see him come out of the Gupta residence with a bag? And at this stage, forget about whether the bag had money or not, just with a bag.

WITNESS 3: More than ten occasions Chair.

CHAIRPERSON: More than ten occasions?

10 **WITNESS 3:** That is correct.

CHAIRPERSON: Does that mean that most of the time whenever you took him, he would emerged from the Gupta residence with a bag?

WITNESS 3: That is correct Chair.

CHAIRPERSON: Okay alright. Of those more than ten occasions when he emerged from the Gupta residence with a bag, on how many occasions did you see what was in the bag?

WITNESS 3: [No audible reply]

20 **CHAIRPERSON:** Witness 3?

WITNESS 3: Yes, Chair it was on one occasion that I saw the money... the bag with the money inside.

CHAIRPERSON: It was only on one occasion that you saw that there was money in the bag.

WITNESS 3: That is correct Chair.

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CHAIRPERSON: Was there any other occasion when you saw what was in the bag, even though it was not money or may it have not been money?

WITNESS 3: Only one occasion money ...[indistinct]
[distortion present]

CHAIRPERSON: You never saw anything else inside the bag, you only saw money and it was only once?

WITNESS 3: That is correct Chair.

CHAIRPERSON: Okay alright. Mr Pretorius.

10 **ADV PRETORIUS SC:** Alright. You say in... I think that is now clarified that. Thank you, Witness 3. You say that in paragraph 42 or you say in paragraph 42 that:

“On certain occasions, you would go somewhere with Mr Singh after a visit to the Gupta residence...”

What happened on these occasions?

WITNESS 3: Okay. Normally, we would leave the residence and drive to the ...[indistinct] next to Killarney Mall.

ADV PRETORIUS SC: Alright. What is Knox Vault. K-n-o-x Vault? What is it? Do you know?

20 **WITNESS 3:** Honestly, I know the premises. I do not know exactly what are you doing there but I know that address because I have been there on many occasions.

ADV PRETORIUS SC: Right. Alright. So on your way you would take Mr Sing to Knox Vault after a visit to the Gupta residence? Did you go there out of your own accord or did

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Mr Singh instruct you to go there?

WITNESS 3: He instructed me to go there.

ADV PRETORIUS SC: Alright. And what would happen when you arrived at Knox Vault?

WITNESS 3: I would park the car and he would jump out and instruct me to open the boot, take out the bag into the premises and he would come with the bag empty.

ADV PRETORIUS SC: Alright. So you say he would instruct you to open the boot.

10 **WITNESS 3:** Yes?

ADV PRETORIUS SC: And the bag, was it empty or was it full? Could you see?

WITNESS 3: Upon our arrival, the bag would be full and we would... he would go inside with the full bag and come back with the bag empty.

ADV PRETORIUS SC: Alright. So you would go to the Gupta residence. After visiting the residence, you would go to Knox Vault with Mr Sing. He would take a full bag into Knox Vault and emerge from Knox Vault with an empty bag.

20 Do I understand that correctly?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: When you say, he would come out of Knox Vault with an empty bag, did you have an occasion to open the bag and look inside or you are only able to say that

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because of how the bag looked like when he came back with it?

WITNESS 3: Chair, a full bag will look bigger.

CHAIRPERSON: Yes.

WITNESS 3: And as he come out, he will have packed(?) [distortion present] in his hand. There will be... you could see, there is nothing in there.

CHAIRPERSON: Yes. So even if there may have been something, it would have been far less than what had been
10 there before he went into Knox Vault?

ADV PRETORIUS SC: That is correct Chair.

CHAIRPERSON: H'm. You would not be able to say for sure there was completely nothing inside but it looked very different from the bag that he had taken in?

WITNESS 3: That is correct Chair.

CHAIRPERSON: Okay. Mr Pretorius.

ADV PRETORIUS SC: The incident that you have just described, coming from the Gupta residence and taking a bag into Knox Vault after that visit to the Gupta residence,
20 on more or less how many occasions did this occur?

WITNESS 3: Six to seven times Chair.

ADV PRETORIUS SC: You recall an incident in 2015 when you were driving Mr Singh to a scheduled meeting and something happened to interrupt your trip to that scheduled meeting. Do you recall that incident?

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WITNESS 3: Yes, on the day [distortion present]

“Sometime in 2015 when I was driving Mr Singh to a scheduled meeting and he received a call on the cellular cell phone.

After he had finished the call, he instructed me to divert from our route and immediately drive to the Gupta residence.

And I could hear there was some panic in his voice.

He, subsequently, into... as we arrive, he jumped out,
10 rushing inside the premises...”

ADV PRETORIUS SC: What happened then?

WITNESS 3: I then waited in the car and waited approximately an hour-and-a half for him to come out.

ADV PRETORIUS SC: Did he come out eventually?

WITNESS 3: Yes, he did and he appeared to be very nervous(?) [distortion present] and stressed. When he got into the vehicle he said, “Fuck this thing!” He then instructed me to drive him home and turn off the radio. Shortly thereafter he fell asleep.

20 **ADV PRETORIUS SC:** Right.

WITNESS 3: And this was an unusual behaviour(?) [distortion present] from him.

ADV PRETORIUS SC: Alright. Did you ever find out what led to his distress on that day?

WITNESS 3: No, Chair I cannot tell.

A handwritten signature in black ink, appearing to be 'AM' or 'RM' with a stylized flourish below it.

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ADV PRETORIUS SC: Alright. In paragraph 47 and following, you relate an incident that occurred at the Three Rivers Lodge. When was this incident... when did this incident occur?

WITNESS 3: Sometime in July 2014.

ADV PRETORIUS SC: And what happened?

WITNESS 3: It was an executive strategy meeting for that whole week and I dropped Mr Singh. And on Monday and... I came to collect him on Friday.

10 **ADV PRETORIUS SC:** Right.

WITNESS 3: So ...[intervenes]

ADV PRETORIUS SC: And it was an executive management meeting of which company?

WITNESS 3: For Transnet.

ADV PRETORIUS SC: Right and it was taking place at the Three Rivers Lodge you say in Vereeniging?

WITNESS 3: Yes, in Vereeniging, Chair.

ADV PRETORIUS SC: And you tell the Chair that you dropped Mr Singh off early in the week and you came to
20 collect him on the Friday afternoon?

WITNESS 3: That is correct.

ADV PRETORIUS SC: When you arrived at the Three Rivers Lodge on the afternoon of the Friday, what did you observe?

WITNESS 3: I noticed four men who appeared to be from

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Asian descent, they looked like Chinese to me, standing around a Hyundai H1 kombi, the parking area. Two of the men appeared to be busy with a conversation on cellular phones.

ADV PRETORIUS SC: And what happened next?

WITNESS 3: The next thing the two men who were speaking on their cellular phones took two luggage bags from the H1 kombi, one black bag and one maroon bag and went inside the lodge area where the executive meeting
10 was held.

ADV PRETORIUS SC: And then continue, what happened after that?

WITNESS 3: Yes, at around 3 p.m. I received an SMS from Mr Singh requesting me to come to the conference room where the meeting was held. As I entered the room the two men who took the luggage bag into the lodge were in the room together with Mr Molefe and Mr Singh. Then Mr Singh pointed to me, the maroon luggage that I should take to the car.

20 **ADV PRETORIUS SC:** Did you do that?

WITNESS 3: I took the bag and put in the boot of our vehicle.

ADV PRETORIUS SC: Right. Was the bag light, heavy, full, empty? What did you notice?

WITNESS 3: It was a travelling bag, very heavy.

A handwritten signature in black ink, appearing to be 'M. K. N. W.' or similar, located in the bottom right corner of the page.

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ADV PRETORIUS SC: Right and are you able to say whether the bag – you had seen the bag earlier?

WITNESS 3: I have seen the bag earlier (indistinct – recording distorted) inside the conference room.

CHAIRPERSON: I think you will have to repeat that answer, witness 3, because there was ...[intervenes]

ADV PRETORIUS SC: Witness 3, please speak slowly and say that again.

WITNESS 3: Yes, Chair, I have seen the bag before
10 because I have seen the bag with the two Chinese as they were taking it into the conference facility.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Right, did you then take the bag and what did you do with it?

WITNESS 3: I took the bag to our vehicle.

ADV PRETORIUS SC: Right and did you see anybody else at that time in relation to these events that you are telling us about?

WITNESS 3: As I was putting the bag in the car, I saw
20 one of our – Mr Brian Molefe's driver putting the black bag into Mr Molefe's car.

ADV PRETORIUS SC: Right, this black bag, had you seen it before?

WITNESS 3: Yes, I have seen it before when the Chinese were pulling it from their kombi into the conference facility.

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ADV PRETORIUS SC: Right.

WITNESS 3: So is the position that at a certain stage you had seen two persons that appeared to you to be Chinese and they had two bags. They went into the hotel with the bags and later on you were asked by Mr Singh to take the one bag and put it into his car and later on you saw Mr Molefe's driver carrying the other bag that you have seen been carrying by the Chinese men into Mr Brian Molefe's car. Is that the position?

10 **WITNESS 3:** That is correct, Chair.

CHAIRPERSON: Witness 3, is that the position?

WITNESS 3: That is correct, Chair.

CHAIRPERSON: Did you hear me?

WITNESS 3: That is correct, Chair.

CHAIRPERSON: Okay, alright. Thank you.

ADV PRETORIUS SC: Alright. On that occasion, on that day, we are talking about a Friday. Did you have occasion to see what was in the bag? Now I am talking about the Friday now.

20 **CHAIRPERSON:** Witness 3.

WITNESS 3: Yes, Chair?

ADV PRETORIUS SC: Can you hear me, witness 3?

CHAIRPERSON: Are you struggling to hear us, witness 3?

WITNESS 3: It was not clear, can you just repeat, Chair?

CHAIRPERSON: Are you struggling to hear us at the

A handwritten signature in black ink, appearing to be 'KUN' or similar, located in the bottom right corner of the page.

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moment?

WITNESS 3: I could hear clearly now.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Alright, you can hear us. The question I am putting to you is, you are talking about an incident that happened at the Three Rivers Lodge in Vereeniging on a Friday in July 2014, am I correct?

WITNESS 3: That is correct, Char.

ADV PRETORIUS SC: On that Friday, not the next
10 Monday but on that Friday did you see what was in the bag that you put into the boot of Mr Singh's vehicle?

WITNESS 3: No, I did not see anything, Chair.

ADV PRETORIUS SC: Right. What happened the next Monday?

WITNESS 3: Okay, the Monday Mr Singh came with his blue M3 and normally I would take it to a car wash on Mondays and as – normally I will check the car because I can hand it to the car wash, so I saw the very same maroon bag at the boot and it was quarter empty. As I
20 opened it there was a lot of money inside and I informed him about the money and at the basement he came down from the 49th floor to come and take the bag.

ADV PRETORIUS SC: Right, now was this bag – you say it was the same bag? The same bag as what?

WITNESS 3: The same maroon bag that I saw on Friday.

A handwritten signature in black ink, appearing to be 'AM' or 'Kain', located in the bottom right corner of the page.

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ADV PRETORIUS SC: Right, on the Friday at the Three Rivers Lodge, right?

WITNESS 3: That is correct, Chair.

ADV PRETORIUS SC: Were you able to recall the weight of the bag on the Friday as compared to the weight of the bag on the Monday?

WITNESS 3: Yes, on Monday the bag was lighter.

ADV PRETORIUS SC: Right and you say you opened the bag to see what was inside the bag and what did you see
10 inside the bag?

WITNESS 3: I saw stashed R200 notes in rubber bands.

ADV PRETORIUS SC: And how did you communicate with Mr Singh?

WITNESS 3: I sent him an SMS informing him about the [indistinct] 38.17 and he came downstairs to come and fetch it. I told him – I sent him an SMS to inform him about the money in the back. He said he is coming downstairs. Then he took the bag up and I left for car wash.

ADV PRETORIUS SC: When you went to collect Mr Singh
20 at Three Rivers Lodge on that Friday in July 2014 what vehicle were you driving?

WITNESS 3: It was the E220.

ADV PRETORIUS SC: Okay, so it was a Mercedes Benz.

WITNESS 3: Yes.

ADV PRETORIUS SC: So you saw the bag in a different

A handwritten signature in black ink, appearing to be 'MM' or 'KMM', with the letters 'KMM' written below it.

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vehicle on the Monday, do I understand you correctly?

WITNESS 3: Yes, it was in his private vehicle on Monday.

CHAIRPERSON: Had you – were you present or were you not present when the bag would have been taken from the E220 to his private vehicle or is that something that happened when you were not there?

WITNESS 3: Okay, from the Three Rivers we drove to the Carlton Centre where his blue private vehicle was and we exchanged – I took the bag from the Mercedes to his
10 private vehicle.

CHAIRPERSON: Okay, alright.

WITNESS 3: And he drove off the Friday on his private vehicle with the bag.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Did you ever have occasion to go with Mr Singh to the business of Sahara Computers?

WITNESS 3: Yes, Chair, I did.

ADV PRETORIUS SC: Can you recall on how many occasions you did that?

20 **WITNESS 3:** It was a number of occasions, Chair, I cannot give you the number but we went there many a times.

ADV PRETORIUS SC: Alright. And do you know who he visited at Sahara Computers?

WITNESS 3: No, Chair.

A handwritten signature in black ink, appearing to be 'M. K. Singh', is located in the bottom right corner of the page.

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ADV PRETORIUS SC: Not sure that the next two paragraphs really are of any relevance to what we are saying but did you ever pick up an associate or a person who was a friend of Mr Singh at Sahara Computers?

WITNESS 3: Yes, I did, Chair.

ADV PRETORIUS SC: And this person, who did she work for?

WITNESS 3: As we collect her from Sahara, she was working for the Sahara business.

10 ADV PRETORIUS SC: And previous to that?

WITNESS 3: Working for Transnet.

ADV PRETORIUS SC: You go on in paragraph 57 to talk of close protection officer services to a Mr Gary Pita. Is that P-i-t-a?

WITNESS 3: That is correct, Chair.

ADV PRETORIUS SC: When was that?

WITNESS 3: From late 2016 to 2018.

ADV PRETORIUS SC: Alright, 2016 to 2018 you say you served Mr Gary Pita. Was this in a capacity as driver and
20 close protection officer?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: Was Mr Gary Pita the newly appointed Chief Financial Officer of Transnet?

WITNESS 3: That is correct.

ADV PRETORIUS SC: And what vehicles did you use to

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transport Mr Pita?

WITNESS 3: The white Mercedes C-Class, the white Mercedes E-Class.

ADV PRETORIUS SC: The same vehicles that Mr Singh used?

WITNESS 3: That is correct.

ADV PRETORIUS SC: And the logbooks for those vehicles, for that period could you find them?

WITNESS 3: All I have submitted to this one.

10 **ADV PRETORIUS SC:** Yes but since then did you attempt to find them?

WITNESS 3: They could not locate them Chair.

ADV PRETORIUS SC: Yes, alright. Did you ever have occasion to drive Mr Pita to the Gupta residence?

WITNESS 3: Yes Chair.

ADV PRETORIUS SC: On how many occasions?

WITNESS 3: Only two occasions.

ADV PRETORIUS SC: Right. On the first occasions what occurred?

20 **WITNESS 3:** It was on a Friday.

ADV PRETORIUS SC: Did anything happen other than a visit to the Gupta residence?

WITNESS 3: I think on that Friday as I took him to the Gupta residence, he was the acting CFO and the week after he was appointed as the Group CFO.

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13 AUGUST 2020 – DAY 250

CHAIRPERSON: So the week before he was appointed Group CFO, he had visited the Gupta residence.

WITNESS 3: Yes Chair order of the day.

ADV PRETORIUS SC: How long did he spend inside the residence?

WITNESS 3: About an hour Chair.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: Well it is – well I see that here I am hearing about somebody who visited the Gupta residence
10 the week before getting appointed as Group CFO.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: The day before yesterday I heard evidence of Mr van Rooyen that he was at the Gupta residence during the day on which he was later informed by the former President that he was to be appointed as Minister of Finance.

ADV PRETORIUS SC: Right.

CHAIRPERSON: Yes, continue.

ADV PRETORIUS SC: The second occasion was when
20 witness number 3?

WITNESS 3: The second occasion was in 2017

ADV PRETORIUS SC: Right, did he go into the residence on that occasion?

WITNESS 3: Yes he did Chair.

ADV PRETORIUS SC: When he came out what did you

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13 AUGUST 2020 – DAY 250

notice about him?

WITNESS 3: He was very loud and he was red-faced and he was mentioning something like 600million payment and some timelines, but I couldn't understand what he was talking about.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: I am sorry, Mr Pretorius can we just – can the witness just repeat that evidence, I missed something, what about – what was the occasion and what
10 about 600million. In this Commission I have heard a lot of 600million Rand figures.

ADV PRETORIUS SC: We will have to collate that evidence with other evidence Chair. Just tell the Chair again please Witness number three what happened on the second occasion when Mr Pita returned from – as he was coming out.

WITNESS 3: Okay, as he was coming, as he was coming to the door, he was red-faced and he swear a lot and he mentioned something like 600million and some timelines
20 but I did not understand what he was talking about.

CHAIRPERSON: Was he talking on the phone or was he just speaking alone?

WITNESS 3: He was speaking alone; he hit the seat of the car.

CHAIRPERSON: Oh, okay.

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ADV PRETORIUS SC: Right you mentioned earlier in your evidence in relation to Mr Singh transporting Mr Singh to Knox Vault, did that ever occur with Mr Pita?

WITNESS 3: Yes it did Chair.

ADV PRETORIUS SC: Tell the Chair please what happened in relation to these visits?

WITNESS 3: I did transport Mr Pita to the Knox Vault six times. This would usually be some time during the week on a day to the office, so I will pick him up at his house
10 and he would come out from the house with a bag, into our car. We drive then as we drive, he would instruct me to go to that Knox Vault. He would go there and I will park, he will jump out with the bag into the premises of the Knox and he would come with an empty bag, we would drive to the office thereafter.

ADV PRETORIUS SC: That evidence will be collated with other evidence I regard to Knox Vault's records Chair. In paragraph 65 you deal with visits by Mr Pita to Mr Saliem Essa, do you know Mr Saliem Essa by site?

20 **WITNESS 3:** Yes I know Mr Saliem Essa as to see him; we used to see him in Berea in a restaurant.

ADV PRETORIUS SC: Right what restaurant was this, it is an unpronounceable name but let's try.

WITNESS 3: It is a Portuguese restaurant it is called Parreirinha restaurant



KAN

13 AUGUST 2020 – DAY 250

ADV PRETORIUS SC: Right.

CHAIRPERSON: Maybe you can spell it for the benefit of the transcribers.

ADV PRETORIUS SC: Well he does much better than I do when I tried to pronounce Parreirinha.

CHAIRPERSON: Witness 3 do you want to spell the name of that restaurant for the benefit of the transcribers?

WITNESS 3: Yes Chair, it is P-a-r-r-e-i-r-i-n-h-a.

CHAIRPERSON: Thank you.

10 **ADV PRETORIUS SC:** Right is that a restaurant in Turffontein?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: On how many occasions did you drive Mr Pita to meet Mr Essa at this restaurant?

WITNESS 3: Fifteen occasions.

ADV PRETORIUS SC: Right, and were these meetings, short meetings?

WITNESS 3: Long meetings Chair.

CHAIRPERSON: Fifteen occasions of exactly or
20 approximately?

WITNESS 3: Normally he would arrive around one and we would leave in the evening, seven o'clock.

CHAIRPERSON: Yes, but what I am asking is whether when you say fifteen occasions is that because you are sure that you took him there on fifteen or occasions or you

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13 AUGUST 2020 – DAY 250

are not sure about fifteen and you mean approximately or about fifteen occasions.

WITNESS 3: Approximately fifteen occasions Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: After Mr Pita's departure from Transnet did you continue to perform duties as a close protection officer in Transnet?

WITNESS 3: Yes I did Chair, within the CFO's office with acting CFO Mr Mohammed Mohamedy.

10 **ADV PRETORIUS SC:** Right. You deal on page 129 with some aspects of your career after working for Mr Mohamedy but I don't think it's necessary for us to go there, you continued to work in a security function do I understand you correctly?

WITNESS 3: That is correct Chair.

ADV PRETORIUS SC: Alright if you go to page 130 you deal there with security matters, just briefly tell the Chair how did you and do you regard the circumstances of your personal security after you had become involved with the
20 Commission? Do you understand the question?

WITNESS 3: Not clearly, can you just repeat again.

ADV PRETORIUS SC: Your personal security in the time leading up to your giving evidence today how do you regard your personal security? Your personal safety.

WITNESS 3: I feel scared from here going forward Chair.

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ADV PRETORIUS SC: Right. And you explain those circumstances fully you have explained them in a supplementary affidavit which has been part of the application but you also explain them to a degree at least on page 130 to 132. Is there anything you would like to add to your statement that I haven't mentioned?

WITNESS 3: No Chair.

ADV PRETORIUS SC: Thank you very much Witness number 3.

10 **WITNESS 3:** Thank you Chair.

CHAIRPERSON: Witness 3 you remember you told me that you took Mr Singh to Knox Vault, I think you said about six times, is that correct.

WITNESS 3: That is correct Chair.

CHAIRPERSON: Are you able to indicate roundabout when that would have been, would it have been during a particular year, was it 2015 or when was it or can you not remember? You were with him only for six months or was it more?

20 **WITNESS 3:** More than a year Chair.

CHAIRPERSON: About a year

WITNESS 3: More than a year yes.

CHAIRPERSON: Would that have been 2014, or 2015 or another year?

WITNESS 3: 2014 and 2015.

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CHAIRPERSON: So those six times when you took him to Knox Vault some of those times would have been in 2014 and others would have been in 2015, is that right?

WITNESS 3: That is correct.

CHAIRPERSON: Okay, alright, thank you. Thank you very much witness 3 for coming to assist the Commission and to share with the Commission what you know about what happened when you were performing these duties or some of the people that you have mentioned we appreciate
10 it very much, we understand your concerns about your safety and the safety of your family, but we are very grateful that you were able to come and give evidence. Thank you very much, the Commission will do what it can, all that it can to assist with regard to having your issues of safety addressed. Thank you very much and you are excused now.

WITNESS 3: Thank you Chair.

ADV PRETORIUS SC: Thank you witness number 3.

CHAIRPERSON: That was your last witness?

20 **ADV PRETORIUS SC:** Correct. I hoped there were more but ...

CHAIRPERSON: Do you feel some more energy? We are going to adjourn for the day, tomorrow I am supposed to hear the evidence of a former Chief Financial Officer in the Free State Provincial Government, Ms Bati Dlamini, so we

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13 AUGUST 2020 – DAY 250

will start at normal time, ten o'clock, but for now we are going to adjourn.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 14 AUGUST 2020

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"MG7"

**IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT BRAAMFONTEIN,
JOHANNESBURG ("the Commission")**

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

**PRELIMINARY STATEMENT OF REPONSE/APPLICATION FOR LEAVE
TO CROSS EXAMINE WITNESS 3**

KINDLY TAKE NOTICE that the applicant hereby files his preliminary statement of response to the allegations made by Witness 3 during the hearing on Thursday, 13 August 2020 ("Witness 3's allegations") and simultaneously hereby gives notice of his intention to apply to the Commission on date and at the time determined by the Chairperson of the Commission, for Directions in the following terms:

1. That the statement of response annexed hereto marked "A" be admitted to the Commission as a preliminary response to Witness 3's allegations;
2. That the applicant be granted leave to cross examine Witness 3 on such terms as the Chairperson of the Commission may deem fit;



3. That the applicant be granted leave to supplement his preliminary response (being annexure A hereto) within a period of 14 (fourteen) calendar days from receipt of the redacted affidavit/statement of Witness 3 from the Commission; and
4. That the applicant be granted such further and alternative relief as the Chairperson of the Commission may deem fit.

DATED at Sandton, Johannesburg on Wednesday, 9 September 2020.

Reginald Tshabalala

TSHABALALA ATTORNEYS, NOTARIES
AND CONVEYANCERS

Attorneys for the applicant

1st Floor, 3 Gwen Lane

Sandton, Johannesburg

TEL: 011 783 5677

E-MAIL: reginald@tshabalala.com

jazmin@tshabalala.com/

kim@tshabalala.com

REF: Mr TR Tshabalala/ /Miss K
Slaffa/jp/G01422

TO:
THE SECRETARY OF THE COMMISSION
2nd Floor, Hillside House
17 Empire Road
Parktown, Johannesburg
TEL: 010 214 0651
E-MAIL: secretary@commissionsc.org.za
REF: Adv Shannon van Vuuren

Filed with the Secretary of the Commission by e-mail
secretary@commissionsc.org.za
[/BoipeloR@commissionsc.org.za](mailto:BoipeloR@commissionsc.org.za)
on Wednesday, 9 September 2020

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"A"

IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT BRAAMFONTEIN, JOHANNESBURG
("the Commission")

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

PRELIMINARY STATEMENT OF RESPONSE INCORPORATING AN
AFFIDAVIT IN SUPPORT OF AN APPLICATION TO CROSS EXAMINE
WITNESS 3 IN TERMS OF RULE 3.3 READ WITH RULE 8.2

I, the undersigned,

MALUSI KNOWLEDGE NKANYEZI GIGABA

do hereby make oath and say:

THE DEPONENT

- 1. I am:
 - 1.1 an adult male; and
 - 1.2 the Former Minister of *inter alia*, the Department of Public Enterprises.

★
KNW
KNW

2. The contents of this statement are within my personal knowledge and belief, save where the context indicates otherwise and are both true and correct.

PURPOSE OF THIS STATEMENT

3. The purpose of this statement is two-fold, namely to serve as:-
- 3.1 a preliminary response to the allegations made by an unidentified witness described as witness 3 ("Witness 3") heard by the Commission on Thursday, 13 August 2020 ("Witness 3's allegations"); and
- 3.2 a basis for an application for leave to cross examine Witness 3 as contemplated in Rule 3.3 read with Rule 8.2 of the Rules of the Commission into allegations of State Capture ("the Commission").

INTRODUCTION

4. On Wednesday, 26 August 2020, the Commission sent to my attorney, Mr. Reginald Tshabalala, whose confirmatory affidavit is annexed hereto as "FA1" the notice in terms of Rule 3.3 annexed hereto as "FA2" together with the transcript of the evidence of Witness 3.
5. In paragraph 4 of the notice in terms of Rule 3.3, the Commission had indicated that it would send me as soon as possible, the redacted affidavit of Witness 3 as per paragraph 2.2 of the Order of the Chairperson dated Wednesday, 26 August 2020.

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6. On Tuesday, 8 September 2020, prior to the preparation of this preliminary response and application, my attorneys wrote to the Commission in an e-mail annexed hereto as "FA3" requesting a copy of the redacted affidavit of Witness 3.
7. At the time of deposing to this affidavit, I had not received the redacted affidavit from the Commission. Due to the fact that according to the Rules of the Commission, an implicated person has 14 (fourteen days) to react to a notice in terms of Rule 3.3, I have as a matter of caution, elected to file this preliminary response and application. It may be that once I receive the redacted affidavit of Witness 3, I may need to supplement my response. In this regard, I have applied for leave to be granted such opportunity by the Chairperson.

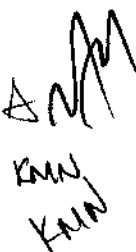
MY RESPONSE TO THE ALLEGATIONS OF WITNESS 3

8. I was appointed as the Deputy Minister of Home Affairs from 2004 until 2009. In 2009 I was re-appointed as the Deputy Minister of Home Affairs after the general elections in 2009, until October 2010. On 1 November 2010, I was appointed as the Minister of Public Enterprises and remained in such position until May 2014.
9. I have had regard to the evidence of Witness 3 as contained in the transcript furnished with the notice in terms of Rule 3.3. I confirm that Witness 3 served

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as my close protection officer between 2005 to 2007. At the time, Witness 3 was a member of the South African Police Services.

10. During 2007, Witness 3 resigned as a member of the South African Police Service to work in the private sector. Witness 3 was then withdrawn as my close protection officer.
11. The Chief of staff for the Ministry of Public Enterprises at the time, Mr. Thami Msomi, was responsible for liaising with the South African Police Service on matters relating to my protection. I would not have known of the meetings Mr. Msomi had arranged with Witness 3.
12. As far as I am aware, Witness 3 was part of the officers appointed at Transnet. Transnet had a large security structure to protect its Very Important People (VIPs) and my understanding is that the Department of Public Enterprises requested Transnet to assign security personnel to protect me, whilst waiting for the South African Police Services to assign additional protectors to me. This was based on the security assessment which had been conducted on me at the time.
13. It is under the circumstances in paragraph 12 above that Witness 3 ended up being seconded to serve as my additional protector. Witness 3 was part of the security personnel in the backup motor vehicle and these were not members of the South African Police Services. They did not have access to the principal motor vehicle which transported me.



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14. In paragraph 20 of page 111 of the transcript, Witness 3 has alleged that in April 2013, he attended a meeting with me and an official of the Department of Public Enterprises. I deny that I met with Witness 3 as alleged. In any event, the processes of appointing protection officers were attended to by the Chief of staff of the Ministry of Public Enterprises. I did not get involved in the process.
15. Witness 3 served as my back up protector from July 2013 to December 2013, a period of 6 months.
16. I have noted that Witness 3 has alleged in paragraphs 10 – 20 of page 115 of the transcript that he accompanied me to the Gupta residence in Saxonwold six to seven times. He has alleged that on these occasions, he drove me alone. I deny this. The protocol has always been that as a minister, I would have the protection of the officers in the main motor vehicle and those officers in the back up motor vehicle. Witness 3 was a back up protector and could not have driven with me alone, more so that Witness 3 was not at that time, a member of the South African Police Services.
17. In my recollection, I must have visited the Gupta residence once or twice during the period of July 2013 to December 2013. During this time, I was very busy as the head of the ANC's elections campaign preparing for the 2014 general elections. I would not have had the time to visit the Gupta residence on such alleged occasions.

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18. In paragraph 10 – 20 of page 116 of the transcript, Witness 3 has alleged that I had instructed him not to record the trips to the Gupta residence in the logbook. I deny this. The issue of recording trips in the logbooks is a matter that fell within the authority of the officers in their capacities as members of the South African Police Services. I did not instruct Witness 3 or any of the other officers not to record any trip in the logbook, it was not my business to do so and I had no authority to do so.
19. In paragraph 20 of page 116 of the transcript, Witness 3 has alleged that I would carry a large backpack and that on one occasion I opened the boot of my motor vehicle and took cash to pay for lunch. Witness 3 has also alleged that the alleged money came from the Gupta residence. I deny that I have carried a large sum of money in a backpack. In the event that I would carry cash, I would use my man bag which does not look like a backpack and is way smaller than a backpack. I have never received money from the Gupta residence or the Guptas.
20. In instances where I had lunch meetings, I would always offer the officers lunch and settle their bills. The officers would sit at their own table and not sit with me or my colleagues. I would request to settle their bills from my table. The officers would not know how I settle their bills, whether in cash or through a bank card or whether the people I had lunch with, settled the bill.

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21. Witness 3 has also alleged that I paid for some of my suits using the alleged cash from the alleged backpack. I deny this. Most of my suits were made for me by a number of designers/stores who had asked me to wear their suits to assist in getting their works to obtain exposure. In the event that I did buy suits, I would pay for them over time and in certain instances, at discounted prices from stores in Sandton City. In those instances where I purchased new suits, Witness 3 would not be near me when I pay. Protection officers would as a norm, stand outside of the store.
22. It is apposite to mention that in 2013, I needed to alter most of my suits as I had lost a lot of weight. These suits were altered at the same stores in Sandton City.

CONCLUSION

23. Witness 3 has made serious allegations and insinuations against me. These allegations are spurious and manufactured. Witness 3 has portrayed me as someone who received money in an unlawful manner and that in doing so, he has alleged that I instructed him not to record trips in his logbook. These are serious allegations which not only I should be afforded an opportunity to respond to through this preliminary statement but I also believe that it would be in the interest of the Commission for me to be granted leave to cross examine Witness 3.

AKM
KNW
KNW

24. I therefore humbly apply for leave to cross examine Witness 3 at a time convenient to the Commission.


DEPONENT

THUS SIGNED AND SWORN TO before me at Sandton on this the 9th day of September 2020 by the deponent who acknowledges that the deponent knows and understands the contents of this affidavit; that it is the truth to the best of the deponent's knowledge and belief and that the deponent has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


COMMISSIONER OF OATHS

EX OFFICIO:
FULL NAMES:
PHYSICAL ADDRESS:
DESIGNATION:

ASHLEY JOY ADAMS
COMMISSIONER OF OATHS
EX OFFICIO
PRACTISING ATTORNEY - RSA
1ST FLOOR, 3 GWEN LANE
SANDTON


KNIN
KNIN

"FA1"

IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT BRAAMFONTEIN, JOHANNESBURG
("the Commission")

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

CONFIRMATORY AFFIDAVIT

I, the undersigned,

TIRHANI REGINALD TSHABALALA

do hereby declare under oath as follows:

1. THE DEPONENT

I am:

- 1.1 a male duly enrolled legal practitioner, practising as an attorney,
conveyancer and notary public of the High Court of South Africa,
practicing for my own account under name and style, Tshabalala
Attorneys, Notaries and Conveyancers at First Floor, 3 Gwen Lane,
Sandton, Johannesburg; and
- 1.2 the attorney of record for the Applicant in this matter.

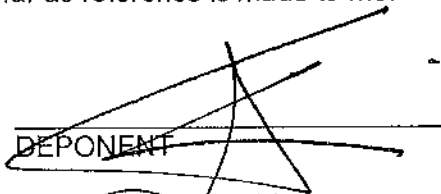
A. S. M.
KNW
KNW

2. KNOWLEDGE OF FACTS

The facts herein contained, unless indicated to the contrary, fall within my own personal knowledge, and are both true and correct.

3. CONFIRMATION OF THE STATEMENT OF RESPONSE

I have read the statement of response of the Applicant, MALUSI KNOWLEDGE NKANYEZI GIGABA to which this affidavit is annexed and confirm the contents therein in so far as reference is made to me.


DEPONENT

THUS SIGNED AND SWORN TO before me at Sutton on this the 24th day of September 2020 by the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on his conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


COMMISSIONER OF OATHS

EX OFFICIO:
FULL NAMES:
PHYSICAL ADDRESS:
DESIGNATION:

ASHLEY JOY ADAMS
COMMISSIONER OF OATHS
EX OFFICIO
PRACTISING ATTORNEY - RSA
1ST FLOOR, 3 GWEN LANE
SANDTON


KNN
KNN

"FA2"



2nd floor, Hillside House
17 Empire Road
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2193
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Tel (toll-free): 0800 222 097
Email: inquiries@statecapture.org.za
Web: www.statecapture.org.za

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

NOTICE IN RE: TRANSNET EVIDENCE

TO : MR MALUSI GIGABA
C/O : TSHABALALA ATTORNEYS
TEL : 011 783 5677
EMAIL : reginald@tshabalala.com

IN TERMS OF THE ORDER GRANTED BY THE CHAIRPERSON OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION"), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 On Thursday, 13 August 2020, the Commission's Legal Team presented the evidence of a witness referred to as **Witness 3** at its hearing held at the Old Council Chamber of the Municipality of the City of Johannesburg, 158 Civic Boulevard Braamfontein, Johannesburg.
- 2 The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct.
- 3 Please find attached:
 - 3.1 **Annexure A:** The Order granted by the Chairperson which records the terms upon which the evidence of the witness was permitted to be heard.
 - 3.2 **Annexure B:** A transcript of the evidence of the witness presented at the hearing.

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KMM

- 4 The relevant redacted affidavit, as per order 2.2 of Annexure A, will be sent to you as soon as possible.
- 5 In accordance with the provisions of Rule 3.4 of the published Rules of the Commission, if you wish to:
 - 5.1 give evidence yourself;
 - 5.2 call any witness to give evidence on your behalf; or
 - 5.3 cross-examine the witnessthen you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.
- 6 An application referred to in paragraph 5 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness's evidence insofar as it implicates you. The affidavit must identify what parts of the witness's evidence are disputed or denied and the grounds on which they are disputed or denied.
- 7 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.
- 8 In the event that you believe that you have been prejudiced, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.
- 9 Please take note that even if you do not make an application under Rule 3.4:
 - 9.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the evidence; and
 - 9.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to

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appear before the Commission to give evidence which has a bearing on a matter being investigated.

- 10 Any response or affidavit in regard to this notice must be sent to Advocate André Lamprecht and Ms Shannon van Vuuren at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 26th DAY OF AUGUST 2020



MS K B SHABALALA
Acting Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State



"FA3"

Kim Slaffa

From: Reginald Tshabalala
Sent: Tuesday, 08 September 2020 15:34
To: 'Secretary'
Cc: 'Kim Slaffa'
Subject: RE: In Camera Witness 3//Notice// Gigaba

Dear Sirs/Mesdames,

I refer to your letter dated Wednesday, 26 August 2020 transmitted to me through the e-mail below.

I have scheduled a meeting with my client for tomorrow morning with a view to respond to the allegations of witness 3. I have since realised that I have not yet received the redacted affidavit of witness 3 from you. Can you be kind enough to urgently let me have the redacted affidavit of witness 3 to enable my client to react to the evidence of witness 3 by tomorrow, being the due date.

Yours Faithfully,



Reginald Tshabalala
Attorney, Conveyancer
and Notary Public
 T: +27 11 783 5677
 E: reginald@tshabalala.com
 www.tshabalala.com

1st Floor, 3 Gwen Lane
 Sandton, Gauteng
 P O Box 87900
 Bryanston 2021
 Tel +27 (0) 11 783 5677

Important Notice: Please note that we will never change our bank account details by email. We urge you to contact our office to verify banking details prior to making any payments or deposits.

This e-mail is being sent from Tshabalala Attorneys, Notaries & Conveyancers, and is intended for the addressee named above. Any unauthorised use or inception of this e-mail is illegal. The e-mail message or its attachments may contain confidential or privileged information and may not be copied, forwarded or disclosed to any unauthorised person. If you are not the named addressee (or person responsible for forwarding the e-mail to the addressee) please notify us immediately via return e-mail and destroy the copy you have received. Save for *bona fide* law firm matters, Tshabalala Attorneys, Notaries & Conveyancers accept no responsibility for the opinions of the content in this e-mail or its attachments.

From: Secretary <Secretary@commissionsc.org.za>
Sent: 26 August 2020 03:26 PM
To: reginald@tshabalala.com
Subject: In Camera Witness 3//Notice// Gigaba

Dear Sir/Madam

Handwritten signature and initials:
 KMS
 KMS

"MG8"

Mafika Mkwana, Chairman

TRANSNET



Honourable Minister Malusi Gigaba
Minister of Public Enterprises
Private Bag X15
Hatfield
0028

Fax: 012 431 1039

Dear Honourable Minister Gigaba

**APPLICATION FOR SECTION 54 APPROVAL IN TERMS OF THE PUBLIC FINANCE
MANAGEMENT ACT ("PFMA"): ACQUISITION OF 1064 LOCOMOTIVES FOR
TRANSNET FREIGHT RAIL'S GENERAL FREIGHT BUSINESS**

Purpose

The purpose of this letter is to seek approval from the Shareholder Minister of our planned investment to acquire 1 064 locomotives for Transnet Freight Rail's General Freight Business (GFB). This is being done in accordance with the requirements of the PFMA and Treasury regulations and guidelines.

The Board of Directors at their meeting of 25 April 2013 approved the proposed Investment. Transnet plans to acquire 1064 locomotives at an estimated total cost of R38,6 billion over the next seven years. This investment in conjunction with investing in related infrastructure and wagons will facilitate the planned ramp up in GFB volumes from 80mt to 170mt over the next seven years as anticipated in the Market Demand Strategy (MDS) which is aligned to Transnet 2013/14 Corporate Plan.

Transnet has been interacting with the Shareholder representatives as part of the stakeholder engagement strategy formulated for investments requiring Shareholder approval. The business case was presented to Transnet's various internal approval governance bodies, Capital Investment Committee, Executive Committee, Board Acquisitions and Disposals Committee and Board of Directors.

Governance

An enhanced governance process was devised for the approval of the investment to acquire 1064 locomotives for Freight Rail's GFB. This includes the establishment of a Locomotive Steering Committee (LSO) which is mandated by Transnet's Executive Committee and chaired by the Group Chief Executive Officer. The Group Chief Financial Officer, TFR Chief

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1. Business case development
2. Recommendation of the business case for approval by the abovementioned approval bodies.
3. Procurement and tender process
4. Negotiating and contracting with the successful tenderer
5. Locomotive manufacture process and adherence to production deadlines and targets during the construction of the locomotives

A governance framework has been developed specifically for this transaction and includes:

- a. Highest standards of confidentiality, reinforced through the High Value Tender (HVT) process with oversight from Transnet Internal Audit
- b. A project management office has been set up at TFR with specific responsibilities of:
 - i. Tracking progress towards milestones,
 - ii. Establishing and owning a virtual data room based on best practice,
 - iii. Scheduling Steering Committee meetings at the Chairperson's request
 - iv. Following up on action items and
 - v. Ensuring confidentiality protocols are in place

This business case provides the rationale to invest in the profitable General Freight Business (GFB) by procuring 1064 new locomotives (465 diesel, 599 electric). This business case demonstrates a clear need to accelerate locomotive deployment to enable delivery against Transnet's Market Demand Strategy and achieve South Africa's broader socioeconomic objectives.

The two options explored include the 'do nothing' scenario which is economically unviable and does not support the volume growth expected in the MDS and will jeopardise the 2013/14 Corporate Plan. The only viable option is for Transnet to invest in the acquisition of the 1064 locomotives (599 electric and 465 diesel).

a. Create value for Transnet by enabling:

- i. TFR to deliver 170 mt by 2018/19 and thereby achieve its MDS target.

- ii. This will result in a positive NPV (R2,7 billion at the TFR hurdle rate of 18.56% and R34,1 billion at the TFR WACC of 12.56%),
- iii. Top-line growth
- iv. Enhanced return on assets (ROA), and
- v. An improved environmental footprint.
- b. Lower the cost of doing business in South Africa by enabling operational efficiencies that will increase customer satisfaction and facilitate a shift from road to rail.
- c. Create and preserve 28,000 direct and indirect South African jobs, and R68 billion in economic impact through local supplier development.

Benefits of the acquisition include:

- a. Improved operational efficiency:
 - i. Increased availability of fleet from the current 85% to 93%
 - ii. Improved reliability as newer fleet is less susceptible to breakdowns
 - iii. Increased tractive effort will result in fewer locomotives required to pull a similar length train
 - iv. Dual Voltage design enables trains to traverse AC and DC configurations avoiding the time consuming practice of changeovers.
 - v. Fleet standardisation will result in a simplified maintenance regime
- b. Create business opportunities for Transnet Engineering who will participate substantially in the localisation programme.

Benefits for the country include:

- a. Creation of R68 billion in localisation benefits for the economy as the Transnet local content requirement is 55% and 60% for diesel and electric locomotives respectively.
- b. Catalyse the sustainable development of a South African locomotive production industry based on the procurement of 1064 locomotives over approximately 7 years and an estimated on-going annual need of 80 locomotives driven by TFR's 30-year replacement life policy
- c. Development of manufacturing skills and creation and preservation of 28 000 direct and indirect jobs
- d. Improve road safety (fewer road fatalities) and general road condition by moving freight from road to rail.
- e. Environmental impacted in a positive way through reduced carbon emissions by the newer fleet.

Benefits to business include:

- a. Increased customer satisfaction as improved fleet reliability results in reliability and predictability of service which provides 'piece of mind' to customers.

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- b. Lowering the cost of doing business by aggressively pursuing a shift from road to rail as rail becomes more cost effective for transportation of freight for distances greater than 300km.

Programmatic procurement strategy

A robust procurement strategy and appropriate governance processes have been designed and instituted to ensure transparency, fairness, and value maximisation for Transnet. The procurement strategy for this project has been approved by the Board of Directors and include the following key aspects:

- a. Alignment to Government's socio-economic policy framework
- b. Developing skills, creating jobs and transferring technology through increasing the local content thresholds (55% for diesel and 60% for electric locomotives)
- c. Open tender process which will result in the broadest possible supplier base bidding for Transnet's business thereby maximising value for Transnet
- d. A six step evaluation methodology will be applied with the following criteria:
 - vi. Price 60% weighting
 - vii. Supplier development 20% weighting
 - viii. Broad-based Black Economic Empowerment 20% weighting.

Risks

The risks that are inherent in a procurement event of this nature have been identified and mitigation strategies are or will be put in place to ensure that the risks to the company are mitigated. Some of the key risks identified include:

Risk	Mitigating actions/considerations
Volumes: volume risk has the greatest potential to impact NPV. A slight underperformance (7% versus MDS targets), Transnet would experience revenue shortfalls of R16.4 billion and a reduction in NPV of R1.7 billion. However, under the worst case scenario (growth of volumes in line with GDP) NPV would be reduced by over R20 billion.	<ul style="list-style-type: none">• This reinforces the need for a flexible procurement and contracting strategy, allowing locomotives to be brought online as they are needed.• Take or pay contracts are to be negotiated and put in place.
Delivery schedule. TFR already has a shortfall of DC electrics, with the electric locomotive shortfall projected to grow to approximately 140 by 2015. Given the previously expected timelines to procure new locomotives locally, TFR may not be able to close this shortfall until the end of the MDS period. Under the base case (procurement in line with schedules stipulated in the RFP), R13.3 billion in MDS revenues would be at risk; this would triple under a moderately delayed scenario with further downside under the worst-case scenario.	<ul style="list-style-type: none">• Procurement and production timelines are being tightly managed to ensure the swiftest possible locomotive delivery, and immediate mitigation strategies are being explored. These include front-loading orders with international suppliers and exploring leasing options.• Payment requirements to suppliers to incentivise delivery of locomotives.
Tariffs. The MDS GFB tariffs are expected to	<ul style="list-style-type: none">• Cost reduction and efficiency

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<p>Increase faster than CPI through 2020 (7% versus 6%). Given that the pricing on almost all GFB commodities is below the cost of full economic recovery even after taking into account all efficiencies, the pricing corridor in TFR's plan is achievable. However, should global and local economic conditions create challenges and tariffs above CPI cannot be implemented, the implication would be a reduction in the NPV of the business case by upwards of R4 billion.</p>	<p>improvement initiatives will need to be developed on a continual basis to ensure that the Transnet cost base is as lean as possible.</p>
<p>Foreign exchange exposure. The Rand's depreciation against the US dollar by 10% this year would increase the price for a transaction of this size by approximately R2 billion.</p>	<ul style="list-style-type: none">• Transnet's Group policy on Financial Risk Management requires that all contracts must be either Rand-based or effectively hedged to minimise the risk of financial loss due to exchange rate fluctuations. Should a Rand-based contract not be possible, hedge accounting will be applied to manage any foreign exchange volatility. The project will be hedged according to the Group policy.
<p>Locomotive purchase price. Additional locomotive price risks (e.g., change order risks related to detailed specifications). A purchase price increase of 10% would have a R1.5 billion impact on NPV.</p>	<ul style="list-style-type: none">• Price risks need to be actively managed during contracting and negotiations

Funding

Funding of the acquisition of the 1064 locomotives (R38,6 billion) is included in Transnet's overall funding requirement of R86 billion over the next 6 years. Two thirds (R25 billion) of the funding requirement will be via cash generated from Transnet operations and the remainder (R14 billion) will be sourced through the Global Medium Term Note, Domestic Medium Term Note, Development Finance Institutions, and Export Credit Agencies depending on the most cost efficient option.

Business Integration

Operational readiness is critical to TFR, Transnet and the country extracting the benefits the acquisition is capable of delivering. Integration of locomotives with demand, wagons, infrastructure, operations other divisions where port interface is required is thus essential. In addition human resource development underlies all the other integration nodes and thus the training of more than 3000 train drivers and assistants is also a key project dependency.

A comprehensive information pack containing the following is attached for your ease of reference:

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- Board of Directors Resolution - Annexure A;
- Executive Summary – Annexure B;
- Business Case – Annexure C.

The ongoing consultation between Transnet and the DPE thus far as well as the information contained in this letter will enable the Honourable Minister to assess this request timeously. In addition this will enable the Committee established by the Honourable Minister to meet urgently to facilitate the approval process.

Please do not hesitate to contact my office if you require further clarity with regard to the proposed investment.

Kind regards



Mafika Mkwanazi

Chairman, Transnet SOC Ltd

Date:

30/04/2013

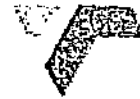


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Mafile Mkwana, Chairman

TRANSNET



Honourable Minister Pravin Gordhan
Minister of Finance
Private Bag X115
Pretoria
0001

Fax: 012 315 5126

Dear Honourable Minister Gordhan

NOTIFICATION: APPLICATION FOR SECTION 54 APPROVAL IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT ("PFMA") - ACQUISITION OF 1064 LOCOMOTIVES FOR TRANSNET FREIGHT RAIL'S GENERAL FREIGHT BUSINESS

The purpose of this letter is to notify the National Treasury of Transnet's application to its Shareholder Minister (Department of Public Enterprises) of our planned investment to acquire 1 064 locomotives for Transnet Freight Rail's General Freight Business (GFB). This is being done in accordance with the requirements of the Public Finance Management Act (PFMA) and Treasury Regulations.

Transnet will acquire 1064 locomotives at an estimated total cost of R38,6 billion over the next seven years. This investment in conjunction with investing in related infrastructure and wagons will facilitate the planned ramp up in GFB volumes from 80mt to 170mt over the next seven years as anticipated in the Market Demand Strategy (MDS) which forms the basis of Transnet's 2013/14 Corporate Plan.

Transnet has been interacting with the Shareholder representatives as well as National Treasury representatives (Ravesh Rajlal and Luyolo Ntlangula) as part of the stakeholder engagement strategy formulated for Transnet's investment's requiring Shareholder approval.

A comprehensive information pack containing the following is attached for your ease of reference:

- Board of Directors Resolution - Annexure A;
- Section 54 Letter of Application to the Minister of Public Enterprises – Annexure B
- Executive Summary – Annexure C;
- Business Case – Annexure D.

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JB Skosana E Tshababala DL Tshape A Singh* (Group Chief Financial Officer)
*Executive... Indian

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Group Company Secretary: ANC Ceba

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Please do not hesitate to contact my office if you require further clarity with regard to the proposed investment.

Kind regards

Mafika Mkwanaazi
Mafika Mkwanaazi
Chairman
Date: 30/04/2013

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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

TO : MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES

FROM : MS. KGOMOTSO MODISE

DEPUTY DIRECTOR-GENERAL : TRANSPORT

FILE REF : 16/1/12/R

IDMS REF : 158980

**SUBJECT : TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064
LOCOMOTIVES**

DATE : 13 JUNE 2013

DEPARTMENT OF PUBLIC ENTERPRISES
SUIT 401, INFOTECH BUILDING ARCADIA STR 1090, HATFIELD 0083
2013 -07- 11
PRIVATE BAG X15 HATFIELD 0028
DEPARTMENT OF PUBLIC ENTERPRISES

1. PURPOSE

- 1.1 To advise the Minister with regard to Transnet's application in terms of Section 54 of the Public Finance Management Act (Act No.1 of 1990 (PFMA) for approval to invest R38,6 billion in the acquisition of 1064 locomotives for Transnet Freight Rail's (TFR) General Freight Business (GFB) over the next seven years. Transnet's original section 54 application is attached hereto as Annexure "B".
- 1.2 To request Minister to sign the letter attached hereto as Annexure "A", to the Chairperson of Transnet approving the application with conditions if in agreement of the contents thereof.

2. SUMMARY

- 2.1 Transnet's 2013/14 Market Demand Strategy (MDS) has projected a 90mt growth in General Freight Business (GFB) volumes, i.e. from 91mt in 2013/14 to 170mt in 2018/19. In order to achieve this stretched target, Transnet had allocated R143bn of the initial MDS

Lefapha la Dikgwabo tsa Puso • Lefapha la Dikgwabo tsa Mmuso • UMnyango wezinkampani zikaHulumeni • Muhasho wa Mabindu a Muvhuo • Departement van Openbare Ondernemings • Kgomo ya Dikgwabo tsa Setshaba • Ndzawuto ya Mabhindzu ya Mfumo • Litiko la Temabhezini aHulumende • ISebe lezaMashishini oMbuso

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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

R301bn capital programme to invest in GFB infrastructure and rolling stock in order to increase capacity.

- 2.2 There has been no investment in GFB locomotives between 1992 and 2008 and the average age of the current GFB fleet of 1889 locomotives is 32 years, whereas the design life of a locomotive is 30 years. In addition, 374 of these locomotives are expected to be written off over the next seven years; as these locomotives would have reached the full life span and have become too expensive to maintain.
- 2.3 In order to address the challenge of aging locomotives, which affects the delivery of MDS volume demands, Transnet proposes to invest approximately R38 billion in the acquisition of 1064 locomotives (599 electric and 465 diesel) to enable TFR to deliver the MDS GFB target of 170mt by 2018/19. This will result in a positive NPV and an increased return on assets (ROA). It is also expected to lower the cost of doing business by improving operational efficiencies, creating and preserving 28 000 direct and indirect jobs while creating R68 billion in economic impact through local supplier development.
- 2.4 Further, the benefits of the acquisition include, inter alia, the creation of Transnet Engineering's (TE's) localisation opportunities, sustainable development of the SA locomotive production industry through consistent annual demand over the next seven years, skills development and job creation. In achieving this, the strategic role of TE as a catalyst in rail industrialisation will have to be clarified. This would be characterised by TE playing a role as a strategic localisation and supplier development agency for the rail and ports industry as a whole.
- 2.5 In order to maximise the localisation and transformation opportunities from this acquisition, Transnet will apply a procurement strategy which is geared towards increasing the weighting of supplier development and Broad-Based Black Economic Empowerment (B-BBEE). Through this procurement strategy, Transnet could achieve as much as 70% localisation from this procurement at a relatively small price premium. The level of localisation targeted is informed by the current capability of local suppliers and the choice of components to be localised. The choice of components to be localised is dependent on the technological complexity of the production of the component and the economies of scale that can be derived in localising that component.
- 2.6 Overall, the detailed business case and explanatory engagements with Transnet confirm there is a need to replace the ageing locomotive fleet if the MDS strategy and 2013/14 Corporate Plan are to be realised. In view of the strategic nature of the locomotive



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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

acquisition, the Department recommends that Minister approves Transnet's 1064 acquisition application.

3. ANALYSIS AND FINDINGS**3.1 Introduction**

3.1.1 On the 2nd of May 2013, Transnet submitted a section 54 PFMA application for Minister to approve the acquisition of 1064 locomotives that is estimated to cost R38.6 billion. This acquisition has been included in the overall MDS investment and funding plans.

3.1.2 The acquisition comprises of the procurement of 465 diesel and 599 electric locomotives by TFR over the next seven years aimed at replacing the current aged fleet and supporting the MDS to ramp up GFB volumes from the current 91mt in 2013/14 to 170mt by 2018/19.

3.1.3 According to the PFMA, Minister has to provide a response within 30 days for the submission date. The 30 day period has however, lapsed due to the necessary due diligence processes undertaken to satisfy ourselves as the sector unit regarding the merits of the business case. There were two engagements between Transnet and the Department's officials that took place since submission of the business case as part of the due diligence process.

3.2 Business need and fleet requirements

3.3.1 As part of the road to rail initiative, TFR has committed to grow its total volumes from the current 208 mtpa to 350 mtpa by 2019. Rail currently only has a market share of 11,5% in respect of tonnes freighted and 29% in respect of tonne-km freighted TFR growth in GFB volumes is expected to increase from the current 40% of total volumes to 49% by 2018/19. The majority of the growth in GFB demand will be generated by rail-friendly bulk commodities that need to be transported over long distances such as manganese, magnetite, and domestic iron ore. Bulk commodities, such as coal needed for Eskom's power stations and container-based commodities for which existing demand moves on road, is also expected to shift to rail.

3.2.2 In order to achieve these MDS targets, TFR has planned to invest a total of R194bn over the seven year period. Of the R194bn, R143bn has been allocated to the GFB business which has been historically plagued with inefficiencies. These inefficiencies have to a large degree been caused by the use of an aged locomotive fleet.



TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

- 3.2.3 Due to the lack of investment in GFB rolling stock in the past, TFR has suffered higher faults per million kilometres, lower gross tonne kilometres, and substantially higher maintenance costs. This has decreased customer satisfaction, leading to a shift from rail to road.
- 3.2.4 The average economic design life of a locomotive is 30 years and TFR's current locomotive fleet is 32 years old. There have been no new locomotive acquisitions between 1992 and 2008, until the GFB fleet was augmented with 50 "like new" diesels, 143 diesels and 95 electrics. Life extension of the current fleet has resulted in high maintenance costs and difficulty in obtaining replacement parts.
- 3.2.5 TFR's current locomotive fleet plan indicates that the fleet complement will decline from 1889 in 2014 to 1592 by 2019, a further reduction to 50% of the fleet in ten years and a totally retired fleet in twenty years. If this is not addressed, TFR will only be able to transport 85 mtpa by 2019, which will be 85 mtpa short of its MDS target.

3.3 Proposed solution

- 3.3.1 To meet the fleet requirements necessary to support the MDS volumes, TFR needs to procure 1064 new locomotives with built-in flexibility in the procurement contract to account for demand fluctuations and operational efficiencies. This will enable the appropriate timing of the delivery of locomotive requirements.

Volumes vs. Locomotive capacity

VOLUMES (PER NET TONNE)	2013/14 2014/15 2015/16 2016/17 2017/18 2018/19					
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Existing fleet	83	82	100	106	92	85
1064 locomotives	1	7	21	41	60	77
Volume shortfall	7	15	6	4	9	8
MDS target	91	104	127	151	161	170

- 3.3.2 The first line on the table above reflects million tonne volume capacity provided by the existing fleet over the remaining original MDS period, the second line reflects additional capacity added by acquisition of the 1064 locomotives and the third line reflects a volume shortfall (which will peak at a considerable risk in 2014/15) due to the limitations in locomotive capacity.
- 3.3.3 The shortfall will be mitigated by increasing locomotive optimisation, which entails improved rolling stock utilisation planning and execution. The total revenue shortfall in the

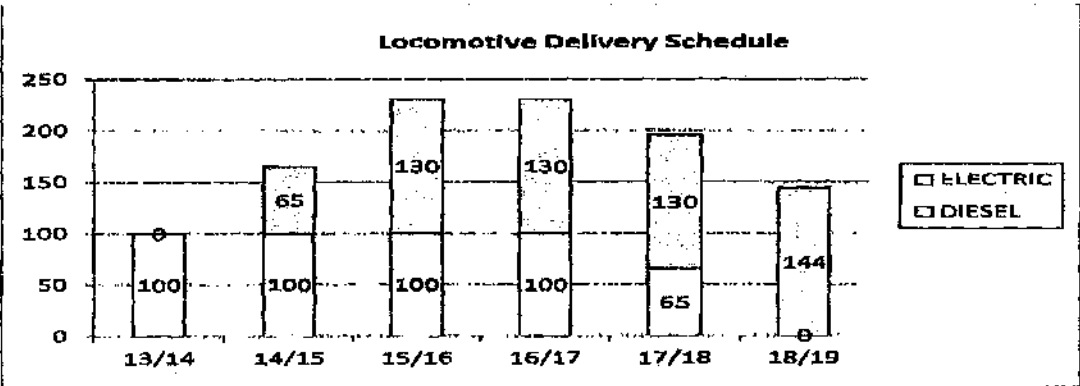
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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

case where no locomotives are purchased and only the existing fleet can therefore be utilised, stands at R73 billion during the period 2013 /14 to 2018/19.

- 3.3.4 A further benefit of the acquisition will be increased standardisation of the fleet which will lead to resolving both operational and maintenance difficulties such as training drivers, planning route design,s and maintaining locomotives. The proposed diesel locomotives can operate over most of the network with notable exception of long tunnels. Current single voltage electric locomotives are confined according to the current electrified network. This imposes operational inefficiencies due to the traction changes. The new electric locomotives will be dual voltage, eliminating the need to change tractive power and enabling trains to bypass operational yards – thereby increasing efficiencies.
- 3.3.5 The graph below reflects the proposed locomotives delivery schedule. Based on this proposed schedule, in the first two years, priority will be given to diesel locomotives and from the third year onwards, electric locomotives will be accelerated. Due to the current strain and uncertainty in the country's electricity supply, may be beneficial to prioritise diesel locomotives in the earlier part of the contract.

Fig 1. Proposed locomotive delivery schedule



3.4 Impact on TE

- 3.4.1 TE will be significantly impacted by the procurement of the 1064 locomotives, shifting from a maintenance-oriented organisation with relatively smaller builds to a manufacturing oriented organisation. The new deployment plan will also significantly alter the way TE operates as the new locomotives would have added features that will reduce maintenance and increase reliability. The positioning of TE as a manufacturing entity with one or more OEMs will be influenced by the procurement as articulated in the RFP.

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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

3.4.2 It is recognised that the role of TE in the locomotive procurement will be determined once bids have been received, relevant OEMs engaged with and the ultimate procurement contract entered into. However, the Department's objective is that TE becomes a rail and ports manufacturing powerhouse for Africa. The Department is looking to position TE as a strategic localisation and supplier development agency for the rail and ports industry as a whole.

3.4.3 In order for this to become a reality, it is necessary to provide TE with a base-load of work to build strategic capabilities, whilst also ensuring that it becomes cost competitive, process efficient and a high quality producer. The Department needs to understand TE's relative role versus that of the private sector and consequently a description of these respective roles. TE should also detail its locomotive supply chain strategy to specify what is being imported, what it is producing, what is being outsourced to the private sector and the broad conditions associated with outsourcing that will result in a competitive national industry. Such conditions may include industry competitiveness benchmarking, investment in plant and skills and the requirement that the industry masters quality and lean manufacturing disciplines as part of the long-term contract. The Department is particularly interested in the localisation strategy flowing from the procurement and the role of TE in the strategy for the following strategic components: traction convertor, traction motor, diesel engine, bogies, electrical systems, management system and control system.

3.5 Project strategic fit

3.5.1 The investment in growing GFB volumes is anticipated to make business sense, as it lowers the cost of doing business and accelerates a modal shift from road to rail. The majority (85%) of the growth in GFB demand is generated by: rail-friendly bulk commodities that need to be transported over long distances such as manganese, magnetite, and domestic iron ore; bulk commodities with specific demand, requirements such as coal needed for Eskom's power stations; and container-based commodities for which existing demand moves on road and will shift to rail.

3.5.2 In addition, the MDS promises to promote localisation, transformation and empowerment. The following localisation and transformation initiatives are proposed:

- International suppliers to transfer knowledge and expertise to up-skill local suppliers
- On-the-job training and apprenticeships to be built into international supplier contracts
- Provision of jobs and procurement opportunities to rural areas where facilities are located

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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

- Assistance to be provided to businesses will serve to foster innovation and create jobs
- R4,2bn expected to be spent over the next 7 years on small business promotion
- Collaboration with suppliers to meet Government's transformation and empowerment objectives.

3.5.3 Whilst, from a high level, the project seeks to address rail market re-capture and localisation, there is a lack of detail on how Transnet intends to create the modal shift. Elements of a specific modal shift strategy that involve corridor analysis and other business model planning is lacking and needs to be addressed. A condition pertaining to the above is therefore included in the letter attached hereto as "**Annexure A**".

3.6 Financial analysis

3.6.1 From a financial perspective, the key value propositions of this project include:

3.6.1.1 Revenue growth with an acceptable tariff increase (in line with the compacted target of CPI+2%)

3.6.1.2A positive Net Present Value (NPV): The NPV is a financial calculation used to determine the profitability of the project in today's Rand terms. The NPV is calculated by discounting future cash flows based on the Weighted Average Cost of Capital (WACC), to determine what these cash flows are worth today, less than the initial investment. If the difference is positive, the investment should be made. If the difference is negative, it means that the project is destroying value.

3.6.1.3 Enhanced Return on Assets (ROA)

3.6.2 Since TFR is an integrated business, i.e. some assets and corporate services are shared between the Business Units, the NPV calculation in the business case was based on TFR as a whole rather than the project itself.

3.6.3 The business case was built on two scenarios as highlighted below:

3.6.3.1 The "do nothing" scenario

The MDS is premised on Transnet's ability to generate cash flows internally in order to fund 2/3 of the R307bn CAPEX programme. Based on TFR's current Locomotive Fleet Plan, the number of locomotives in the GFB fleet will decline from 1889 in 2014 to 1592 by 2019. If this run-out is not addressed, TFR would only have capacity to transport 85 million tonnes in 2019, representing a cumulative revenue shortfall versus the MDS plan of R73 billion over this period. The impact of this revenue shortfall would lead to failure of the MDS.


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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES**3.6.3.2 The new locomotive procurement scenario**

TFR supports its planned volume ramp-up through investment in new locomotives to replace the current aged fleet. Procuring 1064 new locomotives between 2013/14 and 2018/19 would have a positive NPV of R2.7 billion (discounted using TFR's hurdle rate of 18.56%; NPV would be R34.1 billion if discounted using TFR's WACC of 12.56%). The hurdle rate is higher than the WACC rate because it factors in additional project specific risks.

3.6.4 The 1064 locomotives are expected to cost R38.6bn in total, assuming that the current exchange rates prevail, the amount comprises 465 diesel locomotives at an average price of R25 million each and 599 electric locomotives at approximately R34 million each. These estimated prices include a 2% localisation premium. Electric locomotives are initially more expensive to purchase, primarily as a result of significantly higher development costs as more customisation is required than in the case of diesels. However, running costs are lower for electric locomotives, making them less costly in the long run.

3.6.5 In addition to the project cost of R38.6bn, associated capital costs will be spent on wagons and infrastructure through separate projects, to an approximate amount of R17.5bn and R26.5bn respectively, to complement the additional locomotives.

3.6.6 According to the revised MDS, two thirds of the R307bn seven year capital investment plan will be funded from internally generated cash flows and the balance will be funded externally. Similarly, the locomotive plan of R38.6 billion will be funded from internally generated funds (two thirds) and the balance of R13 billion from external sources (one third).

3.6.7 Payment arrangements of locomotives will be carried out as follows: 90% on delivery and 10% on acceptance.

3.7 Operational readiness and infrastructure

3.7.1 TFR will require an additional 3 065 drivers in order to operate the additional locomotives. However, it only has capacity to train an average 500 drivers per year and, at its peak in 2015-2016, TFR will require an additional 791 drivers; this is emanating from shortage of train drivers. Over the MDS period, TFR will have a shortfall of 529 drivers.

3.7.2 In response to this challenge, TFR has now changed its mandatory Refresher Training that was required every 2 years, to a Continuous Professional Learning programme.



TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

Training time has been reduced from 22 days to 6 days. This will effectively free up capacity at the School for additional training of new recruits. TFR will need to start training new drivers immediately to close the driver shortfall before the peak demand period in 2015/16.

- 3.7.3 Sustaining and expanding investment in infrastructure and other key projects within the system will be critical to support MDS delivery and thus TFR will also invest in projects to sustain and expand its rail network capacity. The strategy pursued by TFR over the 9-year planning horizon covers two key strategic focus areas to enable volume growth and systemically improve the safety of operations i.e expand infrastructure, create capacity ahead of demand and Sustain existing infrastructure through accelerated maintenance programmes.

3.8 RISKS

A summary of key risks reported by the SOC and those identified by the shareholder is outlined below. **Annexure "C"** sets out the full risk analysis conducted for on the application.

3.8.1 Critical Skills Attraction and Retention

The ability to attract, develop and retain critical skills could affect the delivery and operation of the new fleet including the plan to transform TE into a manufacturing oriented company. Therefore, Transnet should outline its proposed human resource plan indicating how TE and TFR will attract and retain critical skills while ensuring the development and empowerment of previously disadvantaged groups.

3.8.2 Energy supply

There is a risk that Transnet could be left with non-operational assets given that the electric locomotives would require sustainable energy supply to operate optimally. The current energy reserve margins are tight and with the challenges faced on the construction of power stations by Eskom, there may be a need to prioritise the acquisition of diesel locomotives in the short-term period.

3.8.3 Contract Risk

Transnet could suffer losses caused by poor contractor performance or the poor performance of locomotives upon delivery and as such requires adequate protection against the possibility of this significant risk. However, the Department is concerned that protection could be achieved in a manner that undermines government's efforts to drive small enterprise development or support through projects similar to this one. Therefore,


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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

Transnet should outline how it plans to achieve a balance between *sustainable* small medium enterprise support/development and the need to indemnify the company from risks arising from supplier or product performance.

3.8.4 Preservation and Growth of Shareholder Value

There is a risk that government may miss an opportunity to leverage the capabilities possessed by other state-owned companies in executing this project. Denel in particular possesses advanced manufacturing capabilities that could be leveraged to support the project and to gradually develop TE's manufacturing capability. Therefore, Transnet should be encouraged to explore Denel's capabilities as they could present efficiency gains.

3.8.5 Fraud risk

Fraud risk is inherent in any procurement process. However, in a project of this magnitude a realisation of this risk would significantly erode value and could damage the reputation of the SOC and that of the Shareholder. Therefore, the Shareholder should be immediately notified of any fraudulent incidents above R5 million so that the cases could be referred to and be overseen by the government's Anti-Corruption Task Team which is led by National Treasury.

3.8.6 Effectiveness and Efficiency of Project Delivery

There is a risk of project cost overrun and project delay which could be triggered by key factors such as labour unrest, fluctuations in purchase price and foreign exchange fluctuations.

3.8.7 Volumes shortfall

The MDS is based on a number of economic assumptions. If there are material changes in the economic assumptions and the expected volumes do not materialise, the project's viability will be under threat.

3.8. Procurement Strategy

3.9.1 The procurement of rolling stock and in particular the 1064 locomotives provide Transnet and the country a unique opportunity to strategically re-position the rolling stock industry for both localised assembly and localised manufacture of component parts.

3.9.2 The procurement strategy, which informed the RFPs, focuses on Broad Based Black economic empowerment and is all inclusive, has the potential for creating employment on

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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

a large scale; and includes the local content percentages as detailed in the National Treasury Instruction Note issued on the 16th of July 2012, which highlights a local content percentage of 55% for diesel and 60% for electric locomotives.

- 3.9.3 The expected economies of scale in purchasing 1064 locomotives are sufficiently large so as to create localisation opportunities that could increase the percentage of localisation above these minimum thresholds at a low additional price premium. The extent to which localisation can be achieved is calculated on a component by component basis as each component that is currently not localised requires a specific business case and strategy to be localised. The two main factors that increase the cost of localisation are technological complexity in the production process and the need for high production volumes to make the production runs cost-efficient.
- 3.9.4 Based on a component by component analysis, it has been established that Transnet could achieve a high level of localisation at relatively low price premiums. For diesel and electric locomotives, localisation of 70% and 77% respectively could be achieved at an average price premium of less than 2%. This price premium is calculated as the average price premium paid for a locomotive – i.e., including some items with no price premium and others such as engine assembly with an estimated 8% price premium. This 2% localisation premium is expected to yield an economic impact of R78 billion for South Africa.
- 3.9.5 In driving this localisation and transformation objectives, Transnet has formulated a tender evaluation methodology that increases the weighted scoring for supplier development and Broad-Based Black Economic Empowerment (B-BBEE), i.e. the 60/20/20 approach, 60% for price, 20% for supplier development and 20% for B-BBEE. This approach to localisation targets is expected to create 30% greater total economic benefit than that of the traditional 90/10 approach which is required by the PPPFA, 90% being price and 10% B-BEE. The 1064 procurement has been granted exemption from the Preferential Procurement Policy Framework Act (PPPFA) and thereby allows Transnet to apply the 60/20/20 approach.


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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES**4. FINANCIAL IMPLICATIONS**

None for the Department

5. CONSULTATION/PROJECT TEAM





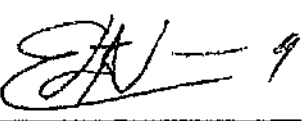



Martin Maiapane, Clive Selwadi, Neelesh Amaidas.

6. RECOMMENDATION

- 6.1 It is recommended that the Minister takes note of the following:
- 6.1.1 Based on the above analysis and engagements with Transnet, the fulfilment on the MDS is highly dependent on a locomotive replacement plan.
 - 6.1.2 The acquisition of the 1064 locomotives will result in a positive NPV of R2.7 billion based on a Transnet hurdle rate of 18.56% and an NPV of R34.1 billion based on a Transnet WACC of 12.56%.
 - 6.1.3 In ensuring that maximum localisation and transformation benefits are derived from this acquisition, Transnet will apply a procurement strategy that is geared towards increasing the weighting of supplier development and B-BBEE.
 - 6.1.4 Through this procurement strategy, Transnet could achieve as much as 70% localisation from the acquisition of the 1064 locomotives at a relatively small price premium of 2%.
- 6.2 It is recommended that the Minister approves the acquisition of the 1064 locomotives with the condition that Transnet provides the Department with the following:
- 6.2.1 Clarity with regard to TE's relative role versus that of the private sector, including the description of these respective roles;
 - 6.2.2 TE's locomotive supply chain strategy which illustrates what is being imported, what TE is producing, what is being outsourced to the private sector and the broad conditions associated with outsourcing which will result in a competitive national industry.
 - 6.2.3 A localisation strategy flowing from the procurement and the role of TE in the strategy for the following strategic components: traction convertor, traction motor, diesel engine, bogies, electrical systems, management system and control system.
- 6.3 It is recommended that the Minister signs the letter (**Annexure A**) to the Chairman of Transnet in agreement with the contents thereof.



TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

Memorandum prepared by:		
 DION HAROLD D: TRANSPORT DATE: 13/06/2013	 NGOAKO HUMA ACD: TRANSPORT DATE: 13/06/2013	 FEMIDA MAHOMED CD: STRATEGIC PARTNERSHIPS DATE: 13/06/2013
REVIEWED AND SUPPORTED:		
 MELANCHTON MAKOBE CD: LGRT DATE: 13/06/2013	 EDWIN BESA ACTING DDG : TRANSPORT DATE: 11.7.2013	
 MS. MATSIETSI MOKHOLO ACTING DIRECTOR-GENERAL DATE: 11/07/2013	RECOMMENDED / NOT RECOMMENDED / COMMENTS 	
 MR. MALUSI GIGABA, MP MINISTER DATE: 2013/08/03	APPROVED / NOT APPROVED / COMMENTS I'd expect that there'll be set-aside for youth and women on this procurement. 	
 MR. BULELANI GRATITUDE MAGWANISHE, MP DEPUTY MINISTER DATE: 2013/06/03	RECOMMENDED / NOT RECOMMENDED / COMMENTS \$ note, not recommend. 	



"MG11"



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X16, Hatfield, 0028 Tel: (012) 431 1118/1150 Fax: (012) 431 1039
Private Bag X9079, CAPE TOWN, 8000 Tel: (021) 461 6378/7449 6760 Fax: (021) 466 2381/481 1741

Mr. Mafika Mkwanazi
Chairman
Transnet SOC limited
P.O. Box 72501
Parkview
Johannesburg
2122

Tel: 011 308 2309
Fax: 011 308 2312

Dear Mr. Mkwanazi

Transnet PFMA Application for the Acquisition of 1064 Locomotives

I refer to the PFMA Section 54 application dated the 2nd of May 2013 regarding the acquisition of 1064 locomotives.

I note Transnet's commitment to the National Growth Path and the National Development Plan objectives.

I also appreciate that this acquisition will go a long way to provide the much needed capacity to realise the Market Demand Strategy volumes, and thereby contribute to the road to rail migration objective. I also expect that we will see significant improvements in operational efficiencies resulting from this procurement. In addition, due to the scale and duration of locomotive fleet procurement, it is critical that we maximise the localisation impact in the process.

I see Transnet Engineering (TE) playing a critical role in developing strategic and industrial capabilities relevant to the rail supply chain. In so doing, TE is expected to systematically support the development of a broader rail industrial cluster involving the private sector and position South Africa as a rail equipment manufacturing hub for Africa. In order to achieve this, the current locomotive procurement programme should be used to ensure that a world class enterprise and rail cluster is built.

Approval is hereby granted to Transnet for the procurement of the 1064 locomotives, subject to the following conditions being met:

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1. A clear statement by Transnet with regard to TE's vision in the locomotive supply chain and what capabilities will need to be developed to make this vision a reality.
2. Transnet to provide TE's seven year locomotive supply chain strategy illustrating what is being imported, what TE produces, what is being outsourced to the private sector and the broad conditions associated with outsourcing that will result in the building of a competitive national industry. Such conditions may include industry competitiveness benchmarking, investment in plant and skills and the requirement that industry masters quality and learn manufacturing disciplines in exchange for long term contracts.
3. Transnet to provide a clear plan to the strategic fit of this locomotive procurement to the broader road to rail migration to objective.
4. Transnet provides the Department with a view of the localisation strategy for the following strategic components:
 - 4.1 Traction convertor;
 - 4.2 Traction motor;
 - Diesel engine;
 - Bogies;
 - Electrical system;
 - Management system;
 - Control system.

Transnet's continued commitment to the economic development of our country is recognised and appreciated; and the Department is committed to providing the necessary support to ensure that the MDS' objectives are achieved.

I trust that you will find the above in order.

Yours sincerely



MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2013/08/13





"MG12"

public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

DEPARTMENT OF PUBLIC ENTERPRISES
PRIVATE BAG/PRIVAATSAK X15
2014 -04- 07
HATFIELD 0028
DEPARTEMENT VAN OPENBARE ONDERNEMINGS

TO : MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES

FROM : MS. JACKY MOLISANE

DEPUTY DIRECTOR- GENERAL : STRATEGIC PARTNERSHIPS

FILE REF : 16/1/12/R

IDMS REF : 170986

**SUBJECT : RESPONSE TO TRANSNET REGARDING THE SUBMISSION OF
ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION
FOR THE ACQUISITION OF 1064 LOCOMOTIVES**

DATE : 11 MARCH 2014

1. PURPOSE

The memorandum seeks to advise Minister in respect of Transnet's submission related to the acquisition of 1064 locomotives (attached as **Annexure A**) and to request Minister to sign a letter to the Chairman of Transnet (attached as **Annexure B**), if in agreement with the contents thereof.

2. SUMMARY

2.1 On 3 August 2013 Minister approved Transnet's PFMA application for the acquisition of 1064 locomotives subject to Transnet providing the Department with the following information:

- Clarity in regard to Transnet Engineering's (TE) role versus the private sector, including the description of these respective roles;
- TE's locomotive supply chain strategy that illustrates what is being imported, what TE is producing, what is being outsourced to the private sector and the broad conditions associated with outsourcing that will result in a competitive national industry;
- A localisation strategy flowing from the procurement and the role of TE in the strategy for the following strategic components:-

Lefapha la Dikgwebo tsa Puso • Lefapha la Dikgwebo tsa Mmuso • UMnyango wezinkampani zikaHulumeni • Muhasho wa Mabindu a Muvhuso • Departement van Openbare Ondernemings • Kgoro ya Dikgwebo tsa Setshaba • Ndawulo ya Mabindzu ya Mfumo • Litiko leTemabhezintsi aHulumende • ISebe lezaMashishini oMbuso

Confidential

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KMM

RESPONSE TO TRANSNET REGARDING THE SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

- Traction convertor
- Traction motor
- Engine
- Bogie gear
- Electrical system
- Management system
- Control system.

- 2.2 In response to Minister's letter, Transnet has submitted information addressing the issues stipulated above.
- 2.3 The Department has assessed the information and has subsequently met with TE on 28 February 2014. TE made a brief presentation on its vision, capabilities and strategy related to the locomotive acquisition.
- 2.4 In light of the discussions held with TE and the Department's assessment of the information provided by Transnet, we are satisfied that overall the procurement process and negotiations that are currently underway by Transnet, seeks to achieve and address our national industrial development objectives.
- 2.5 There are however, a few areas that the Department remains concerned about, that relate primarily to TE's role versus that of the private sector in the procurement as well as the selection of the number of Original Equipment Manufacturers (OEMs) partners to TE for both diesel and electric locomotives. We have been advised that four OEMS, two for diesel locomotives and two for electric locomotives have been shortlisted for the procurement and that TE is the preferred partner for both diesel OEMs and well as both electric locomotive OEMs.
- 2.6 Of particular concern is TE's export strategy into Africa and whether the procurement will have the effect of setting up global OEMs to ultimately effectively compete with TE in Africa. In response to the above, the Department has developed a paper (attached as Annexure C) to guide Transnet on how it can optimise partnerships with OEMs on the back of the strategic procurement to achieve national industrial development objectives.
- 2.7 Minister is requested to sign the attached letter to the Chairman of Transnet, if in agreement with the contents thereof.

3. ANALYSIS AND FINDINGS

- 3.1 Procuring 1064 locomotives provides a distinct opportunity to strategically re-position TE. TE continues to play an important role in locomotive assembly and has capability across a range of locomotive maintenance functions. There are a number of reasons as to why strategically re-positioning TE to enhance its locomotive design and manufacturing capability makes

RESPONSE TO TRANSNET REGARDING THE SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

sense to Transnet as a Group and to South Africa as a developing country with aspirations to grow its manufacturing sector and associated exports.

- 3.2 A transaction as large as the procurement of the 1064 locomotives creates an opportunity to reposition TE and the cluster as a whole towards the design and manufacture of more complex and valuable components and systems. This would result in greater sustainability for local suppliers and enhancing South Africa's position as a design and manufacturing hub for exports into Africa, which over time will be a critical requirement if the industry is to be sustained.

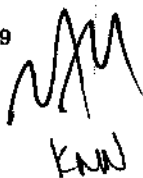
TE's vision in the locomotive supply chain and TE's capability assessment

- 3.3 TE has the aspiration of becoming an OEM for locomotives designed for African operating conditions and other narrow rail gauge territories. Whilst TE has extensive locomotive maintenance, repair and rehabilitation capability and is involved in new locomotive assembly, it has never designed or taken systems integration responsibility for its own locomotive.
- 3.4 The traditional role of a locomotive OEM has been as a prime contractor, system integrator and designer of key components. TE does not yet have these capabilities, but could develop them over the period associated with this transaction. In order to realise this vision, TE will in the short-term need to develop an enhanced capability through selectively seeking participation in the 1064 locomotive contract. The areas that TE has identified as strategic to realising its vision are:
- Co-design of fabricated bogies
 - Bogie frame manufacturing
 - Locomotive cab/carbody manufacturing
 - Design of drivers console
 - Assembly of high and low voltage cable kits
 - Design and manufacture of toilets
 - Cubicle manufacturing
 - Bogie final assembly
 - Engine assembly at TE facility
 - Assembly of locomotives
 - Under frames including fuel tank
 - Painting
 - Assembly and testing of locomotive control and electrical systems
 - Assembly and testing of wheel sets
 - Assembly and testing of pantographs
 - Brake valve assembly


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RESPONSE TO TRANSNET REGARDING THE SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

- Final assembly traction motors and related components
 - Traction motor load testing
 - Defined work in respect of the main power tractions system
 - Test and commission locomotives.
- 3.5 Analysing TE's capability across the spectrum from design to manufacture to maintain, demonstrates where TE's competitive positioning has traditionally been strong. In the areas of locomotive maintenance TE has developed distinctive competence, including capability to rehabilitate older generation locomotives currently held within the Transnet Freight Rail (TFR) stable.
- 3.6 However, TE has a number of capabilities that it needs to develop in order to be positioned to act as an OEM. In manufacture, TE has recently acquired considerable skill in the assembly function and has begun to understand the challenge of integrating a state-of-the-art locomotive. However, in respect of tool design and plans for manufacture, TE's capabilities are relatively rudimentary. In addition, TE needs to develop IP and skills and practical capability in respect of systems integration, concept and detailed design and an ability to simulate and analyse locomotive products that were originally conceptualised by the company.
- 3.7 The integration task should also not be under-estimated. Whilst some elements of design may be outsourced, the ability to integrate components that have been commissioned for production by a complex supply chain into a single product delivered on time within tight budget constraints and at pre-determined levels of quality and reliability, remains for some manufactures, for example in the motor industry, their core competitive advantage. Key to this function is the ability to work with and develop competitive sub-component and parts suppliers.
- 3.8 TE has considerable experience in the design of wagons but not in locomotive design. In the process of upgrading locomotives, TE has gained considerable lower level systems integration experience - this together with skills in locomotive assembly does lay a foundation for the building of a design and integration capability, but there is a long way to go.
- 3.9 TE is in the process of acquiring design skills to design a low tech hydrodynamic drive locomotive for the African market. Leveraging the opportunities created through playing a strategic role under the guidance of a global OEM would allow TE to extend its capability to the design and evolution of diesel-electric locomotives with specific application in Africa, taking into account environmental conditions, expected levels of maintenance, haulage characteristics and track weight limitations and the restrictions imposed by the cape-gauge.



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RESPONSE TO TRANSNET REGARDING THE SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

- 3.10 It is therefore vital that Transnet leverages its position in the locomotive procurement to build a strategic partnership between TE, a diesel locomotive OEM and an electric locomotive OEM.

Structuring strategic industrial partnerships with the successful OEM bidders

- 3.11 There are a number of industry development objectives associated with the Transnet locomotive fleet procurement:

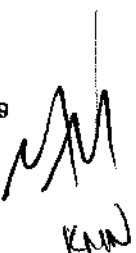
- At an overarching level, we have the objective of optimising the level of national value add (local content) in the production of the locomotives based on the building of globally competitive capabilities in the South African industry.
- In addition, it is critical to secure the sustainability of the industry through exporting locomotives and components into Africa and to become part of global OEM supply chains for selected components.
- Our aspiration is for Transnet Engineering (TE) to become a true national industrial champion in rail and port supply chains. This will require that TE develops globally competitive capabilities for the production of strategic and complex components; that TE leads an export drive into Africa and other accessible markets; that TE plays a facilitative role in the development of the national rail and port cluster involving the private sector and finally; that TE leads a relevant technology development programme to ensure high levels of industry dynamism. In addition, we wish to encourage TE to master capabilities that will create the ability to service other strategic sectors e.g. mining, chemicals, where there are overlaps with rail and port equipment requirements.
- Finally, we have the objective of building a significant technologically dynamic and globally competitive private sector component to the rail and port cluster.

- 3.12 There are fundamentally three levers to achieve the abovementioned objectives:

- Transnet Freight Rail (TFR) is a significant global procurer of rolling stock and by far and away the most significant procurer in Africa.
- As the new fleet is operationalised, TFR will have redundant, old capacity which can be refurbished and sold on the African continent – privileged access to this old fleet will be extremely strategic in the future.
- The Departments of Trade and Industry and Science and Technology and the Industrial Development Corporation have existing incentives and have the ability to design new incentives to support the development of the rail and port cluster.

- 3.13 There are key requirements for an OEM relationship as listed below:

- Global OEMs are key drivers of technology development in their chosen supply chains. Recently, as a result of industry consolidation over the last thirty years, these supply


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RESPONSE TO TRANSNET REGARDING THE SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

chains tend to be dominated by two to three OEMs who have, as a result, considerable market power and revenues. Locomotive OEMs are no exception to this process.

- It is critical that South African rail industry as a whole, has strategic partnerships with these OEMs as a means of accessing design and production technologies as well as markets.
- In particular, we wish to position the South African industry to become export leaders into Africa and it is vital that Transnet's levers are exercised to this end.
- The worst of all case scenarios is that the locomotives that are procured by Transnet are leveraged by OEMs to go into competition with South African industry in the African market.
- It is vital that Transnet leverages its position to build a strategic partnership between TE and a diesel locomotive OEM and an electric locomotive OEM to achieve the following:
 - ✓ TE develops a world-class assembly capability in both diesel and electric technologies.
 - ✓ TE develops the capabilities to design and produce strategic components for locomotives, particularly those that have application in the mining and chemical industries.
 - ✓ TE becomes an exclusive marketing partner for at least one diesel OEM in Africa, with an in-principle agreement from the OEM to provide support for additional markets when no exclusive marketing agreement is in place – the worst case scenario will be for an OEM to use the procurement and its sub-contracting relationship with TE to compete with TE in Africa.
 - ✓ TE enters into a technology development agreement with the OEM with a focus on technologies relevant to Africa.
 - ✓ It is recognised that TE has ambitions to become an OEM and consequently should enter into a mutually beneficial agreement with its global partner to achieve this objective.
 - ✓ TE should be given latitude to ring-fence the relationship with the OEM to secure long-term alignment.

3.14 As part of TE's industry development obligations, TE should undertake the following:

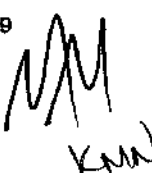
- Outsource low complexity and targeted complex items to South African companies who are better positioned than TE to deliver.
- TE will provide the DPE with a comprehensive supply chain strategy for the duration of the fleet procurement which will include those items that TE will produce internally; those items that TE will localise internally; those items that TE will outsource to national industry; those items that TE will outsource to national industry for localisation; and finally those items that will be imported.

RESPONSE TO TRANSNET REGARDING THE SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

- TE should partner with one diesel OEM and one electric OEM in order to achieve alignment for a long-term export driven relationship and to ensure that TE has the focus to become world-class with its partner.
 - TE will also benchmark itself and obtain relevant globally recognised certification as part of the programme of positioning itself as a driver of exports.
- 3.15 Certain private sector companies should also benefit from the procurement, particularly those involved in assembly and the production of complex components. These companies need to:
- Provide their own skills development and supplier development plans;
 - Be benchmarked and master relevant global certification requirements;
 - Support an export programme;
 - Make investments into technology development.
- 3.16 The locomotive procurement is a unique and once-off opportunity to develop the national rail industry and is therefore of interest to a range of Government departments and stakeholders as well as to industry. Our expectation is that the implementation of the procurement should be very closely scrutinised.
- 3.17 It is consequently critical that a robust independent monitoring mechanism is put in place to determine very quickly if OEMs are meeting their contract obligations in respect of supplier development and localisation. The monitoring methodology should include specific milestones against which the OEMs are measured at required intervals. The results of these independent audits must be communicated to the Shareholder on a quarterly basis, together with actions Transnet is taking, should an OEM not meet its obligations.
- 3.18 If an OEM fails to deliver on its supplier development and localisation obligations for one quarter, the OEM must deliver a comprehensive plan as to how its performance shortcomings will be addressed. If the OEM fails to deliver on the plan and the following quarter does not show substantive progress, then this must result in a termination of the contract given that, as four OEMs have been shortlisted, there will be an alternative supplier for both locomotive types. Alternatively, a new OEM can be selected based on who came third in the current procurement to sustain a competitive dynamic.
- 3.19 The department's position as detailed above needs to be urgently communicated to Transnet, given that the negotiations are nearing the final hour and the announcement of the successful tenderers is imminent.
- 3.20 Minister is therefore kindly requested to sign the attached letter (as per **Annexure B**) to the Chairman of Transnet.

4. FINANCIAL IMPLICATIONS

None arising from this memorandum.



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RESPONSE TO TRANSNET REGARDING THE SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

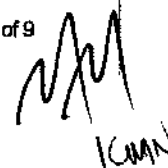
5. CONSULTATION/PROJECT TEAM

Dion Harold, Ngoako Huma (Transport), Femida Mahomed (Strategic Partnerships) and Edwin Ritchken (DG's Office).

6. RECOMMENDATION

It is recommended that:

- 6.1 The Minister notes the contents of the memorandum.
- 6.2 The Minister signs the letter to the Chairman of Transnet if in agreement with the contents thereof attached hereto as "**Annexure B**".



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RESPONSE TO TRANSNET REGARDING SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE PFMA APPLICATION FOR THE ACQUISITION OF 1064 LOCOMOTIVES

Memorandum prepared by:

PP Mahomed

FEMIDA MAHOMED

CD: STRATEGIC RELATIONSHIPS

DATE: 14/03/2014

REVIEWED AND SUPPORTED:

[Signature]
NGOAKO HUMA

CD: TRANSPORT

DATE: 14/03/2014

[Signature]
KGOMOTSO MODISE

DDG: TRANSPORT

ENTERPRISES

DATE: 14/03/2014

[Signature]
MELANCHTON MAKOBE

CD: LEGAL

DATE: 14/03/2014

[Signature]
JACKY MOLISANE

DDG: STRATEGIC

PARTNERSHIPS

DATE: 17/03/14

[Signature]
M.A. MATSIETSI MOKHOLO

DDG: LEGAL &
GOVERNANCE

DATE: 17/03/14

[Signature]
MR TSHEDISO MATONA

DIRECTOR-GENERAL

DATE: 4/4/2014

[Signature]
MR MALUSI GIGABA, MP

MINISTER

DATE: 2014/04/29

[Signature]
MR GRATITUDE MAGWANISHE, MP

DEPUTY MINISTER

DATE: 2014/04/29

RECOMMENDED/NOT RECOMMENDED/COMMENTS

- ① paras 3.17 and 3.18 are key controls for Transnet, but more so the Shareholder/DPE and departments like DTI, EDD. I'm concerned about what mechanism and capacity is being put in place to exercise this control. The terms of the NMP must weigh in on this!

APPROVED/NOT APPROVED/COMMENTS

Amend the letter to include that they should explain the PSP strategy of this transaction. I also want to know what consequences of the manufacturing of locomotives will be manufactured locally. The market must be ready. Transnet

NOTED / COMMENTS

Should share the contract with the shareholder.

Edits effected
to 2014
② see edit on p2 of
draft letter. WE NEED
ONE FOCUS POINT IN DPE for
this!

[Signature]
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MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Mr. Mafika Mkwanazi
Chairman
Transnet SOC limited
P.O. Box 72501
Parkview
Johannesburg
2122

Tel: 011 308 2309
Fax: 011 308 2312

Dear Mr. Mkwanazi

Transnet PFMA Application for the Acquisition of 1064 Locomotives

I refer to the PFMA Section 54 application dated the 2nd of May 2013 regarding the acquisition of 1064 locomotives.

I note Transnet's commitment to the National Growth Path and the National Development Plan objectives.

I also appreciate that this acquisition will go a long way to provide the much needed capacity to realise the Market Demand Strategy volumes, and thereby contribute to the road to rail migration objective. I also expect that we will see significant improvements in operational efficiencies resulting from this procurement. In addition, due to the scale and duration of locomotive fleet procurement, it is critical that we maximise the localisation impact in the process.

I see Transnet Engineering (TE) playing a critical role in developing strategic and industrial capabilities relevant to the rail supply chain. In so doing, TE is expected to systematically support the development of a broader rail industrial cluster involving the private sector and position South Africa as a rail equipment manufacturing hub for Africa. In order to achieve this, the current locomotive procurement programme should be used to ensure that a world class enterprise and rail cluster is built.

Approval is hereby granted to Transnet for the procurement of the 1064 locomotives, subject to the following conditions being met:

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1. A clear statement by Transnet with regard to TE's vision in the locomotive supply chain and what capabilities will need to be developed to make this vision a reality.
2. Transnet to provide TE's seven year locomotive supply chain strategy illustrating what is being imported, what TE produces, what is being outsourced to the private sector and the broad conditions associated with outsourcing that will result in the building of a competitive national industry. Such conditions may include industry competitiveness benchmarking, investment in plant and skills and the requirement that industry masters quality and learn manufacturing disciplines in exchange for long term contracts.
3. Transnet to provide a clear plan to the strategic fit of this locomotive procurement to the broader road to rail migration to objective.
4. Transnet provides the Department with a view of the localisation strategy for the following strategic components:
 - 4.1 Traction convertor;
 - 4.2 Traction motor;
 - Diesel engine;
 - Bogies;
 - Electrical system;
 - Management system;
 - Control system.

Transnet's continued commitment to the economic development of our country is recognised and appreciated; and the Department is committed to providing the necessary support to ensure that the MDS' objectives are achieved.

I trust that you will find the above in order.

Yours sincerely



MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2013/08/23


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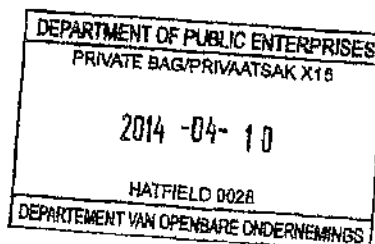
Mofiso Mkwana, Chairperson

TRANSNET



Our Ref No: MM/18192

Minister Malusi Gigaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028



Fax: 012 431 1039

Dear Minister Gigaba

APPLICATION TO THE SHAREHOLDER MINISTER IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT FOR THE ACQUISITION OF 100 DUAL VOLTAGE ELECTRIC LOCOMOTIVES FOR THE EXPORT COAL LINE

The purpose of this letter is obtain approval from the Shareholder Minister for the acquisition of 100 dual voltage electric locomotives for the Export Coal Line at an estimated total cost of R4,840 billion. This is being done in accordance with the Public Finance Management Act (PFMA).

The investment to acquire 100 dual voltage locomotives for the Coal Line was initially approved by the Board of Directors on 24 January 2014 at an estimated total cost of R3,871 billion which is within the threshold of the Board's limit, however subsequent to the contract negotiation process it has transpired that the ETC of the investment is now R4,840 billion and approval from the Shareholder Minister in terms of 554(2)d is required.

The difference in cost can be attributable to:

- Entering into a fixed price contract thereby shielding the Company against any potential deterioration of the Rand against the US Dollar.
- Escalation in labour cost
- Increase in material costs
- Inflation and forward looking trends

The acquisition of 100 Dual Voltage electric locomotives for the Export Coal Channel is being undertaken to mitigate against MDS volume loss in the interim. Due to the unforeseen delay in the tender process for the manufacture of 1064 locomotives, the 100 dual voltage locomotives are to be used for the Export Coal Line, however this will facilitate the cascading of locomotives from the Coal Export Line to the General Freight Business (GFB) thereby adding tractive capacity to enable GFB to capture MDS volumes while the 1064 contract proceeds into execution. As the 1064 contract produces locomotives the older GFB fleet will be retired.

Transnet SOC Ltd
Registration Number
1990/000900/30

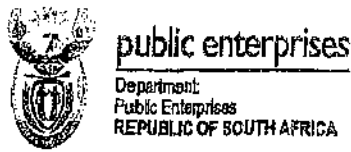
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Directors: ME Mkwana (Chairman) B Molefe (Group Chief Executive) MA Fenuochi Y Forbes MD Geyzenan JP Moseane N Mooka NR Njoku JM Starmis IS Skosana E Tshabalala DLJ Tshope A Singh (Group Chief Financial Officer)
"Executive"

www.transnet.net

Group Company Secretary: ANC Debi



Ministry - Incoming Correspondence / Request

MINISTER

Date received:	11 April 2014
From	Mafika Mkwanazi Chairman: Transnet
Subject:	Application to the Shareholder Minister in terms of Public Finance Management Act for the Acquisition of 100 Dual Voltage Electric Locomotives for the Export of Coal Line.
Dear Minister	
Please find attached request from Transnet requesting Minister's approval for the acquisition of 100 dual voltage electric locomotives for the Export Coal Line at an estimated total cost of R4. 840 billion.	
Regards, Butie	
Action/Comment	Copy to DM and DG Copy to Transport, Legal and Strategic Partnerships to assess and advise.
Minister of Public Enterprises Comments:	Assessment and advise awaited.
Date: 2014/04/13	

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This will result in savings in energy consumption, maintenance costs and a standardised fleet resulting in more efficient maintenance practices. In-depth details regarding the above project are contained in the business case provided (annexure A).

Attached for your ease of reference is the business case together with the excerpts of the Board of Directors minutes. As indicated earlier at the time of approval the Board was the final approval body for the investment, hence the excerpts of minutes (annexure B) reflect the previously approved estimated total cost.

It is recommended that the Shareholder Minister approves the investment to acquire 100 dual voltage electric locomotives for the Export Coal Line at an estimated total cost of R4,840 billion.

Please do not hesitate to contact my office if you require further information or an engagement with the Transnet team.

Kind regards


Mafika Mkwanezi
Chairman
Date: 10/04/2014


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Annexure A

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BUSINESS CASE

MITIGATION OF MDS VOLUMES AT RISK THROUGH THE INVESTMENT IN AND PROCUREMENT OF 100 CLASS 19E EQUIVALENT DUAL VOLTAGE ELECTRIC LOCOMOTIVES

PURPOSE

1. The purpose of this submission is to obtain approval from the Shareholder Minister of 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 Class 19E equivalent electric locomotives required for the Coal Export Line in the estimated amount of R4,840 billion (excluding borrowing costs);

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 Class 19E 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
4. The Class 19E dual voltage electric are modern capable locomotives. They have proven themselves in service and will improve service quality through improved reliability and reduced maintenance costs.
5. This submission proposes an accelerated procurement to mitigate General Freight MDS volumes at risk by confining 100 Class 19E electric locomotives to China South Rail (CSR). 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 2.4 mt (14/15) to 7.2 mt (16/17) and the cumulative income protected is R4 163m (13/14 - 16/17).
6. The confinement to CSR 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 programmatic element of the 1064 procurement enables locomotive quantities per annum to be adjusted to circumstances.
9. The proposed transactions do not increase the risk related to the 1064 tender process.

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Annexure A

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BUSINESS CASE

MITIGATION OF MDS VOLUMES AT RISK THROUGH THE INVESTMENT IN AND PROCUREMENT OF 100 CLASS 19E EQUIVALENT DUAL VOLTAGE ELECTRIC LOCOMOTIVES

PURPOSE

1. The purpose of this submission is to obtain approval from the Shareholder Minister of 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 Class 19E equivalent electric locomotives required for the Coal Export Line in the estimated amount of R4,4 billion (excluding borrowing costs);

EXECUTIVE SUMMARY

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8. The programmatic element of the 1064 procurement enables locomotive quantities per annum to be adjusted to circumstances.
9. The proposed transactions do not increase the risk related to the 1064 tender process.

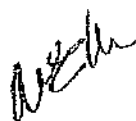
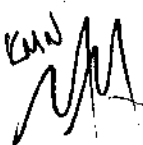
10. Socio-economic benefits will be realised in line with existing commitments and expectations.
11. The context and arguments are presented as follows:
 - a) History and Status of the TFR Fleet Plan
 - b) Status of the 1064 Procurement
 - c) Impact of the 1064 delay
 - d) MDS Risk Mitigation
 - e) Project Benefits
 - f) Procurement Strategy
 - g) Financial and budget Implications

BACKGROUND

12. The investment to acquire 100 locomotives for the Coal Line was initially approved by the Board of Directors on 24 January 2014 at an estimated total cost of R3,871 billion which is within the threshold of the Board's limit, however subsequent to the contract negotiation process it has transpired that the ETC of the investment is now R4,4 billion and approval from the Shareholder Minister in terms of S54(2)d is required.
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 62 "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, post MDS approval.
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
Coal Fleet (26 ton axle)		
112 (100 19E)	97.5	<ul style="list-style-type: none"> • Probable downward volume revision. Contracts currently being signed for 10 years for 80 mt as coal reserves, sources and Eskom demand are evaluated. • 112 targeted for expansion to 97.5 mt • Current fleet of 10E, 7E and 11E require near term replacement. • 100 (off the 112) switched to fleet replacement pending finality of and commitment to long term coal export expansion and requested per this submission • 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.
GFB (22 ton axle)		
50 EMD		<ul style="list-style-type: none"> • 50 "like new" EMD diesels were delivered between December 2009 and March 2010 on open tender.
100 GE (Class 43)		<ul style="list-style-type: none"> • In 2008 these locomotives were identified as a "quick fix" with 81 to sustain the aging fleet and 19 for volume expansion. • GE won the tender, which was confined to three companies, and the locomotives were delivered between May 2011 and January 2013.
77E	155 mt	<ul style="list-style-type: none"> • In April 2011 the Fleet Plan was presented to the "new" Transnet Board for 77E GFB locomotives for 155.8 mt.
95 CSR and 43 GE		<ul style="list-style-type: none"> • 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. • The 95 and 43 locomotives were determined and limited by the uncommitted funds in the then Five year Capital program • The diesels were delivered between January 2013 and June 2013. • The 95 CSR are planned for delivery March 2014 to March 2015.
1064	170 mt	<ul style="list-style-type: none"> • August 2011 the locomotive requirements for 175 mt were presented being 1202 locomotives (77E+44E). • With the 138 already approved the balance of the GFB fleet plan was 1064 locomotives. (1202 - 138) • In March 2012 the 1064 approval process commenced in tabling the business case at Transnet Freight Rail Investment Committee. • The 1064 procurement is expanded in the body of the document below.
60		<ul style="list-style-type: none"> • 60 Class 43 requested to fill the gap in the first year of the 1064 resulting from the delay in procurement.

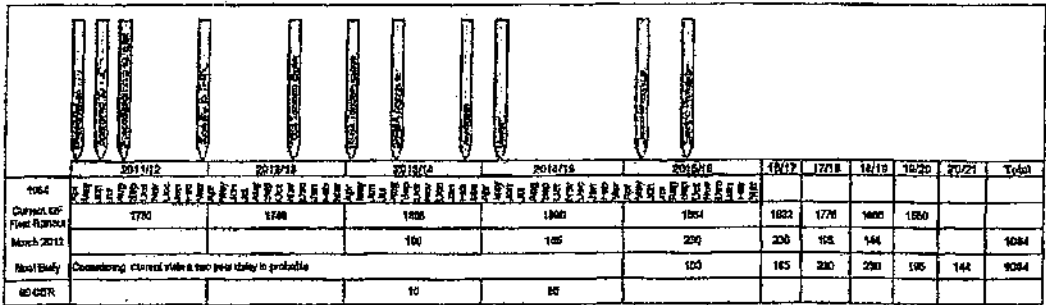
Loco Fleet History and Plan	Tons	Comment and Update
Ore Export Line (30 ton axle)		
44 32 76	44 mt 60 mt	<ul style="list-style-type: none"> • 44 15E bought open tender (Toshiba / Mitsui) to replace / supplement existing 9E locomotives and Class 34 GE Diesels with an option for a further 18 locomotives.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

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- 16. The essential points relating to this proposal are:
 - a) The 100 Class 19E locomotives are for the coal line and were always part of the TFR locomotive fleet plan. See Para 34 and following. They release locomotives that can be used on GFB for the year that the 1064 program is delayed.
- 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 Class 19E not being part of the 1064 locomotive process are covered under the Procurement Strategy Para 52(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

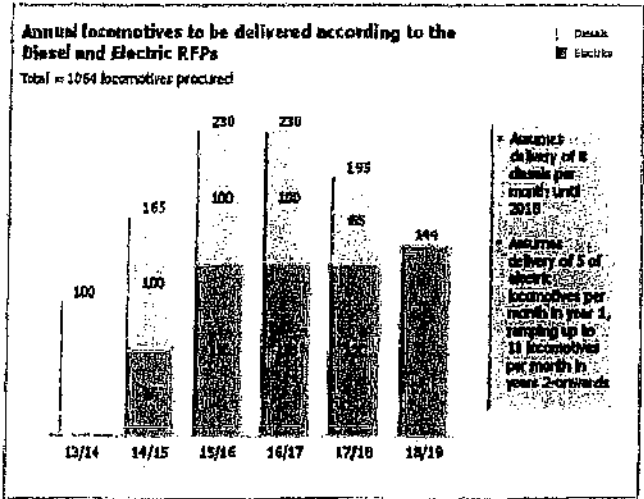
- 20. TFR's Corporate Plan sets out the 7 Year Market Demand Strategy (MDS) 2013/14- 2019/20 to virtually double General Freight volumes to 170 mt by 2019/20. This requires an integrated and synchronised approach across locomotives, wagons, infrastructure and personnel and these aspects were covered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



- 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, and it is expected that adjudication will be finalised by November 2013 and contracts awarded by February 2014.
- 27. 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

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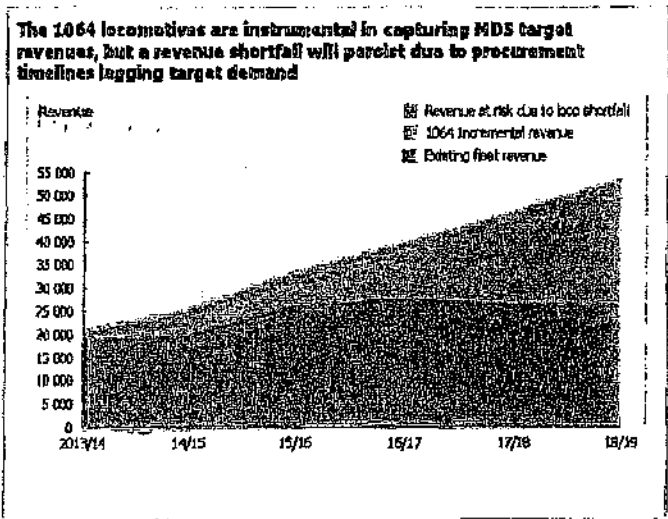
delivery timelines that were modelled as per the RFPs and used as the base case assumption. It indicates that at the end of 2014/15 we would be behind by a total of 265 new locomotives which would have a major impact on MDS volumes.



28. 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 MDS.

Impact of the 1064 Delay

29. 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.



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30. 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	95
Fuel and Elec. Rm	67	183	331	440	469	471	290

Shortfall Total	2013/14
One Year Delay	- 16/17
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	425	465
Impact							
Locomotives #	33	138	257	391	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	2013/14
Two Year Delay	- 16/17
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.

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MOTIVATION**MDS Risk Mitigation**

31. 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

32. Note that this submission is not a full risk mitigation. Further the benefits in 2013/14 is from Project Shongololo which are the new operating procedures introduced on the Coal Export Line.
33. 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:

34. 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 13/14-16/17) 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.
35. 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.
36. 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.
37. 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.
38. 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.

39. 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.
40. 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
41. 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.
42. 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.
43. 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) **Thebrazimbi – 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

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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

44. 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

45. The 100 Class 19E business case articulates the benefits of the earlier than previously planned delivery of the locomotives to the Coal Export Line.
46. 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.
47. 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

PROJECT BENEFITS

48. Protection of GFB MDS income and targets amounting to R4 163 m for the 100 Class 19E over the period 2013/14-2016/17 .
49. Coal Export volumes and income are protected through improved reliability.
50. Sustainability objectives as per the Transnet Sustainability framework are met threefold:
- 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.
 - Sustainability from a **social perspective** is met through the optimisation of manufacturing facilities, job creation and proactive stakeholder engagement.
 - 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.
51. The programme will support the shift from road to rail as the cascaded locomotives take up the shortfall in the General Freight market.
52. Benefits specific to the 100 Class 19E include:
- Energy savings will be achieved with an 18% improvement in KVA requirements over the old technology Class 7E and Class 10E locomotives.

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- 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.

PROCUREMENT STRATEGY

Rationale for not being part of the 1064 process

53. The procurement process was carefully considered and was not taken into the 1064 locomotive process. Aspects considered were:
- a) **Type:** The 100 19E equivalents 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.

Analysis and Implications of Procurement Options

54. 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
55. **Go out on tender:** With this option, which affords transparency, the locomotives become available beyond the 1064 timeframe and hence this is not a viable option as it does not address the urgency. It does not address MDS volumes and causes a 20mt gap from 2014 to 2016.
56. **Do Nothing:** This option puts the MDS volumes at risk that this proposal wishes to mitigate. The implications are:

Base case Rm	Budget	Projections				
2013-14 Corporate Plan	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Revenue	36 690	45 382	53 852	62 146	72 541	81 622
Operating Expenses	20 616	22 640	25 057	28 279	31 434	35 336
EBITDA	16 074	22 742	28 796	33 866	41 107	46 286

One Year Delay Rm	Budget	Projections				
2013-14 Corporate Plan	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Revenue	36 327	44 096	50 512	56 163	64 513	72 480
Operating Expenses	20 514	22 367	24 594	27 680	30 802	34 704
EBITDA	15 813	21 729	25 917	28 483	33 711	37 776

57. **Confine:** This addresses the urgency of the proposal but has potential negative implications regarding public. For these reasons (and as outlined above) this is not part of the 1064 process and will not impact on that process.
- a) The locomotives are known, meet requirements and prototyping is not required

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- b) The CSR facilities are available for Immediate production which will result in significant delivery acceleration based on the learning of the 95 locomotive production processes. CSR has capacity to produce 2000 locomotives per annum.
 - c) 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
 - d) Confinement of the contract to CSR meets the grounds for confinement per the most recently BADC approved PPM.
 - e) Both the extension and confinement are acceptable procurement mechanisms per the PPM in this instance.
58. **Extend current 20E contract for 95 CSR Locomotives:** The 20E currently on order is a 22 ton per axle GFB locomotive and is not intended for heavy haul use on the Coal Export Line. The first delivery is awaited, the locomotive has still to be tested and it is at present unproven. Only after extensive type testing will it be possible to say whether and to what extent it can replicate the heavy haul capabilities of the 19E. Additionally, extension would not be an acceptable procurement mechanism per the PPM given the material amendment to contract which could be challenged.

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 to 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.

59. **Implications:** The 1064 tender is currently under adjudication. It is one of 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 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

- 60. For reasons of urgency, the confine / extend contract option is the recommended option.
- 61. 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

- 62. 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:

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- 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."
63. The project is motivated on the basis of Para (a) where a genuine unforeseeable urgency has arisen.
- a) Item 12 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 timeous 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.
64. 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 largely identical with those already supplied and to be supplied.
 - 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 locomotive tender process. Both these tenders include Board approved Procurement methodology of maximising supplier development whilst ensuring highest standards of quality and best possible commercial offering. Transnet has recently 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.

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- ii. Production of the current MARS contract has been completed and 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, continuation with Mitsui via a confinement would place 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 the 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.
65. TE is currently maintaining and repairing the Class 19E Electric series which means that they are accustomed to maintenance regimes of 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 practices will result in shorter mean time to repair. Common practices will be addressed through maintenance of the 95 locomotive series, 599 elements that CSR is shortlisted for this fleet.
66. From a socioeconomic perspective the following jobs will be retained in assembly facilities;
- a) Approximately 400 jobs are estimated to be created over the period for electric assembly and further jobs will be retained in downstream enterprises.
 - b) Based on SD offerings made in recent tenders, Transnet believes it can achieve maximum SD possible of at least 70% for the electric locomotives.
67. Considering the volume at risk and the urgent requirement for the Coal Line locomotives to cascade the current fleet to General Freight, it was decided to confine the procurement to CSR.

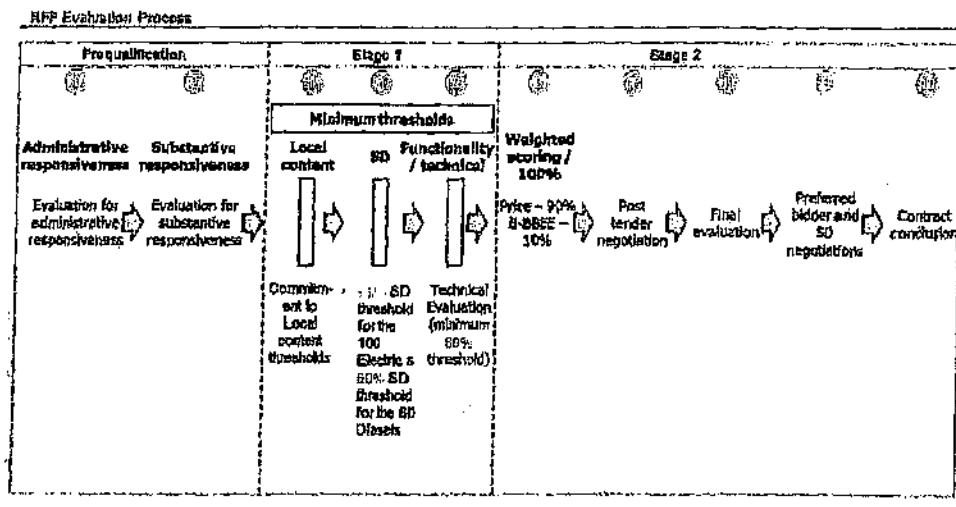
Contracting strategy

68. Confine and award to China South Rail (CSR) for 100 Class 19E locomotives.
69. The reasons for the different confinement and extension strategies have been highlighted in the sections above.

Evaluation Methodology

70. 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.





71. 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.
- 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-BBEE – scorecard (10%) will be used 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-BBEE improvement plan (FRC Future)
- 10) **Conclude contract** – the parties sign a contract and addendums to formalize the agreement.

72. 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.

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- 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)

- 73. Meeting Local Content (3) is a prerequisite to proceeding to SD threshold (4) evaluation.
- 74. 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%

- 75. 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%

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

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Supplier Development (SD)	
Category	Weighting
Investment in plant – bidders monetary commitment to investment in plant and equipment	10%
Downstream procurement – bidders commitment to supporting 2 nd , 3 rd 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 ED development	15%
Total & Threshold > 65% for Electric and > 60% for Diesels	100%

Award Conditions – 100 Class 19E Equivalent

77. Approval to award the business to CSR is requested subject to SD compliance with the following:
- The delays in the 1064 acquisition will result in the delivery of the 0164 locomotives extending beyond the current 7 year MDS capital plan.
 - The 1064 budget will be adjusted commencing the 2014/15 7 year cycle for the delayed delivery 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 continuous replenishment of new locomotives.

Financial Impact to Group

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

Ratios: Transnet Group - As Is	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

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

Ratios: Transnet Group One (1) Year Delay	Budget 2013/14	Projections				
		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

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

Ratios: Transnet Group Two (2) Year Delay	Budget 2013/14	Projections				
		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

82. The transaction will be aligned with the Government of South Africa's socioeconomic policy framework, including CSDP, NGP, NDP, SSI, and IPAP2.
83. Meeting the MDS growth targets supports the National Development Program in the Industrialisation of SA's mineral resources.
84. The program supports the sustainable development of a South African locomotive production industry.
85. Economic benefits include:
- Using idle capacity available in South Africa
 - 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%.
 - Ability to reinstate / retain local jobs as the skills pool already exists.

PROJECT RISKS

86. Both projects face several risks that could affect their overall economic viability:
87. **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.
88. 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.
89. Exchange Rate Fluctuations:

- a) For the 100 Class 19E confined to CSR, 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.
90. Tariffs not being realised:
- a) 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.
- b) 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.
91. Tariff exposure to commodity downturns:
- a) 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.
- b) 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.
92. **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.
93. Project interdependencies:
- a) 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.
- b) 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.
94. Project risks will be mitigated during implementation by a **dedicated cross-functional project team** to manage the contract.



Annexure B

Office of Ayanda Ceba, Group Company Secretary

TRANSNET

TO WHOM IT MAY CONCERN

CERTIFIED EXCERPT FROM THE MINUTES OF THE SPECIAL BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 14/1 HELD ON 24 JANUARY 2014 AT 16:10 IN BOARDROOM 4901, 49TH FLOOR, CARLTON CENTRE, 150 COMMISSIONER STREET, JOHANNESBURG

***4.1 Acquisition of additional 100 Class 19E equivalent Dual Voltage Electric Locomotives and 60 Class 43 Diesel Locomotives**

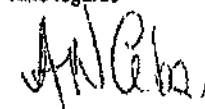
RESOLVED that the Board:

- o Noted the risk to TFR MDS volumes through insufficient traction power resulting from the delay in the procurement of the 1064 Locomotives.
- + Approved the investment in and procurement of 100 Electric Locomotives required for the Coal Export Line estimated at R3.8bn (excluding borrowing costs).
- o Approved the confinement and award of the procurement for the 100 Electric Locomotives to CSR.
- o Approved the investment and amendments to the Fleet Plan to procure 60 Class 43 Diesel Locomotives for General Freight estimated at R1.8bn (excluding borrowing costs).
- o Approved an extension of the current Class 43 Diesel Locomotives contract for 60 additional locomotives to *General Electric South Africa Technologies (Pty) Ltd*.
- o Delegated authority to the GCE to sign and conclude all relevant documents to give effect to the resolution, including the award and process approval.

14/1/1"

Certified a true excerpt.

Kind regards



AYANDA CEBU
Group Company Secretary
Transnet SOC Ltd
Date: 24 February 2014

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Executive

www.transnet.net

Group Company Secretary: ANC Ceba






public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Strategic Industrial Partnerships with Locomotives Original Equipment Manufacturers (OEMs)

Background:

Transnet is currently in the process of renewing its rolling stock fleet and associated infrastructure to facilitate and improve freight service and to meet increasing demand for such services. Transnet has not undertaken a significant procurement of rolling stock since the mid-nineteen eighties. As a result of a lack of capital expenditure, the fleet of locomotives needs refurbishment and replacement to improve service to customers. In order to rectify this, Transnet has engaged in an accelerated procurement plan. Undertaking this new rolling stock procurement programme will enable a significant shift towards the rebuilding and development of South Africa's aging freight rail system and its associated industry.

The magnitude of the programme provides the opportunity to leverage procurement to establish a localised rail and rolling stock industry in South Africa. To this end, Government has introduced various legislation and policies including New Growth Path (NGP), Industrial Policy Action Plan (IPAP), National Industry Participation Programme (NIPP) and the Competitive Supplier Development Programme (CSDP) in addition to B-BBEE to ensure that the large spend on infrastructure projects results in achievement of transformation and industrialisation targets.

Problem Statement:

How can SOC optimise partnerships with OEMs on the back of strategic procurements to achieve national industrial development objectives.

National Industrial Objectives:

There are a number of industry development objectives associated with the Transnet locomotive fleet procurement:

- At an overarching level, we have the objective of optimising the level of national value add (local content) in the production of the locomotives based on the building of globally competitive capabilities in the South African industry.
- In addition, it is critical to secure the sustainability of the industry through exporting locomotives and components into Africa and to become part of global OEM supply chains for selected components.
- Our aspiration is for Transnet Engineering (TE) to become a true national industrial champion in rail and port supply chains. This will require that TE develops globally competitive capabilities for the production of strategic and complex components; that TE leads an export drive into Africa and other accessible markets; that TE plays a facilitative role in the development of the national rail and port cluster involving the private sector and finally; that TE leads a relevant technology development programme to ensure high levels of industry dynamism. In addition, we wish to encourage TE to master capabilities that will create the ability to service other strategic sectors e.g. mining, chemicals, where there are overlaps with rail and port equipment requirements.
- Finally, we have the objective of building a significant technologically dynamic and globally competitive private sector component to the rail and port cluster.

Levers:

There are fundamentally three levers to achieve the abovementioned objectives:

1. Transnet Freight Rail (TFR) is a significant global procurer of rolling stock and by far and away the most significant procurer in Africa.


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2. As the new fleet is operationalised, TFR will have redundant, old capacity which can be refurbished and sold on the African continent – privileged access to this old fleet will be extremely strategic in the future.
3. The Departments of Trade and Industry and Science and Technology and the Industrial Development Corporation have existing incentives and have the ability to design new incentives to support the development of the rail and port cluster.

Key Requirement for OEM relationship:

1. Global OEMs are key drivers of technology development in their chosen supply chains. Recently, as a result of industry consolidation over the last thirty years, these supply chains tend to be dominated by two to three OEMs who have, as a result, considerable market power and revenues. Locomotive OEMs are no exception to this process.
2. It is critical that South African rail industry as a whole, has strategic partnerships with these OEMs as a means of accessing design and production technologies as well as markets.
3. In particular, we wish to position the South African industry to become export leaders into Africa and it is vital that Transnet's levers are exercised to this end.
4. Four OEMs, two for diesel and two for electric locomotives, have been shortlisted for the locomotive procurement.
5. The worst of all case scenarios is that the locomotives that are procured by Transnet are leveraged by OEMs to go into competition with South African industry in the African market.
6. It is vital that Transnet leverages its position to build a strategic partnership between TE and a diesel locomotive OEM and an electric locomotive OEM to achieve the following:
 - TE develops a world-class assembly capability in both diesel and electric technologies.
 - TE develops the capabilities to design and produce strategic components for locomotives, particularly those that have application in the mining and chemical industries.



- TE becomes an exclusive marketing partner for at least one diesel OEM in Africa with an in-principle agreement from the OEM to provide support for additional markets when no exclusive marketing agreement is in place – the worst case scenario will be for an OEM to use the procurement and its sub-contracting relationship with TE to compete with TE in Africa.
- TE enters into a technology development agreement with the OEM with a focus on technologies relevant to Africa.
- It is recognised that TE has ambitions to become an OEM and consequently should enter into a mutually beneficial agreement with its global partner to achieve this objective.
- TE should be given latitude to ring-fence the relationship with the OEM to secure long-term alignment.

7. As part of TE's industry development obligations, TE will:

- Outsource low complexity and targeted complex items to South African companies who are better positioned than TE to deliver.
- TE will provide the DPE with a comprehensive supply chain strategy for the duration of the fleet procurement which will include those items that TE will produce internally; those items that TE will localise internally; those items that TE will outsource to national industry; those items that TE will outsource to national industry for localisation and finally, those items that will be imported.
- TE should partner with one diesel OEM and one electric OEM in order to achieve alignment for a long-term export driven relationship and to ensure that TE has the focus to become world-class with its partner.
- TE will also benchmark itself and obtain relevant globally recognised certification as part of the programme of positioning itself as a driver of exports.

8. Certain private sector companies should also benefit from the procurement, particularly those involved in assembly and the production of complex components. These companies need to:

- Provide their own skills development and supplier development plans.



- Be benchmarked and master relevant global certification requirements.
- Support an export programme.
- Make investments into technology development.

Monitoring and Evaluation:

1. The locomotive procurement is a unique and once-off opportunity to develop the national rail industry and is therefore of interest to a range of Government departments and stakeholders as well as to industry. Our expectation is that the implementation of the procurement should be very closely scrutinised.
2. It is consequently critical that a robust independent monitoring mechanism is put in place to determine very quickly if OEMs are meeting their contract obligations in respect of supplier development and localisation. The monitoring methodology should include specific milestones against which the OEMs are measured at required intervals. The results of these independent audits must be communicated to the Shareholder on a quarterly basis, together with actions Transnet is taking should an OEM not meet its obligations.
3. If an OEM fails to deliver on its supplier development and localisation obligations for one quarter, the OEM must deliver a comprehensive plan as to how its performance shortcomings will be addressed. If the OEM fails to deliver on the plan and the following quarter does not show substantive progress, then this must result in a termination of the contract given that, as four OEMs have been shortlisted, there will be an alternative supplier for both locomotive types. Alternatively, a new OEM can be selected based on who came third in the current procurement to sustain a competitive dynamic.



"MG15"

Remarks by Mr. Malusi Gigaba MP, Minister of Public Enterprises, on the occasion of the announcement of the Locomotive Procurement in Tshwane on 22 October 2012

Last week Friday, President said unveiled a R4 trillion infrastructure roll-out plan for South Africa.

During his Keynote Address, he said:

“This year we decided to single out infrastructure for special focus. We are not saying that the other five job drivers are not important. They remain very key to economic growth and development. However, our view is that infrastructure development is a catalyst to sustainable economic development and to the improvement of the quality of life of our people in a most fundamental way... We must use that project management experience to change our country’s landscape and improve living conditions while growing the economy. We have developed an integrated, aligned and coordinated 20 year infrastructure pipeline. This is a necessary investment. The failure to invest in basic services in black communities over the decades of colonial oppression and apartheid is a critical element in the persistence of inequality today. To reverse the legacy of the past, we have already started building houses, schools, hospitals, clinics, nursing colleges, dams, power stations and other infrastructure.”

He proceeded further to say that:

“On economic infrastructure, we are creating enabling infrastructure such as rail, ports, energy, broadband and roads. No one can imagine a successful producer who lacks access to transport, telecommunications, water or electricity. There is a further benefit for economic development. Public investment requires huge amounts of inputs such as equipment, building materials, generators, cranes, trains and even tar for the roads. If all of these materials are bought locally, their production will give a real boost to the economy. That is particularly important given the uncertain global outlook. Therefore as a job creator, the infrastructure programme is a clear winner. Construction and maintenance alone will employ tens of thousands of people.”

In this extensive quote are summed up the critical challenges faced by our economy.

First, we must extricate the South African from its reliance on developed markets which are currently experiencing difficulties as a result of the global economic slowdown.

We will accomplish that by diversifying our production systems and processes and industrialising our economy, which would have the result drastically to reduce our current role in the international trading system as a producer and exporter of primary commodities and importer of value-added products.

Secondly, this is important in order to reverse the scourge of unemployment, poverty and inequality that is rampant in our society.

In this regard, the logistics and energy infrastructure, two of the largest investment programme in our infrastructure roll-out unveiled by the His Excellency, President Zuma, are the two vital enablers of economic activity and demonstrate by the sheer scale of their

intended investment the direction our government intends to take with regard to transforming both the structure of our economy as well as its ownership patterns.

For this purpose, the rail system remains a core element of building a globally competitive logistics system to support global trade.

Rail, through its implicit economies of scale, has key advantages over road for the movement of large volume and heavy goods in that it decreases road congestion and road damages, whilst increasing road safety.

It also has less environmentally negative externalities and produces significantly less carbon emissions.

Yet, the last two decades have seen a massive migration of goods off the rail system and onto road.

Road transport has doubled in this period, while rail transport has decreased by 20%.

It is estimated that road externalities are costing the economy R34 billion per year.

The rapid migration from rail to road was a natural response to the removal of restrictive regulations which required special permits for bulk freight on the road.

Another factor of this migration was the inadequate rail system due to under-investment and a perceived unreliable performance by the operator.

A principal tenet of the South African government's road freight strategy is to facilitate an optimum split of cargo between road and rail.

As a start, it is critical that we improve the quality of our rail infrastructure and associated operating equipment which will invariably contribute to improving the performance and reliability of rail.

In order to reverse the rail to road migration, Transnet has expanded its capital expenditure budget from R110 billion over five years to R300 billion over seven years.

Critical in this strategy is that 55% of the Capex will be investments in new logistics capacity, which goes beyond the predominantly maintenance expenditure typical of previous Capex plans.

Firstly, it needs to be emphasised that choosing our technology partners to provide equipment that is core to the reliability and competitiveness of our national infrastructure is not something that we do lightly.

Should this equipment be poorly designed or produced and should the ability to maintain it be inadequately localised, our entire economy will be put at risk.

Consequently, we are looking for partners that will give priority to our needs and show a serious commitment to delivering on the value we are looking for.



Secondly, it must further be emphasised that we have the objective to leverage our SOC procurements to promote investments in plant, technologies and skills in our national supply chains.

Our overarching economic objective in terms of this approach is to increase national economic activity, create jobs, decrease imports and stimulate industrial activities through enterprise development.

A key element of this process will involve moving from a transactional relationship between SOCS and their suppliers to a longer term, developmental relationship.

We have been putting considerable effort into enhancing our procurement planning so as to create a coherent demand platform on which these relationships can be built.

The synthesis of the procurement planning is that when procuring complex equipment we look at three different dimensions of value:

- we are procuring equipment,
- we are procuring an industry and supplier development process, and
- fundamentally, we are procuring to ensure transformation of our economy which delivers equitable share of wealth through our buying power, so that we address racial economic disparities.

We are aware of the economic cost associated with all these different dimensions of value and believe that it is an appropriate growth path we should take so that more South Africans can have a stake in the economy and to ensure proper distribution of economic benefits.

Let me briefly expand on what I mean:

- Firstly, when we buy equipment we take into account the projected productivity of the asset, the initial capital cost, the full life-cycle cost as well as a risk factor related to the reliability of the equipment. Hence, we strive to select a supplier whose equipment will give us the best over-all return on our investment;
- Secondly, when we buy equipment we are procuring commitments by suppliers to enhance the capabilities of our national industry. This can take the form of, for example, direct investments in plant, technology transfers, skills development programmes and commitments to promote exports from South Africa. All suppliers are given an equal opportunity to compete to make the best industrial development value proposition to us. This value proposition is not necessarily limited to only the locomotive supply chain. Those who are most competitive in this area will have a considerable advantage in providing us with the value we are looking for.
- Thirdly, when we procure equipment we are procuring a process of empowering historically-disadvantaged people to participate in the mainstream of our economy and of creating new opportunities for such participation. This can include for example, equity participation opportunities, management development programmes and small business development processes.

We are here today to announce the procurement of 95 electric locomotives from China South Rail (CSR) Zhuzhou Electric Locomotive and Basadi Matsete.

This tender required the suppliers to meet a minimum of a 60% localisation threshold in order to qualify.

The consortium and Transnet have agreed on a tight delivery schedule that will see the first batch of locomotives delivered to TFR by December 2013, while the last batch is planned to be delivered in September 2014.

The parties committed to produce the majority of the locomotives locally.

The first 10 locos will be assembled in CSR's factories in China, while the remainder will be made in South Africa in line with the agreed supplier development targets of 60,5% of the total value of the contract.

This marks a significant increase on the previous levels of localisation in the production of electrical locomotives and is in line with the New Growth Path and social compact agreement on local procurement.

We believe this will inject massive economic benefits and lead to the development of intermediary sectors who will serve as suppliers because fifty percent (50%) of the capital budget will be spent on rail.

This tender is historic in that it marks the first time that Transnet has procured locomotives to provide capacity for our key rail corridors from a Chinese Original Equipment Manufacturer (OEM), which reflects our commitment to the BRICS strategic trade and investment relationships within this emerging economic community.

It also recognises the tremendous progress made in China to build globally competitive capabilities in sectors involving the manufacture of highly sophisticated capital equipment.

In the next quarter, Transnet will implement a locomotive fleet procurement of unprecedented scale in South Africa's history, amounting to approximately R35 billion for 1064 locomotives made up of 599 new dual-voltage electric locomotives and 465 new diesel locomotives,

The procurement will lay a platform for a seven-year strategic partnership between Transnet and their suppliers in the locomotive cluster.

We also expect the scale of the procurement to increase in the second phase of the procurement in seven years time.

This process will not only significantly expand Transnet's haulage capacity with reliable modern locomotives to enable the move from road to rail, but we also expect to more than double the amount of local content in locomotives from this procurement.

This Capex programme puts South Africa on the path of becoming one of a number of manufacturing centres competing on the basis of price and quality.

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We need to set up a global centre of excellence for targeted capabilities in partnership with a leading OEM, which will involve coordinated investments in manufacturing facilities, skills, university curricula, technology transfers and technology development facilities.

In summary, we need to develop a technologically-dynamic and globally-competitive industrial cluster supporting the needs of our rail system.

In this context, we want to see our OEM partners become truly entrenched in the South African economy, in exchange for a partnership with the SOCS in our infrastructure build programme.

We would like to work with our OEM partners to make direct investments into the South African economy and to develop South African companies to become part of their global supply chains.

We are seeking to partner OEMs not just for the South African market, but also for the purpose of exporting to the regional and global market.

In summary, we would like to see our partners make South Africa the design and manufacturing hub for their regional activities, not just in the locomotive supply chain, but in all the spheres in which the OEM is active.

In conclusion, I would like to congratulate Transnet, CSR and Basadi Matsete on the closure of this historic procurement which, I hope, marks the start of a long and fruitful partnership between the three companies.

I thank you.

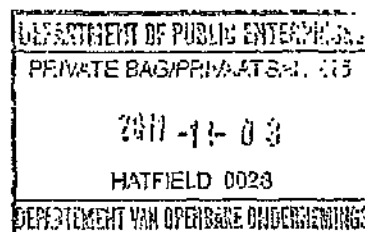
"MG16"

Malusi Mkhwanazi, Chairman

TRANSNET



Mr. Malusi Gigaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028



Dear Minister Gigaba

REQUEST FOR APPROVAL IN TERMS OF SECTION 54 2(d) OF THE PUBLIC FINANCE MANAGEMENT ACT, ACT NO. 1 OF 1999 FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES

Purpose

Approval is requested in terms of the PFMA, which requires shareholder approval to commence with projects with a value above the 1 % total asset value threshold, for the procurement of 95 General Freight Business (GFB) electric locomotives to an estimated total cost is R2, 659 million.

Background

The current five-year Corporate Plan makes provision for the acquisition of GFB electric locomotives. The locomotive acquisition was previously envisaged to occur in later years, but in considering Transnet's latest forecasts, meeting of demand to promote economic growth and reprioritised capital requirements Transnet can afford to immediately fund the acquisition of 95 electric locomotives on the strength of its balance sheet.

The locomotive fleet modernization plan ("the Fleet Plan") encompassing TFR's strategic intent of supporting TFR's customer's needs through the building of capacity as well as safe and efficient operations, sets out the fleet modernization framework for Transnet Freight Rail's locomotive fleet.

The Fleet Plan (Annexure A) outlines the historical procurement, and aging fleet. The current fleet and required fleet status based on condition and affordability is reflected in detail in the Fleet Plan. Future procurements are predicated on the basis of market demand, technology, business strategy, operational efficiency and affordability in which the locomotive fleet will evolve.

The Fleet Plan was presented to and approved by the Transnet Board on 20 April 2011 (Annexure B). The Board of Directors has approved the acquisition of the 95 Electric Locomotives on 31 August 2011, subject to the appropriate approval of the Minister of Public Enterprises in terms of the PFMA (Annexure C).

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www.transnet.net

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Motivation

The key finding of the locomotive fleet plan is that there is insufficient traction power to meet the planned volume demand.

The aggressive capital programme has thus far mainly focused on the upgrade and maintenance of the locomotive fleet to reduce locomotive failures and replace obsolete components. As such it has largely been based on sustaining existing volumes. In addition fleets, have been aging further during the period limiting Transnet's ability to support current volumes.

An efficient and reliable locomotive fleet is imperative to deliver the volumes as indicated in the Corporate Plan (252.4 mtpa in year 2015/16) as well as accommodating the serviceable market demand.

As a result of the acquisition, GFB volume ramp-up by up to 27.7mt can be facilitated. The market demand which is expected to be well in excess of 27.7mt is currently being validated.

The proposed solution is to proceed with the acquisition of the first tranche of the roll-out of the locomotive Fleet Plan. This will partly meet the Fleet Plan requirements of the 5 Year Corporate Plan, but will not meet all the volume demand available in the General Freight Sector. The remaining requirements have been captured in the market demand strategy which has been shared with you.

A detailed financial assessment has been performed and the project is financially viable as required by Transnet's financial governance framework. The business case as presented to the Transnet Board of Directors supporting the acquisition is provided as Annexure D.

To address the expected shortfall in the locomotive requirements it is proposed that the locomotive procurement plan commence.

Procurement

Transnet will go out on open tender for the acquisition of the 95 electric locomotives with the proviso that the acquisition is subject to Transnet obtaining PFMA approval from the Shareholder. The reason for adopting this approach was due to time constraints and the specialized nature of Transnet's Cape gauge locomotive requirements which needs significantly greater input and testing of design and performance validation.

Transnet's procurement strategy for the acquisition of 95 Electric locomotives has transformation, empowerment and economic growth as its main supplier development objectives which are aligned to Government's New Growth Path goals of promoting:

- ❖ empowerment of previously disadvantaged individuals,
- ❖ sustainably developing local industry and
- ❖ improving skills to support localisation and industrialisation objectives

Transnet has adopted a procurement strategy aimed at achieving localisation, technology transfer to local entities, skills development in assembly, manufacture and maintenance techniques, job creation and preservation, impact on the green economy through energy regeneration and reduction in carbon emissions and the promotion of small businesses particularly in rural areas.

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Our weighting criteria is based on achieving significant impact in the areas mentioned above as well as focusing on the promotion of Broad Based Black Economic Empowerment through applying weighting for the B-BBEE Scorecard rating and allocating additional points for further recognition criteria focusing on black ownership, management control, employment equity, enterprise development and preferential procurement.

Additionally, bidders will have to pass through two gates before being eligible for evaluation on the above, the first gate being the level of economic growth, empowerment and transformation the bidder can create and the second being a technical gate.

By applying this strategy Transnet aims to support its mandate of transforming its supplier base by engaging in targeted supplier development initiatives to support localisation and industrialisation whilst providing meaningful opportunities for previously disadvantaged South Africans.

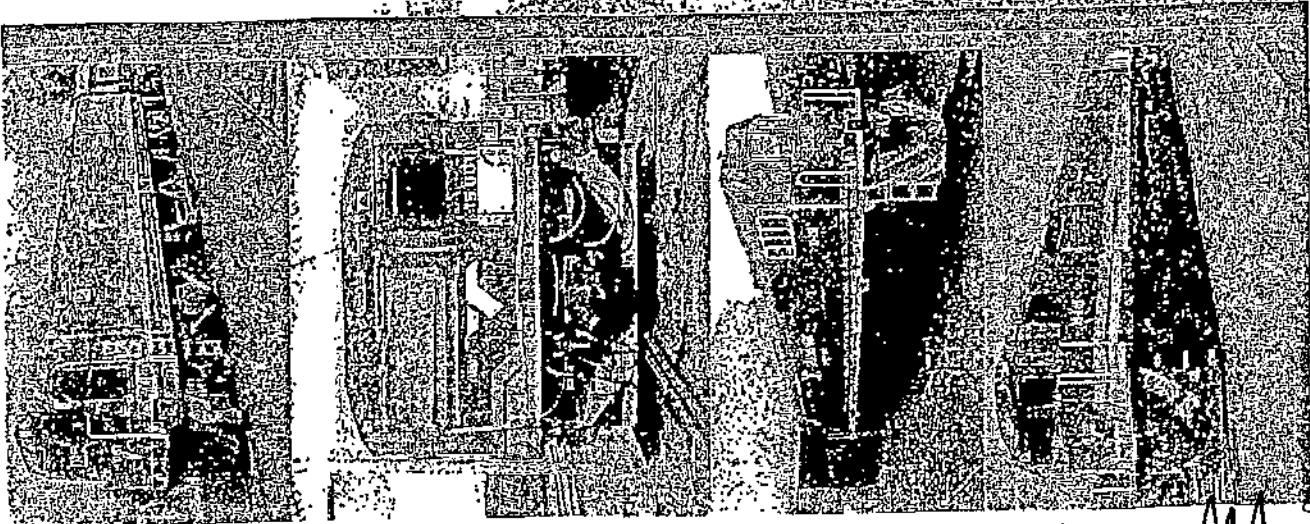
Consequently in support of Transnet's objective of increasing volumes and providing appropriate GFB capacity it is requested that you approve the procurement of the 95 electric locomotives.

Kind regards


Mafika Mkwanazi
Chairman
Date: 24/10/2011



Annexure A



CONFIDENTIAL

LOCOMOTIVE FLEET AND
MODERNISATION PLAN

TRANSNET

Delivering on our commitment to you

Reference Date: 20 April 2014
Version: 2.04

TRANSNET



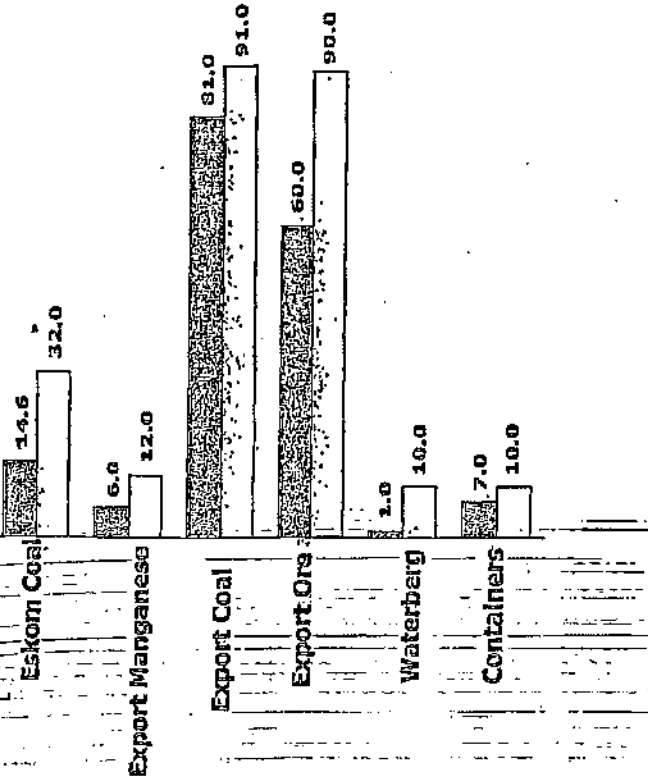
2 Business Plan Volume Exclusions

KEY NOTES AND ASSUMPTIONS

Fleet requirements are calculated to include the following volumes

- a) Export GFB to 110.7 mta (15/16)
 - b) Coal to 81mta (14/15)
 - c) Export Ore to 60mta (12/13)
- Shunting loco requirements included however these are still to be finalised

Key Commodity Budgetary shortfall



Included in the 110.7 mt Budget
 Potential Demand

Commodity / Flow

Eskom Coal

Export Manganese

Export Coal

Export Iron Ore

Waterberg Coal

Containers
Current budget 587k TEUs (10/11) to grow to 838k TEUs (14/15)

Capital Required - Unfunded

- Additional capital required (TFR and Eskom) still to be quantified
- Relocated terminal : ~R10b (Saldanha or Ngqura)
- Cost and timing of expansion to 91mt unknown
- Re-signalling
- Only funded to 60mt
- Short term ~R7b (Infra and Rolling Stock)
- Kascon Phase 1 : ~R0.5b
- Ngqura hinterland : ~R3.2b (Per TCP)
- Infrastructure beyond 2 trains per day
- Pretcon / Cascon : requires approximately R 75m funding
- City Deep : approximately R1bn additional funding required

③ Five Year Locomotive Requirements and Cost as per Business Plan

|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

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4 FLEET REQUIREMENTS – EFFICIENCY TARGETS

The locomotive requirements calculations were based on the number of trains that would have to be executed to satisfy the traffic file. The three main factors that influenced these calculations are as follows:

a. Operating Model

- Siding to Siding (S-S) Traffic
- Hub to Hub Traffic (H-H) Traffic
- Siding to Hub to Siding (S-H-S) Traffic

b. Corridor Model

- Standardising locomotive deployment to a corridor (aligned with standardised locomotive maintenance depots)
- Operating only diesel locomotive on certain flows (to reduce locomotive traction changes that reduces efficiencies)
- Revising service designs and train plans for regular and repetitive schedules
- Implementing security solutions required for that particular corridor
- Ring fencing and assembling pools of wagons depending on the supply chain strategy for a particular commodity

c. Operational Efficiency Targets

Locomotive resources required are determined by the operations model which informs efficiency improvements for the different traffic types as well as locomotive deployment strategies.

Below is table indicating the projected efficiency targets as per Transnet Freight Rail Business Plan.

Efficiency Targets (Locomotive Requirements)	2009/10			2010/11			2011/12		
	2009/10	2010/11	2011/12	2009/10	2010/11	2011/12	2009/10	2010/11	2011/12
General Freight Mainline ¹	5 232	5 337	5 595	5 809	5 975	6 133			
General Freight B-Fleet ²	4 788	4 878	5 139	5 353	5 516	5 673			
General Freight Shunting ³	3 616	3 957	4 211	4 415	4 568	4 716			
Coal Line	15 465	16 238	17 050	17 903	18 798	19 739			
Ore Line	3 7451	44 808	45 594	53 283	55 630	57 945			

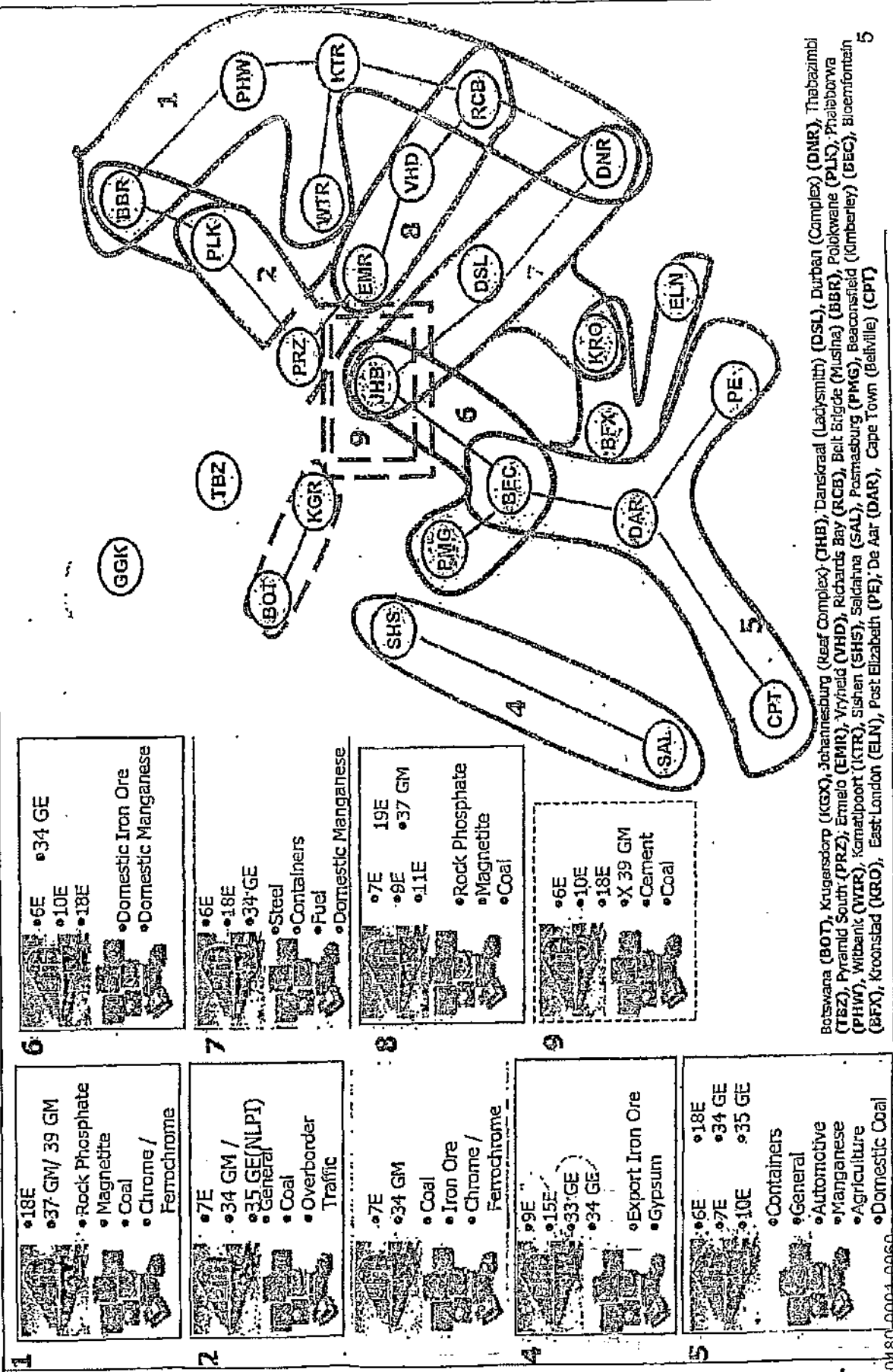
Note 1: Includes Mainline and narrow gauge excludes Shunters and B-Fleet
Note 2: Includes Mainline and B-Fleet excludes Shunters
Note 3: Includes Mainline, B-Fleet and Shunters

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Fleet Requirements -Corridor View

5



Botswana (BOT), Krugersdorp (KGR), Johannesburg (JHB), Durban Complex (DNR), Durban Complex (DNR), Thabazimbi (TBZ), Pyramid South (PRZ), Ermelo (EMR), Vryheid (VHD), Richards Bay (RCB), Beit Bridge (Musha) (BBR), Polokwane (PLK), Phaleborwa (PHW), Witbank (WTR), Kameelpoort (KTR), Sishen (SHS), Saldanha (SAL), Port Elizabeth (PE), De Aar (DAR), Cape Town (Bellville) (CPT)

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6 Current Locomotive Fleet Types

Locomotive Fleet		Locomotive Fleet	
GE	Group	GE	Technical
Diesel Locomotives	33	GE	18
	34	GE	189
	34	GM	123
	35	GE	129
	35	GM	96
	36	GE	101
	36	GM	87
	37	GM	70
	38	X38	37
	39	GM	55
	91	GE	7
Total			1012
Electric Locomotives	6E	6E	9
	6E1	6E	209
	7E	7E	66
	7E1	7E	40
	7E2	7E	46
	7E3	7E	68
	7E4	7E	16
	8E	8E	62
	9E	9E	30
	10E1	10E	89
	10E2	10E	60
	11E	11E	45
	14E1	14E	8
	15E	15E	27
	18E	18E	460
	19E	19E	47
Total			1232
Total Locomotives Fleet Size			2244
Total Diesel type		Total Electric type	
11		13	

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7 Future Locomotive Fleet Types

KEY NOTES AND ASSUMPTIONS

All new locomotives are based on the following five broad categories:

Locomotive Type	Specifically used on the Ore Line
Electric Heavy Haul - Type 1 50kV 30 ton per axle	Operations on Coal Line or GFB Corridor where this axle load is permitted
Electric Heavy Haul - Type 2 3kv 25kV Dual Voltage 26 ton per axle	To be used on all GFB Corridors
Electric General Purpose - Type 3 3kv 25kV Dual Voltage 21 ton per axle	To be used across all corridors including the Coal and Ore Export Lines
General Purpose Diesel - Type 4 300kN-350kN maximum tractive effort and 21 tons per axle with AC traction motors	To be used as mini haulers and shunters in yards and branch lines
Trip and Shunting Joco - Type 5 Dual Voltage Electro-diesel, small, efficient low power diesel of around 750kW supported by a 25kV and 3kV electric power pickup and transformer. 13 ton per axle load and double cab for ease of shunting	

- All fleet sizes reflected are at the end of each financial year
- All prices are escalated at a 6% year on year increase

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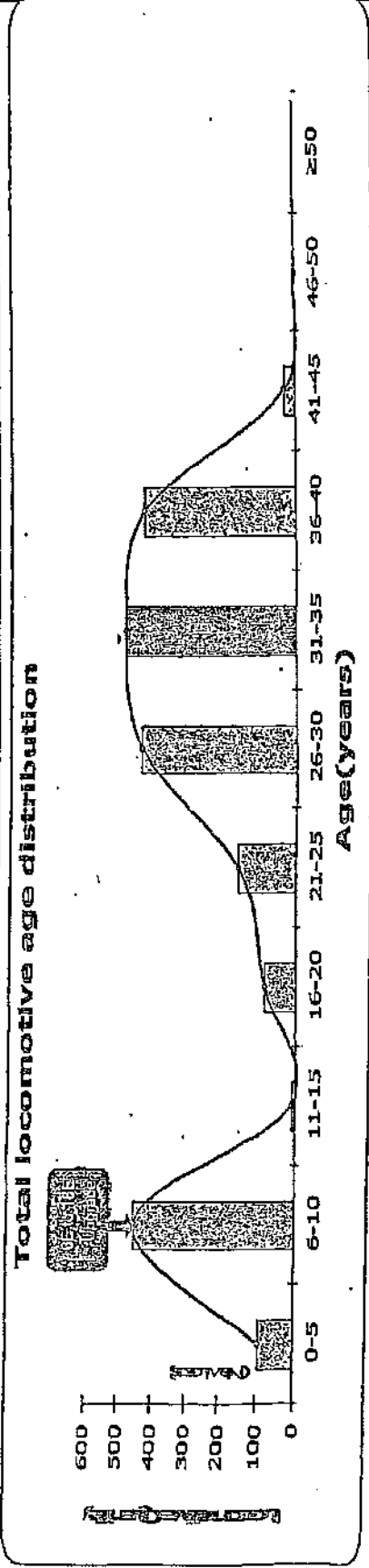
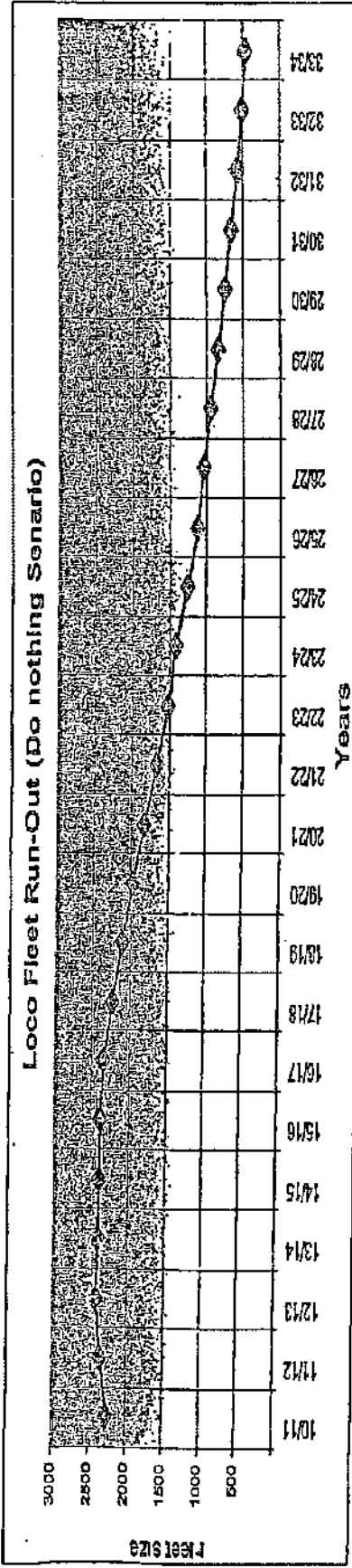
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8 Current Fleet Status

Fleet Quantity Overview, Locomotive Age Distribution And Run Out (Do Nothing Scenario) - as at 12 December 2018

	GFB	Coal	Ore	Total
BEZ Locomotive	593	26	16	635
Active Locomotives	1601	360	174	2135
Total Fleet	2194	386	190	2770



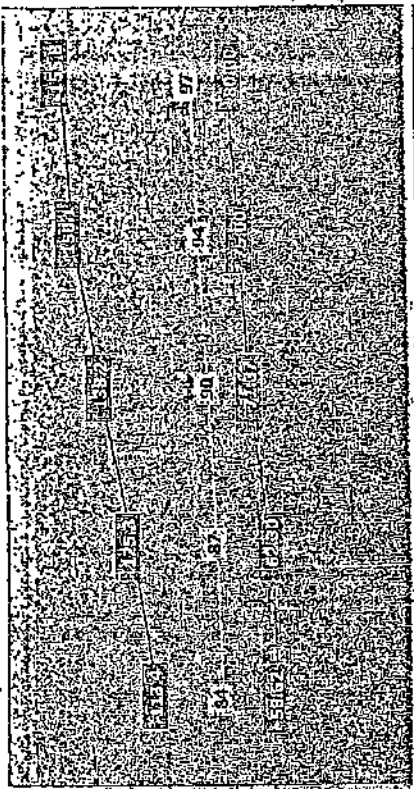
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9 Business Plan vs Market Volumes

Unconstrained Tonnage Projection (Million Tons)

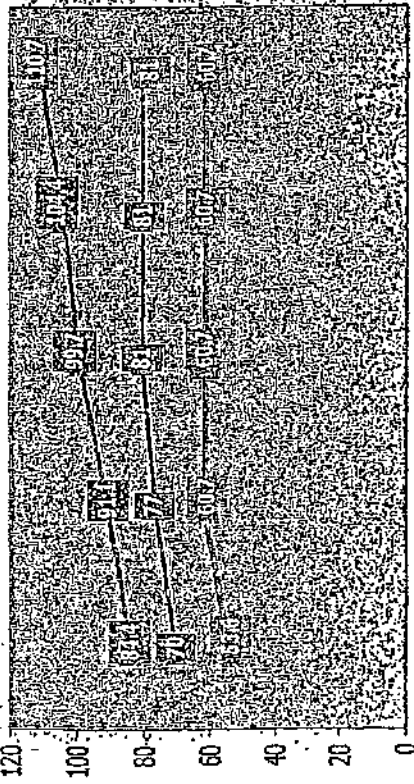
GF LINE Unconstrained COAL LINE Unconstrained ORE LINE Unconstrained



	11/12	12/13	13/14	14/15	15/16
GF LINE	113.4	125.3	138.2	150.1	155.8
COAL LINE	84	87	90	94	97
ORE LINE	58.62	62.30	71.37	75.00	80.00

Business Tonnage Projection (Million Tons)

GF LINE COAL LINE ORE LINE

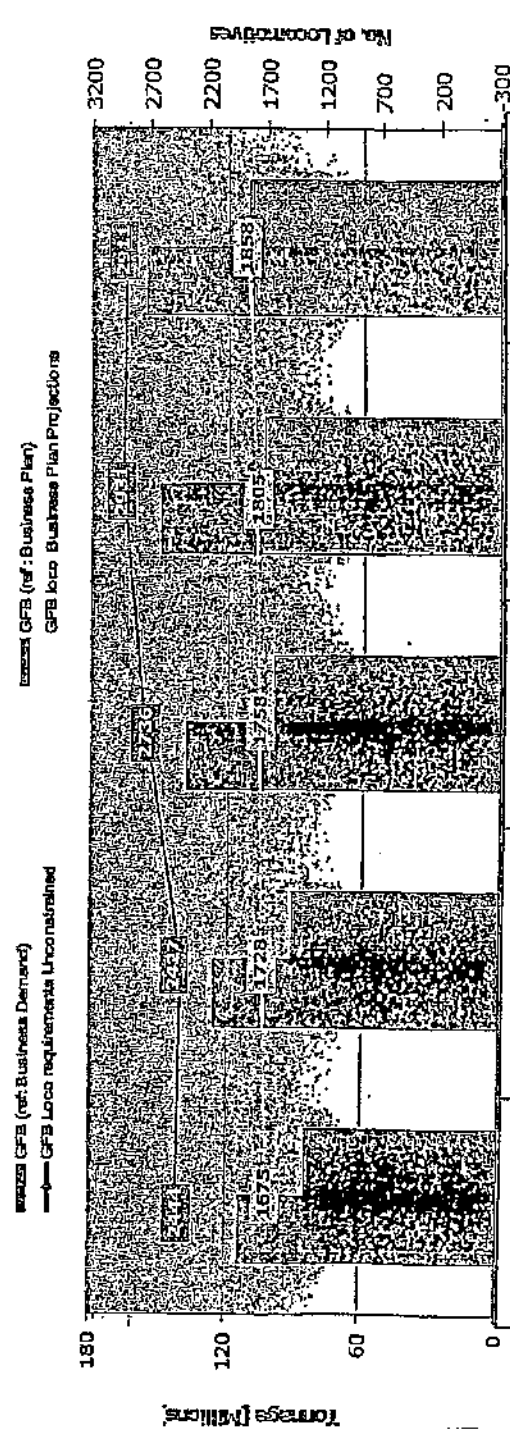


	11/12	12/13	13/14	14/15	15/16
GF LINE	84.4	91.1	99.7	104.4	110.7
COAL LINE	70	81	81	91	91
ORE LINE	53.6	60.7	60.7	60.7	60.7

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10 GFB Market (155.8mt) vs Business Plan Volumes (110mt)

General Freight Business

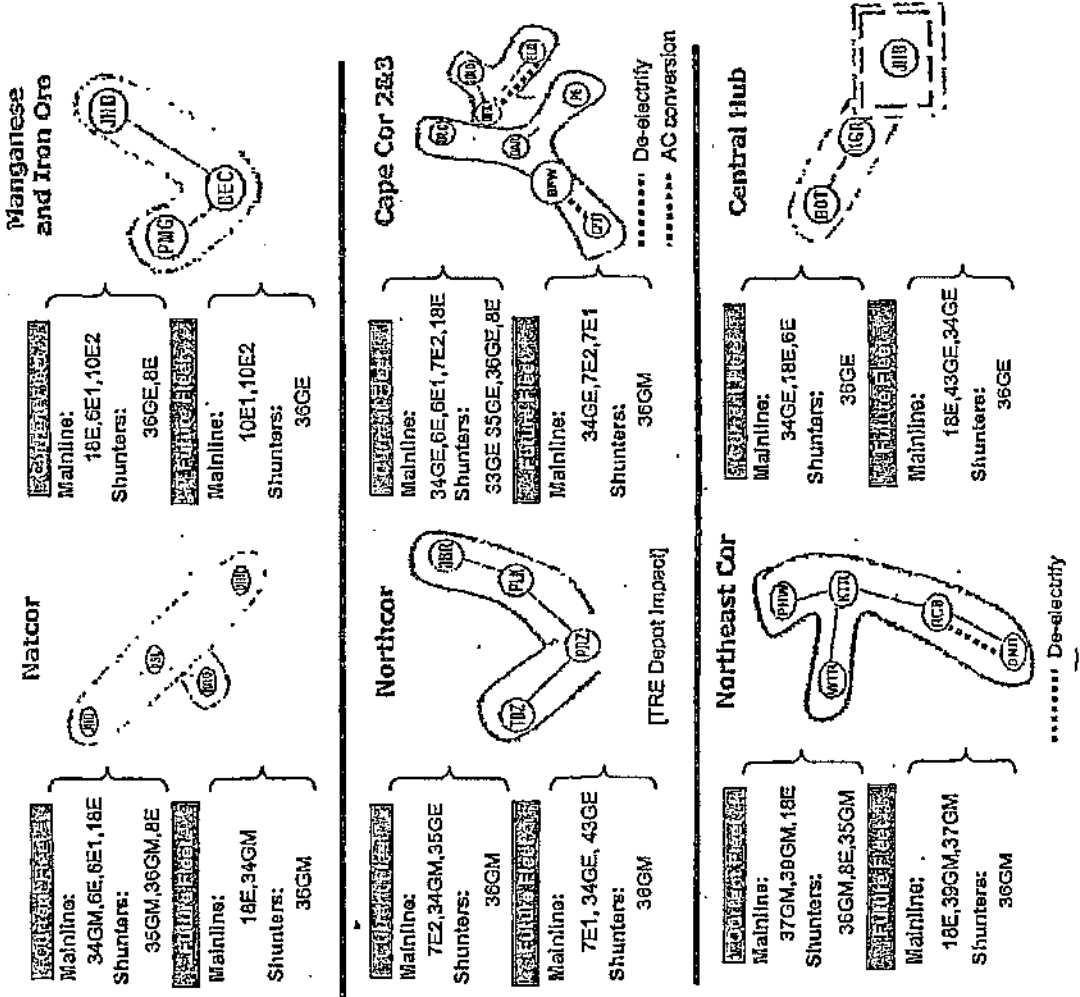


	2011	2012	2013	2014	2015
GFB (ref : Business Plan)	84.4	91.1	99.7	104.4	110.7
GFB Loco Business Plan Projections	1675	1728	1738	1805	1858
GFB (ref: Market Demand-Unconstrained)	113.4	125.3	138.2	150.1	155.8
GFB Loco requirements unconstrained	2444	2427	2735	2931	2911
Loco Variance requirement with new generation power : Bus Plan vs Plan vs Market demand	611	105	56	138	0
Buy/ Lease Electric (Proposed Delivery Schedule)	0	30	120	120	24
Buy/ Lease Diesel (Proposed Delivery Schedule)	0	58	100	68	0
Buy/ Lease Shuntlers (Proposed Delivery Schedule)	0	100	150	140	0

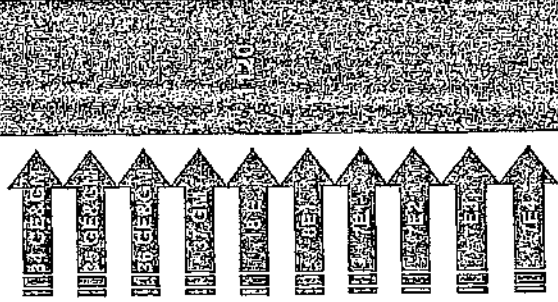
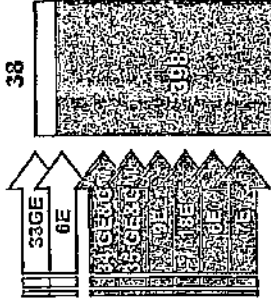
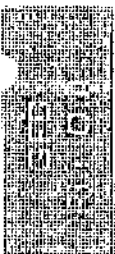
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11 GFB- Deployment and Future Fleet



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Short Term
2011/2013
Long Term
2020

Medium Term
2014/2020

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12 GFB Requirements Summary (Aligned to Five Year Business Plan Capped @ 110 mta)

Class	GN	Group	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31
33	17B	GE	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	29
34	21B	GE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	105
34	21B	GM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	121
35	161	GE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	49
35	161	GM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	133
36	141	GE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	96
36	141	GM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	80
37	245	GM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	33
38	100	X38	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
39	308	GM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7
91	66	GE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7
10E1	310	10E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	78
10E2	310	10E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14E1	240	14E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8
18E	200	18E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	406
6E	170	6E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	70
GE1	170	GE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	88
7E	300	7E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	33
7E3	300	7E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	48
7E1	300	7E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	29
7E2	300	7E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6
7E4	300	7E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	63
GE	145	GE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1333
TOTALS			-21	-41	-30	6	-11	-15	34	113	113	125	130	153	136	107	152	81	77	95	99	90	1333
Current/Opening Fleet			1588	1642	1755	1834	1800	1798	1800	1753	1627	1501	1363	1220	1054	905	785	628	542	469	360	259	
New Locos																							
commitment																							
Damaged locos return			23	100	51	51	51	51	51	51	51	51	51	51	51	51	51	51	51	51	51	51	51
Wreck out			0	64	64	64	64	64	64	64	64	64	64	64	64	64	64	64	64	64	64	64	64
Fleet run out			12	29	30	37	5	13	34	113	113	125	130	153	136	107	144	73	69	67	68	79	
Fleet cascade			33	70	60	16	16	28	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS			1642	1755	1834	1800	1798	1800	1753	1627	1501	1363	1220	1054	905	785	628	542	469	360	259	167	
Requirement (Active)			1781	1860	1919	1954	2001	2001	2001	2001	2001	2001	2001	2001	2001	2001	2001	2001	2001	2001	2001	2001	2001
Variances			-139	-105	-85	-154	-203	-201	-248	-374	-500	-638	-781	-947	-1096	-1216	-1373	-1459	-1541	-1641	-1742	-1834	

LOCOMOTIVES CASCADED TO GFB

LOCOMOTIVES TO RUN OUT

IN CURRENT BUDGET

NOT IN CURRENT BUDGET

Note: Negative quantities in the table above indicates locomotive additions to the fleet

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GFB Requirements Summary (Aligned to Five Year Business Plan Capped @ 110mta)

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	Totals
Diesel Commitment/Purchase																					303
Diesel Commitment																					278
Diesel Runout																					544
Electric Commitment/purchase	0	0																			545
Electric Runout																					220
Bunker Commitment/purchase																					268
Stuntar Runout	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	187
Branchline Commitment/purchase																					172
Branchline Runout	13	9	8	0	0	0	3	4	3	16	20	29	30	26	27	5	9	0	0	0	1254
Baseline to sustain all GF	0	0	46	63	49	49	49	49	49	86	86	86	86	86	86	86	86	86	86	86	1067
Runouts																					
Baseline without	0	0	46	63	49	49	49	49	49	69	69	69	69	69	69	69	69	69	69	69	
Branchline																					

IN CURRENT BUDGET

NOT IN CURRENT BUDGET

IN CURRENT BUDGET

NOT IN CURRENT BUDGET

Includes: Capacity to 110 mta in 2015

Write offs of 8 per year

GFB Market Requirements (155.8mt) and Cost vs Business Plan (110mt)

GFB Unconstrained Locomotive Quantities and Costs by Unconstrained Volume					GFB Unconstrained Locomotive Quantities and Costs by Unconstrained Volume				
	Volume (mt)	Cost (\$M)	Cost (\$M)	Cost (\$M)		Volume (mt)	Cost (\$M)	Cost (\$M)	Cost (\$M)
Total Unconstrained GFB Volumes (mt)	113.4	125.3	138.2	150.1	155.8				
Total Unconstrained Loco Requirements	2444	2627	2736	2931	2911				
Business Plan Projected Fleet	1675	1723	1758	1805	1858				
Actual Req if New Generation Locos are purchased	2286	2445	2531	2716	2717				
New Generation Locomotives to be purchased (Main line)									
Cost to purchase (Rm)									

GFB Unconstrained Locomotive Quantities and Costs by Unconstrained Volume					GFB Unconstrained Locomotive Quantities and Costs by Unconstrained Volume				
	Volume (mt)	Cost (\$M)	Cost (\$M)	Cost (\$M)		Volume (mt)	Cost (\$M)	Cost (\$M)	Cost (\$M)
Unconstrained Requirements	113.4	125.3	138.2	150.1	155.8				
Business Plan projected fleet	766	821	864	896	888				
Variance between Business Plan and Unconstrained requirements	1149	1231	1297	1345	1333				
Variance based on tractive effort calculation for new locomotives	529	575	575	690	690				
	550	571	583	602	623				
	825	857	875	903	935				
	300	300	300	300	300				
	216	250	281	294	265				
	324	374	422	442	398				
	229	275	275	390	390				
	166	192	216	226	204				
	216	249	281	294	265				
	229	275	275	390	390				
	113.4	125.3	138.2	150.1	155.8				
	766	821	864	896	888				
	1149	1231	1297	1345	1333				
	529	575	575	690	690				
	550	571	583	602	623				
	825	857	875	903	935				
	300	300	300	300	300				
	216	250	281	294	265				
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	229	275	275	390	390				
	166	192	216	226	204				
	216	249	281	294	265				
	229	275	275	390	390				
	113.4	125.3	138.2	150.1	155.8				
	766	821	864	896	888				
	1149	1231	1297	1345	1333				
	529	575	575	690	690				
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	825	857	875	903	935				
	300	300	300	300	300				
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	113.4	125.3	138.2	150.1	155.8				
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	216	249	281	294	265				
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	113.4	125.3	138.2	150.1	155.8				
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	216	250	281	294	265				
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	166	192	216	226	204				
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	229	275	275	390	390				
	113.4	125.3	138.2	150.1	155.8				
	766	821	864	896	888				
	1149	1231	1297	1345	1333				
	529	575	575	690	690				
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	300	300	300	300	300				
	216	250	281	294	265				
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	229	275	275	390	390				
	166	192	216	226	204				
	216	249	281	294	265				
	229	275	275	390	390				
	113.4	125.3	138.2	150.1	155.8				
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	216	250	281	294	265				
	324	374	422	442	398				
	229	275	275	390	390				
	166	192	216	226	204				
	216	249	281	294	265				
	229	275	275	390	390				
	113.4	125.3	138.2	150.1	155.8				
	766	821	864	896	888				
	1149	1231	1297	1345	1333				
	529	575	575	690	690				
	550	571	583	602	623				
	825	857	875	903	935				
	300	300	300	300	300				
	216	250	281	294	265				
	324	374	422	442	398				
	229	275	275	390	390				

TRANSNET

15 Ore Line-Summary (Aligned to Five Year Business Plan Capped @ 60mta)

		Ore Line Runout and Cascading Plan																					
Class	KN Group	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30		
33	178 GE																						
34	213 GE																2	10	5	4	5		
36	141 GE																						
15E	454																						
9E	388 9E								6	6	10	9											
TOTALS		19	22	44	6	0	0	0	6	6	10	9											
		Ore Line Requirements																					
Current/Opening		10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30		
Fleet		170	188	168	144	147	146	145	144	137	130	119	109	108	107	106	105	102	91	85	80		
New Locos commitment		38	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5		
Damaged locos return		5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5		
Wreck out		6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6		
Fleet run out		0	0	1	6	0	0	0	6	6	10	9	0	0	0	0	2	10	5	4	5		
Fleet cascade		19	22	44	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Total		188	168	144	147	146	145	144	137	130	119	109	108	107	106	105	102	91	85	80	74		
Requirement (Active)		174	140	142	142	142	142	142	136	130	120	111	111	111	111	111	111	111	111	111	111		
		LOCOMOTIVES CASCADED TO GEB																					
		LOCOMOTIVES TO RUN OUT																					
		Note: Negative quantities in the table above indicates locomotive additions to the fleet Includes 32 new 15E Locomotives																					
		Includes 60mta up to 14/15																					
		24 CURRENT BUDGET 32 locomotive @ R44m EACH																					
		NOTIN CURRENT BUDGET																					

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Ore Line Market Requirements (80 mt) and Cost vs Business Plan (60mt)



ORE Summary of Forecasting Ore Quantities and Cost for Unconstrained Values							Ore Generation Requirements vs Business Plan (Cost Rm)									
	Year:	11/10	12/11	13/12	14/13	15/14	11/10	12/11	13/12	14/13	15/14	16/15	17/16	18/17	19/18	Total
Total Unconstrained ORE Volumes (Mt)		58.6	62.3	71.3	75.0	80.0										
Total Unconstrained Loco Requirements		174	168	130	135	141										
Business Plan Projected Fleet		178	154	130	130	130										
Actual Req if New Generation Locos are purchased		174	163	130	135	141										
New Generation Locomotives to be purchased																
Cost to purchase(Rm)																

ORE Unconstrained Locomotive Requirements vs Business Plan																
	11/10	12/11	13/12	14/13	15/14	16/15	17/16	18/17	19/18	Total						
Volume (Mt)	58.6	62.3	71.3	75.0	80.0											
Diesel	96	74	20	21	22											
Electric	74	90	106	110	115											
Shunters	4	4	4	4	4											
Total Requirements	174	168	130	135	141											
Diesel	100	76	20	20	20											
Electric	74	74	106	106	106											
Shunters	4	4	4	4	4											
Total Business Plan Fleet	178	154	130	130	130											
Diesel	0	0	0	1	2											
Electric	0	10	0	4	9											
Shunters	0	0	0	0	0											
Total Variance	0	10	0	5	11											
Electric				23	23											
Diesel				3	9											
Total				26	26											

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Coal Line-Summary (Aligned to Five Year Business Plan Capped @ 81 mta)

Class	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26
IGN																
11E																
7E															8	8
7E1																
7E3																
7E4																
10E1																
34D																
37D																
19E																
36GM																9
35D																
Total	14	48	16		16	28									8	17
Current/Opening Fleet	333	364	361	369	375	378	348	345	344	342	340	338	336	334	332	322
New Locos commitment																
New Locos proposed																
Damaged locos return	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Wreck out	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Fleet run out	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	17
Fleet cascade	14	48	16	16	16	28	0	0	0	0	0	0	0	0	0	0
Total	364	361	369	375	378	348	345	344	342	340	338	336	334	332	322	303
Requirement (Active)	339	323	321	321	321	321	321	321	321	321	321	321	321	321	321	321

LOCOMOTIVES CASCADED TO GFB

LOCOMOTIVES TO RUN OUT

IN CURRENT BUDGET

NOT IN CURRENT BUDGET @ APPROX R35m each=R3.73 bn

Note: Negative quantities in the table above indicates locomotive additions to the fleet

Includes Capacity to 81 mta in 2015

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Coal Line Market Requirements (81 mt) and Cost vs Business Plan (97mt)

Coal Line Market Requirements		Business Plan		Difference	
Volume (mt)	Cost	Volume (mt)	Cost	Volume (mt)	Cost
81	84.0	97	94.0	16	10.0
Unconstrained	278	282	289	4	7
Business Plan	255	251	255	-4	4
Actual Requirement	278	282	289	4	7
New Generation Locomotives to be purchased					
Locos req to replace existing fleet for					
Standardisation and cascade					
Total Required					
Cost to purchase					

Business Plan		Difference	
Volume (mt)	Cost	Volume (mt)	Cost
81	84.0	97	94.0
Unconstrained	278	282	289
Business Plan	255	251	255
Actual Requirement	278	282	289
New Generation Locomotives to be purchased			
Locos req to replace existing fleet for			
Standardisation and cascade			
Total Required			
Cost to purchase			

45 x 11E will remain as part of Export Coal fleet. Total fleet = 110 (Existing purchase) + 112(Additional Purchase) + 45 (11E Existing Fleet) + 41 (Diesels)

Total fleet 308 to haul 97mt

Current Fleet 255 to haul 76mt

Unconstrained Requirements		Business Plan		Difference	
Volume (Mt)	Cost	Volume (Mt)	Cost	Volume (Mt)	Cost
81	84.0	97	94.0	16	10.0
Unconstrained	278	282	289	4	7
Business Plan	255	251	255	-4	4
Actual Requirement	278	282	289	4	7
New Generation Locomotives to be purchased					
Locos req to replace existing fleet for					
Standardisation and cascade					
Total Required					
Cost to purchase					

Business Plan		Difference	
Volume (Mt)	Cost	Volume (Mt)	Cost
81	84.0	97	94.0
Unconstrained	278	282	289
Business Plan	255	251	255
Actual Requirement	278	282	289
New Generation Locomotives to be purchased			
Locos req to replace existing fleet for			
Standardisation and cascade			
Total Required			
Cost to purchase			



20 Capex Requirements TO Mitigation Run outs
(Aligned To Five Year Business Plan)

Budget for 65% of Out-of-Pace New Locomotive Roll-in Annual Million																					
Sectors	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	Total
Oya Bus	Electric 50kV	R1748	R146	R1197	R544	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0
	Diesel corridors (21 y/a)	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0
	Shunters dual elect. (18 y/a)	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0
Coal Bus	Dual electric 3/25kV (26 tons/axle)	R0	R0	R1258	R1410	R1454	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R4123
	19E committed	R1504	R1594	R431	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R3530
	Diesel corridors (21 y/a)	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R2249
	Shunters dual elect. (18 y/a)	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0
GFB	Dual electric 3/25kV (21 tons/axle)	R0	R0	R1151	R1220	R1293	R1370	R1453	R1540	R1632	R1730	R1834	R1944	R2000	R2104	R2315	R2454	R2601	R2757	R2923	R3090
	Diesel corridors (21 y/a)	R0	R0	R362	R849	R494	R523	R535	R588	R623	R661	R700	R742	R787	R834	R884	R937	R993	R1053	R1116	R1173
	41 Diesel Committed Shunters dual elect. (18 y/a)	R46	R878	R1602	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R0	R2526
	Branchline dual elect. (18 y/a)	R0	R0	R0	R0	R0	R0	R0	R0	R1061	R1146	R1215	R1288	R1365	R1447	R1534	R1626	R1723	R1827	R1936	R26108
		R0	R0	R0	R0	R0	R0	R0	R0	R519	R974	R1033	R1095	R1160	R1230	R1304	R1382	R1465	R1553	R1646	R19160
	Total	R3298	R2618	R5941	R4027	R3241	R1894	R2007	R2128	R2255	R3472	R3688	R3901	R4135	R4383	R4646	R5035	R6748	R6777	R6522	R7033
Estimated Unit Price is related by 65% Annually																					
Locomotive Type	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	
Electric 50kV	46	49	52	55	58	62	65	69	73	78	82	87	93	98	104	110	117	124	131	139	
Dual electric 3/25kV (26 tons/axle)	32	34	36	38	40	43	45	48	51	54	57	61	64	68	72	77	81	86	91	97	
Dual electric 3/25kV (21 tons/axle)	32	34	36	38	40	43	45	48	51	54	57	61	64	68	72	77	81	86	91	97	
Diesel corridors (21 y/a)	23	24	26	27	29	31	33	35	37	39	41	44	46	49	52	55	58	62	66	70	
Shunters dual elect. (18 y/a)	32	34	36	38	40	43	45	48	51	54	57	61	64	68	72	77	81	86	91	97	

0077-0480-0001-0075

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TRANSNET



MEMORANDUM

memo

TO : The Board of Directors
Transnet Limited

FROM : Mr Siyabonga Gama, Acting Group Chief Executive

DATE : 13 April 2011

LOCOMOTIVE FLEET AND MODERNISATION PLAN

We present the TFR Locomotive Fleet and Modernisation Plan for your consideration and approval. The Fleet Plan takes into account the unconstrained fleet requirements of TFR to meet customer demand. It therefore departs from the current five year Corporate Plan in that it attempts to address locomotive requirements based on volume demand, in order for Transnet not to be a constraint in the economy, but to enable a match of assets to projected demand.

Below are the actual volumes available to rail in 2015/16 which, due to locomotive constraints, we are unable to haul:-

	Corporate Plan (mt)	Market Demand (mt)	Locomotive Requirement	Estimated Cost (bn)
GFB	110.7	155.8	520	R17.657
COAL	81	97	112	R 4.238
IRON ORE	60.7	80	26	R 1.717
				R 23.613

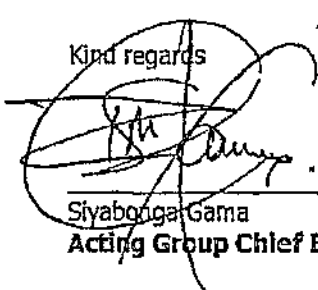
The following resolutions are required from the board:-

- 1) Approval for the acquisition of 226 diesel and 294 electric locomotives being a total of 520 locomotives for the GFB business to be delivered by 2015/16, at an estimated total cost of R17,657bn;
- 2) Approval for the acquisition of 23 electric and 3 diesel locomotives for the Iron ore line at an estimated total cost of R1,717bn to cater for volumes of 80mt by 2015/16;

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Kwadi

- 3) Approval for the acquisition of 112 new electric locomotives for the coal line at an estimated cost of R4,238bn to cater for 97mt of coal by 2015/16;
- 4) Approval for a capital investment at an estimated cost of R1,917bn to repair and rebuild 274 existing locomotives by Transnet Rail Engineering with a life expectancy of a further 12 years;
- 5) That the Group Chief Executive of Transnet be authorized, with power to sub-delegate, to issue tenders in respect of 1,2 and 3 above and to investigate buy or lease and buy options that are optimal to Transnet to acquire these locomotives;
- 6) That the Group Chief Executive of Transnet, prior to finalizing any details relating to any of these acquisitions, approach the Transnet Board for formal approval of each of these transactions before awarding such to potential successful tenderers.

Kind regards


Siyabonga Gama

Acting Group Chief Executive


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Annexure B

EXCERPT FROM THE MINUTES OF MEETING NO. 11/5 OF THE BOARD OF DIRECTORS OF
TRANSNET LIMITED HELD ON 20 APRIL 2011 AT 08:20 IN 4TH FLOOR BOARDROOM, TRANSNET
PORT TERMINAL OFFICES, KINGSMEAD OFFICE PARK, DURBAN

8.12 Locomotive Fleet Modernisation Plan

8.12.1 Management took the Board through the submission as contained in the pack. The submission was taken as read. The Board was advised that some portions of the capital expenditure were not in the current Corporate Plan. The matter was extensively deliberated upon.

8.12.2 The Board agreed that the funding requirements for the Fleet Modernisation Plan should fit within the Corporate Plan. It requested Mr Singh to review the capital expenditure requirements in the funding plan, and to revert if there were challenges.

Mr Singh

8.12.3 The Board stated the following:

- It requests a better appreciation of the Locomotives Fleet Modernisation Plan and its impact on the funding plan.
- It requests an impact analysis on the cash flows and returns.
- The matter should be submitted to the Board Acquisitions and Disposals and Board Audit Committees for further consideration.

The Board **RESOLVED** that it approves the Locomotives Fleet Modernisation Plan at a cost of R23.6b, subject to the submission of a holistic funding plan and affordability.

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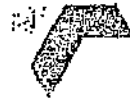
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TRANSNET



MEMORANDUM

www.transnet.net

To: Mr. ME Mkwana, Chairman, Transnet Board of Directors

From: Brian Molefe, Group Chief Executive, Transnet

Date: 19 August 2011

SUBJECT: APPROVAL TO PROCEED WITH THE ACQUISITION OF LOCOMOTIVES BY FREIGHT RAIL IN RESPECT OF GFB DIESEL AND ELECTRIC FLEETS

PURPOSE:

- 1 The purpose of this submission is to obtain approval from the Transnet Board of Directors (The Board):
 - 1.1 On the investment of the locomotives required for the General Freight Business within the affordability and funding constraints of the current 5 year Corporate Plan.
 - 1.2 To seek confinement on certain classes of locomotives to ensure that these locomotives are delivered and productively utilized within the shortest possible time frames.
 - 1.3 To obtain PFMA approval from the Minister of Public Enterprises to proceed with acquisition of 138 new locomotives at an estimated total cost R3 649 million.

BACKGROUND:

2. The locomotive fleet plan was presented to and approved by the Transnet Board on 20 April 2011. The Board requested the Board Acquisition and Disposal Council (BADC) to confirm and finalise the affordability and approve the acquisition of the locomotives in accordance with the fleet plan. The Board also requested Transnet Freight Rail (TFR) to indicate what other investments would be required to optimize the locomotive plan.
 - 2.1 TFR is currently in the process of finalizing and assessing the funding and affordability concerns related to the total fleet plan.
 - 2.2 In order to address the urgent need for tractive effort it is recommended that TFR undertakes the procurement of locomotives, even while the funding for the total fleet plan is being finalized.
 - 2.3 This submission covers the following critical areas for conversation:
 - 2.1.1 Affordability and funding
 - 2.1.2 Procurement approach

2.1.3 CSDP Initiatives

2.1.4 Business requirements

DISCUSSION:

3. A key assumption made in this document is that the investment case of locomotives in terms of the locomotive fleet plan has been completed. This submission is for the first tranche of the locomotives in terms of the locomotive fleet plan. The business case has been prepared and together with this submission will be presented to Exco for noting during August 2011. The submission has been tabled and approved at the BADC on 3 August 2011. Approval from the Shareholder in terms of the PFMA will be requested once the Board has granted approval.

4. In developing a funding solution the following actions were undertaken:

4.1 The 2011/12 budget as per the Corporate Plan was revised to create additional headroom on gearing and cash interest cover.

4.2 The following changes were effected on the 2011/12 budget:

4.2.1 Revenue increased by R844 million due to higher Pipelines revenue and export coal tariffs.

4.2.2 Operating expenses decreased by R114 million. The decrease was after adjusting for the higher than expected salary increase, higher Brent crude price and the implementation of R1.0 billion cost savings programme.

4.2.3 The re-phasing of the capital spend resulting in a reduction of R1 072 million.

4.2.4 The early redemption of the T018 that resulted in a net reduction in interest cost of R176 million.

4.3 As a result of the changes effected in paragraph 4.2, the gearing and cash interest cover impact is as follows:

2011/12 Corporate Plan

	2011/12	2012/13	2013/14	2014/15	2015/16
Gearing (%)	46.8	46.8	46.4	42.8	37.7
Cash interest cover (times)	3.2	3.3	3.4	3.9	4.8

2011/12 Revised Target based on par. 4.2 above

	2011/12	2012/13	2013/14	2014/15	2015/16
Gearing (%)	44.6	45.7	44.8	40.7	35.0
Cash interest cover (times)	3.41	3.35	3.45	4.01	5.1

Transnet internal gearing and cash interest cover target per year: less than 47% and greater than 3.2 times respectively.

5. The funding available to acquire locomotives are as follows:

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Corporate Plan Funding	R Billions
Uncommitted locomotive capital in Corporate Plan	3,656
Latest requirements for locomotives	3,649

6. Delegation of Authority: The combined project ETC of both suggested locomotive acquisition projects exceed 1% of Transnet's asset base (R1.6bn as at March 2011). Board and PFMA approval is required for the first tranche of the Locomotive acquisition, before commencement of the project.
7. The locomotive acquisition was budgeted in the latter years of the five year planning cycle. Due to action plans to create much needed liquidity in the first 3 years of the 2011/12 Corporate Plan TFR can fund the acquisition of 43 Diesel and 95 Electric locomotives on the strength of the Transnet Balance Sheet much sooner than originally planned.

7.1 Affordability and Funding

The earlier acquisition of these locomotives is affordable, and the impact is illustrated in the following table.

	2011/12	2012/13	2013/14	2014/15	2015/16	Total
Diesel Units		43				43
Electric Units		45	50			95
Proposed Earlier Capex Flow (Rm)	225	2 164	1 260			3 649
Corporate Plan Capex Flow (Rm)	79	314	1 312	956	995	3 656
Incremental Revenue to Corporate Plan		548.8	961.3	984.1	433.8	2 928
Gearing (%)	44.6	45.7	44.8	40.7	35.0	
Cash Interest cover (times)	3.41	3.35	3.45	4.01	5.1	

Note: These additional locomotives do not cover the full Tractive requirement to meet the 5 Year Corporate Plan. This business case partially addresses the shortfall

7.2 Assumptions:

7.2.1 Advance payment of 10% has been factored into the cash flow and 90% to be paid on acceptance. This is in line with the advance payment made for the acquisition of 100 Class 43 GE Diesel locomotives.

7.2.2 Revenue Increase relates to the average rate per ton of R196.00 applied to the additional tonnages of 6mt for 2012/13 ramping up to 27.7mt in 2013/14 expected to be hauled by the new fleet.

7.2.3 A conservative locomotive efficiency improvement of 4.7% in million

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tones per net ton kilometer in year 20012/13 reducing to 2.6% in 2015/16 was used, despite a concerted effort to improve asset utilization that is underway.

- 7.2.4 The market demand, well in excess of the 27.7 mtpa in 2013/14 is anticipated and is being validated.
- 7.2.5 No increase in freight tariff, in both nominal and real term was used in the analysis.
- 7.2.6 The profit margin was capped at an EBITDA percentage of 40%, well below the performance of comparable railways.
- 7.2.7 The additional volumes, as well as profitability assumption used in compiling the financial impact are very conservative.

7.3 Procurement Approach entails:-

- 7.3.1 The Locomotive Fleet Plan predicates standardisation of the locomotive fleets. The balance between a standardized fleet and a single supplier versus multiple lowest costs tender and multiple suppliers requires a fine balance of full life cycle cost and simplicity of operations. Currently TFR has 11 different diesel types and 16 different electric types. The rationale for standardisation of the locomotive fleet is fully set out in the approved Locomotive Fleet Plan.
- 7.3.2 The Locomotive Fleet Plan is premised on 5 different types of locomotives. The 95 Electric locomotives are viewed as the precursor of the standardized dual voltage multi-purpose General Freight Mainline locomotive.
- 7.3.3 The diesel fleet being procured from General Electric is 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 tender offers as it would result in wasted money and/or time for Transnet.
- 7.3.4 The production line is operational and design is finalized. Lead times will therefore be kept to a minimum.
- 7.3.5 The production line for the Class 43 locomotives are expected to come to an end towards April 2012 and there is an urgent need to procure the additional locomotives in order to deliver upon current committed volumes.
- 7.3.6 Present delivered locomotives have recently been tested and are operating according to expectation.
- 7.3.7 The testing of locomotives has commenced with the initial manufacturing and operational faults rectified.
- 7.3.8 Training curricular has been developed and personnel are already being trained on locomotives operations and maintenance.
- 7.3.9 Approximately 186 jobs will be retained at the TRE assembly facility and further jobs will be retained in downstream enterprises.
- 7.4 CSDP Initiatives: GE has already committed to a CSDP program and enhancing this program for additional locomotive requirements will be negotiated.
- 7.5 Cape gauge electric locomotives are bespoke designs (unlike diesels), requiring significantly greater input and testing of design and performance validation.

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This would significantly affect the ability of suppliers to deliver locomotives on time and the proposed delivery schedule is dependent on going to market as soon as possible.

7.6 Locomotives are in themselves highly technical with specialized technology and components. Manufacture and procurement requires specialized facilities many of which are not locally manufactured. The maintenance and aftermarket requirements of these locomotives will require components and specialized skills not found locally.

7.7 Business Requirements: Demand for rail capacity is being driven by the following factors:

- 7.7.1 The current business plan volume growth is constrained by capacity/capital
- 7.7.2 Domestic Coal to address Eskom's consumption and road to rail migration plan
- 7.7.3 IRON ORE – domestic and regional consumption of steel fuelling demand for iron-ore and new export project by Aquila from Thabazimbi to Richards Bay
- 7.7.4 MANGANESE: SA's share of world output set to grow with junior miners and additional output of traditional TFR clients.
- 7.7.5 CONTAINERS: rail container volumes to increase in line with TFR's stated objective of increasing market share along key intermodal routes such as the NATCOR.
- 7.7.6 CEMENT: cement volumes to increase in line with SA's GDP growth (4% on average). TFR also targeting rail-friendly volumes in this sector.
- 7.7.7 MAGNETITE: demand mainly from China – driven by increased steel production. Export growth indicates modest increase and domestic consumption is set to grow once local beneficiation projects are started.
- 7.7.8 GRAIN, MAIZE, WHEAT & FOODSTUFFS: domestic harvests average between 10mtpa-14mtpa, weather permitting. Demand projection represents TFR's increased share of total market demand as more traffic is shifted from road to rail
- 7.7.9 PETROLEUM LIQUIDS/PRODUCTS: demand projections indicate increased volumes by rail in support of the NMPP. Also, there has been increased over border demand from Botswana and Mozambique.

RISK ASSESSMENT:

8. The locomotive Fleet Plan was subjected to full risk assessment before approval thereof.

8.1 The volume ramp up for Transnet Freight Rail is significantly dependent on the procurement of locomotives in the very short term. It must be noted that the proposed procurement programme is very tight and potential risks to the programme include:

8.1.1 A delay in approvals would significantly impact achievement of the current Corporate Plan volumes as these locomotives form an

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integral part of that plan.

- 8.1.2 While not a risk in itself, it must be noted that the acquisition of these 138 locomotives only partially satisfies the locomotive requirements of the current requirements of the current Corporate Plan.
- 8.1.3 TFR's reputation will be further eroded if TFR is not seen to be addressing locomotive shortfalls
- 8.1.4 Manufacturers have to establish local manufacturing facilities or endure production breaks if orders are not placed timeously on current facilities.
- 8.1.5 Offshore procurement has inherent shipping delays and reassembly once they reach the harbour.
- 8.1.6 The first batch of any new locomotives has to undergo rigorous acceptance tests prior to being put into service and commencement of manufacture of the remaining locomotives.
- 8.1.7 Cape gauge electric locomotives are bespoke designs (unlike diesels), requiring significantly greater input and testing of design and performance validation.
- 8.1.8 Bidding manufacturers not having enough time to design major modifications required for adaptation into the RSR standards.

CONCLUSION

- 9. Transnet is able to fund the acquisition of 43 Diesel and 95 Electric locomotives within Transnet's affordability levels

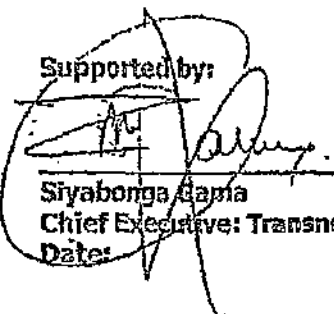
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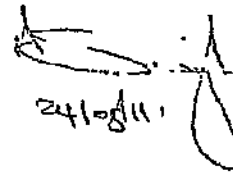
- 10. It is therefore requested that the Transnet Board of Directors considers, supports and recommends to the Minister, Department of Public Enterprises that:
 - 10.1 Transnet proceed with the acquisition of 43 locomotives on confined tender basis to GE to deploy in the GFB operations.
 - 10.2 Transnet proceed with an open tender to acquire 45 electric locomotives in 2012/13 and a further 50 electric locomotives in 2013/14 for deployment in the GFB operations.
 - 10.3 That the Group Chief Executive of Transnet be authorized, with powers to sub-delegate the resolutions above.

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2. The Minister, Department of Public Enterprises, to support and approve the funding to proceed with the acquisition of locomotives by Transnet Freight Rail at an Estimated Total Cost (ETC) of R3 649 million.

Supported by:



Siyabonga Dama
Chief Executive: Transnet Freight Rail
Date:


24/08/11

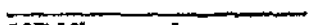
Recommended/ ~~Not Recommended~~


Brian Molefe
Group Chief Executive
Date: 24.8.11.

Recommended/ Not Recommended


BD Mkhwanazi
Chairman: Board Acquisitions and Disposals Committee
Date:

Supported/ Not Supported


ME Mkhwanazi
Chairman of the Board
Date:
Date :



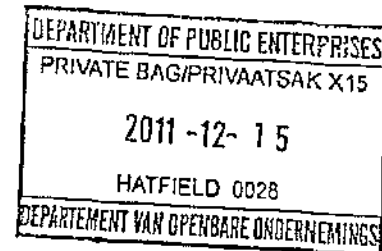
"MG17"**public enterprises**

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

TO : MR MALUSI GIGABA
MINISTER

FROM : MS RAISIBE LEPULE
DEPUTY DIRECTOR-GENERAL



FILE REF : 16/1/9/1

IDMS REF : 140056

SCANNED

**SUBJECT : REQUEST FOR APPROVAL IN TERMS OF SECTION 54 2(d) OF THE
PUBLIC FINANCE MANAGEMENT ACT FOR PROCUREMENT OF 95
ELECTRIC LOCOMOTIVES**

DATE : 5 DECEMBER 2011

1. PURPOSE

- To brief the Minister on Transnet application under section 54 2(d) of the Public Finance Management Act (PFMA) for procurement of 95 General Freight Business (GFB) electric locomotives to an estimated total cost of R2 659 million (attached as Annexure "A"); and
- To request the Minister to sign the attached letter to the Chairperson of Transnet granting approval for the application, if he is in agreement with the contents thereof.

2. SUMMARY

2.1 Transnet is requesting approval in terms of section 54 2(d) of the PFMA for the procurement of 95 GFB Electric locomotives for an estimated total cost of R2 659 million. The Board of Transnet approved the acquisition of the 95 Electric Locomotives on 31 August 2011, subject to the approval of the Minister of Public Enterprises.

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REQUEST FOR APPROVAL FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES

- 2.2 The 2011/12 Transnet Corporate Plan made provision for the acquisition of GFB electric locomotives. The locomotive acquisition was previously envisaged to occur in later years as indicated in the Corporate Plan but Transnet can now afford to fund the acquisition of 95 electric locomotives from its balance sheet. An early acquisition should immediately lead to improved financial and efficiency indicators in the GFB business. General freight (GF) volume increase up to 27.7mt can be facilitated.
- 2.3 Current status of Transnet locomotives fleet: There is currently a shortfall of locomotives for General Freight (GF). The impending life expiration of locomotives combined with increased traffic will lead to a traction of around 700 locomotives between 2014/15 – 2018/19. Transnet has developed a Fleet Plan that necessitates planning for fleet acquisition, see Annexure A.
- 2.4 Transnet fleet strategy up to now had been to prioritise locomotives procurement to the bulk commodities and cascading of old bulk line locomotives to GFB. The locomotives especially in GFB were not dedicated to specific commodity. Deployment of new locomotives on its own cannot improve returns to scale hence Transnet is introducing a new scheduled railway service designed to provide fixed arrival and departure times for every train on its timetable.
- 2.5 The Department should support the prioritization of GFB locomotive acquisition to facilitate trade and enhance competitiveness to support export led growth. The lack of reliable locomotives and predictable service to customers is a major concern to the Department, especially if it can still happen during this period of slow global economic growth environment. Another concern is the ad-hoc nature of this locomotive acquisition that creates a depressing impression on TFR's ability to do fleet planning.
- 2.6 According to Transnet, its fleet procurement strategy will take into account issues of transformation, empowerment and economic growth as its main supplier development objectives. If we are to use the procurements to develop South Africa's industrial capability and to increase local content from the present 34% of the value of a locomotive Transnet must be actively involved in the identification and development of the local supplier industry. The application does not indicate the Competitive Supplier Development Programme (CSDP) element of the transaction.
- 2.7 The Department recommends that the Minister approves the application, with the proviso that Transnet provides the Shareholder with a comprehensive presentation on its engagement with the CSDP process. Transnet should address the locomotive shortfall to cover its full tractive requirements to meet the five year Corporate Plan volume estimates and provide satisfactory service to customers.



REQUEST FOR APPROVAL FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES

3. DISCUSSION

3.1 BACKGROUND

Transnet Freight Rail has set out a Locomotive Fleet Modernization Plan encompassing TFR's strategic intent of supporting customer's needs through the building of capacity as well as safe and efficient operations. The plan outlines the historical procurement and aging fleet.

Future procurements are predicated on the basis of market demand, technology, business strategy, operational efficiency and affordability in which locomotives fleet will evolve. The Key finding of the locomotive fleet plan is that there is insufficient traction power to meet the planned volume demand.

The following section discusses the elements of the Fleet Plan that applies to the current Corporate Plan term and this application.

3.2 LOCOMOTIVE FLEET AND MODERNISATION PLAN, 2011/12 - 2015/16

The Fleet Plan takes into account the unconstrained fleet requirements of TFR to meet customer demand. It therefore departs from the current Corporate Plan in that it attempts to address locomotive requirements based on volume demand, in order for Transnet not to be a constraint in the economy, but to enable a match of assets to projected demand.

Below, in column 1, are the projected volumes to rail in 2015/16 which due to locomotive constraints Transnet is unable to haul. This was presented to the Board on 20 April 2011. The Board resolved to approve the Locomotive Fleet Modernization Plan at a cost of R23,6bn subject to the submission of a holistic plan and affordability.

Table 1: Volume and locomotive requirements 2015/16

	Corporate Plan Volumes (mt)	Market Demand Volumes (mt)	Locomotive Requirement	Estimated Cost (Rbn)
GFB	110.7	155.8	520	R17.657
COAL	81	97	112	R4.238
IRON ORE	60.7	80	26	R1.717
Total	252.4	332.8	658	R23.613

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REQUEST FOR APPROVAL FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES

On 31 August 2011 Transnet submitted an Interim Fleet Plan and resolved that the Board approves the following:

- The Interim Locomotive Fleet Acquisition Plan at a value of approximately R3,6bn:
 - Transnet proceeds with the acquisition of 43 locomotives on a confined tender basis to General Electric to deploy in the GFB operations; and
 - Transnet proceeds with a transparent procurement process to acquire 45 electric locomotives in the 2012/13 financial year and a further 50 electric locomotives in the 2013/14 financial year for deployment in the GFB operations;
- Transnet may submit a PFMA application on the approved acquisition to the Shareholder Minister for the acquisition of 95 electric locomotives.

In this regard the Board has requested PFMA approval for the 95 electric locomotives. On the 43 General Electric locomotives Transnet seeks confinement to ensure that these locomotives are delivered and productively utilized within the shortest possible time frames.

3.3 IMPACT OF EARLY LOCOMOTIVE ACQUISITION ON THE CORPORATE PLAN

Transnet effected the following changes on the 2011/12 Corporate Plan budget to create additional headroom on gearing and cash interest cover:

- Revenue increased by R844 million due to higher Pipelines revenue and export coal tariffs.
- Operating expenses decreased by R114 million.
- The re-phasing of the capital spend resulting in a reduction of R1,072 billion.
- The early redemption of the T018 that resulted in a net reduction in interest cost of R176 million.

Table 2 below indicates the favorable liquidity indicators regarding the application. Transnet internal gearing and cash interest cover target per year are as follows: less than 47% and greater than 3.2 times respectively.

Table 2: gearing and cash interest cover ratio under approved vs adjusted Corporate Plan

	2011/12	2012/13	2013/14	2014/15	2015/16
Corporate Plan Gearing %	46.8	46.8	46.4	42.8	37.7
Adjusted Gearing %	44.6	45.7	44.8	40.7	35
Cash Interest Cover (times)	3.2	3.3	3.4	3.9	4.8
Adjusted Cash Interest	3.41	3.35	3.45	4.01	5.1

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REQUEST FOR APPROVAL FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES

Table 3 below shows the funding available to acquire locomotives is R3.656 billion for committed locomotive capital in corporate plan versus the R3.649 billion for early locomotive acquisition scenario. TFR can fund the acquisition of 43 Diesel and 95 Electric locomotives on the strength of Transnet Balance Sheet much sooner than originally planned.

Row 4 in Table 3 shows the locomotive acquisition was budgeted in the latter years of the five year planning cycle. Row 3 shows that the earlier acquisition of these locomotives is affordable:

Table 3: Difference between funding Corporate Plan vs earlier locomotive acquisition

	2011/12	2012/13	2013/14	2014/15	2015/16	Total
Diesel Units		43				43
Electric Units		45	50			95
Earlier Capex (Rm)	225	2164	1260			3649
Corporate Plan (Rm)	79	314	1312	956	995	3656

It is important to note that this business case partially addresses the shortfall and does not cover the full Tractive requirement to meet the 5 year Corporate Plan. Table 1 above shows the full unconstrained locomotive requirement.

3.4 PROCUREMENT APPROACH

The Fleet Plan predicates standardization of the locomotive fleets. TFR standardization strategy is in line with Competitive Supplier Development strategy. Currently, TFR has 11 different diesel types and 16 different electric types.

The Fleet Plan is premised on 5 different types of locomotives. The 95 electric locomotives are viewed as the precursor of the standardized dual voltage multi-purpose General Freight mainline locomotives.

The 43 diesel fleet being procured from General Electric is highly specialized and largely identical to those previously executed by that supplier (recent 100 locomotives) and it is not in the interest of the public to solicit other tender offers. The production line is operational and design is finalized. Lead times will therefore be kept at a minimum.

The production line for the Class 43 locomotives are expected to come to an end towards April 2012 and there is an urgent need to procure the additional locomotives in order to

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REQUEST FOR APPROVAL FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES

deliver upon current committed volumes. Approximately 186 jobs will be retained at the Transnet Rail Engineering assembly facility and further jobs will be retained in downstream enterprises. General Electric has already committed to a Competitive Supplier Development Programme on the previous 100 locomotives and enhancing this programme for the additional locomotive requirements must be negotiated by Transnet.

Competitive Supplier Development Programme (CSDP): The Department would like to raise the concern that the CSDP has not been adequately addressed in the application for the procurement of the 95 electric locomotives. We are aware that Transnet is at an advanced stage of development of their next generation Supplier Development Plans, and therefore should be in a position to provide estimated targets for the CSDP. The only mention of CSDP in the application is with respect to ensuring that the procurement strategy has transformation, empowerment and economic growth as its main Supplier Development objectives, which we believe is not adequate given the scale of this procurement. In addition, if we are to use the procurement to develop South Africa's industrial capability and to increase local content from the present 34% of the value of a locomotive, Transnet must make available its plans in this regard. We need to understand and agree on how the procurement will be leveraged.

We are of the view that Transnet should be requested to provide the Shareholder with a comprehensive briefing on its engagement with the CSDP process, particularly on this procurement.

3.5 RISK ASSESSMENT**3.5.1 Operational philosophy**

It is important to note that the favoured operational philosophy within DPE and the Department of Transport (DOT), in the context of rail policy, is greater collaboration between road and rail for sustainable long term freight transport solutions. To give effect to this strategy implies that Transnet must consider the creation of rapid consolidation facilities i.e. decoupling facilities or storage points that would attract freight densities and in turn make rail transport between nodes feasible, efficient and cost effective. In the current model, Transnet has opted to substitute decoupling facilities with rolling stock. In both cases i.e. a decoupling facility solution and a rolling stock solution, the objective is to ensure improved capacity and service for customers. From a Transnet perspective the latter is however, a far more capital intensive solution wherein Transnet makes the full investment for customer service. The cost-benefit of both solutions has not been interrogated nor embedded within Transnet's operational thinking since Transnet does not regard terminals (decoupling



REQUEST FOR APPROVAL FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES

facilities) operations as part of its core business. The creation of decoupling facilities does however, provide the basis for identifying feasible rail PPPs (as articulated in Minister's Performance Agreement) wherein private sector would invest in decoupling facilities while Transnet would invest in operations.

3.5.2 Historical Capital expenditure

Ageing infrastructure has been cited as the key reason for depressed efficiencies in spite of more than five years of capital investment in rail infrastructure. During this period Transnet has failed to gain market share from road transport. The fleet acquisition programme aims to address this constraint by increasing capacity and therefore the asset base. Going forward, the department will ensure that fleet utilisation is strictly monitored to ensure a superior Return on Asset. The alternate strategy to include decoupling facilities should be factored into future CAPEX applications to generate even better ROA.

Transnet's inability to significantly improve General Freight operational inefficiencies, mainly rail, results in high transport costs to the South African economy. For example, in spite of more than five years of capital investment in the rail infrastructure, Transnet has been unable to gain market share from road transport. This is due to the fact that Transnet's focus had been on bulk lines e.g. export iron ore and export coal.

3.5.3 Procurement

The volume ramp up for TFR especially General Freight is dependent on the procurement of locomotives in the very short and medium term. Potential risk to the fleet programme include a delay in approvals and deployment would significantly impact achievement of the current Corporate Plan volumes and the Minister's delivery agreement volume target as these locomotives form an integral part of the plan.

The ad-hoc nature of the locomotive acquisition creates a poor impression of TFR's ability to do fleet planning. Transnet falls short of CSDP strategy and Industrial Policy Action Plan (IPAP) that requires Transnet to adopt a long term predictable locomotive fleet demand to necessitate development of local supplier base. Manufacturers have established local manufacturing facilities and could endure production breaks if orders are not placed timeously on current facilities.

The acquisition process could be delayed by bidding manufacturers not having enough time to design major modifications required for adoption into the Railway Safety Regulator standards.

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REQUEST FOR APPROVAL FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES**4. FINANCIAL IMPLICATIONS**

Transnet is able to fund the acquisition of 43 Diesel and 95 Electric locomotives within Transnet's affordability levels in the current Corporate Plan.

5. CONSULTATION/PROJECT TEAM

Transnet team, Femida Mahomed and Edwin Ritchken

6. RECOMMENDATION

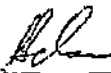
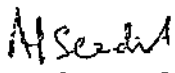


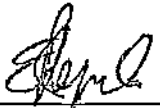
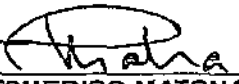


It is recommended that the Minister:

- 6.1 Notes the contents of this memorandum;
- 6.2 Notes the operational philosophy risks in paragraph 3.5.1 of this memo; and
- 6.3 Signs the attached letter approving the acquisition of the 95 Electric locomotives in terms of section 54 2(d) of the Public Finance Management Act, with the proviso that Transnet provides a comprehensive briefing to the Shareholder on its engagement with the CSDP process and particularly for this procurement.



KUN

REQUEST FOR APPROVAL FOR PROCUREMENT OF 95 ELECTRIC LOCOMOTIVES

Memorandum prepared by:		Supported by:	
<div> NATHANIEL SEBITSO D: TRANSPORT DATE: 05/11/2011</div>		<div> ADAM I. SEEDAT CD: TRANSPORT DATE: 5/12/2011</div> <div> NEELESH AMAIDAS CD: TRANSPORT DATE: 08/12/2011</div>	
REVIEWED BY:			
<div> BENEDICT MOGADIME ACTING DDG: JPF DATE: 08/12/2011</div>		<div> RAISIBE LEPULE DDG: TRANSPORT DATE: 8/12/2011</div>	
<div> MR. TSHEDISO MATONA DIRECTOR GENERAL DATE: 14/12/2011</div>		RECOMMENDED / NOT RECOMMENDED / COMMENTS 	
<div> MR. MALUSI GIGABA, MP MINISTER DATE: 2011/12/21</div>		APPROVED / NOT APPROVED / COMMENTS The Dept should have ensured that Transnet complies with the CSDP, PAP and the NGP. SOCs should not be allowed to evade Govt policies. This matter is urgent and I feel short of disapproving this application. All SOCs should be made aware that in future I WILL NOT approve! NOTED / COMMENTS This should be made very clear to SOCs!	
<div> MR. DIKOBÉ BEN MARTINS, MP DEPUTY MINISTER DATE: 23 Dec 2011</div>		 	


KUN

"MG18"



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 431 1039
Private Bag X9078, Cape Town, 8000 Tel: 021 481 6376/7 Fax: 021 465 2381/461 1741

Mr Mafika Mkwana
Chairperson of Transnet Board
P O Box 72501
Parkview
2122

Tel: 011 308 2309
Fax: 011 308 2312

Dear Mr Mkwana

Transnet Request for Approval to Procure 95 Electric Locomotives for GFB

Your letter dated 24 October 2011 refers.

I hereby approve Transnet's section 54 2(d) application for the procurement of 95 General Freight Business Electric locomotives to an estimated total cost of R2,7 bn, with the proviso that Transnet provides me with a comprehensive briefing on the company's engagement with the CSDP process and particularly the supplier development and localisation components for this procurement.

In order to keep abreast of developments with regard to future locomotive requirements, I would like to request that you provide me with an updated strategy, revised Locomotive Fleet Procurement Plan, a financial analysis of how this strategy will be implemented and how the process will contribute to Government's economic objectives as stated in the New Growth Path (NGP) and Industrial Policy Action Plan (IPAP) policy statements.

I trust you find the above in order.

Yours sincerely

**MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2011/12/21**

"MG19" TRANSNET-REF-BUNDLE-04980669



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

TRANSNET



delivering freight mobility

2013-2014
SHAREHOLDER'S COMPACT

Entered into by and between

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, HEREIN
REPRESENTED BY THE MINISTER OF PUBLIC ENTERPRISES
("The Shareholder Representative")

And

TRANSNET SOC LTD, HEREIN REPRESENTED BY THE CHAIRPERSON OF THE
TRANSNET BOARD OF DIRECTORS

2013/04/10

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1. INTERPRETATION

- 1.1 "Accounting Authority" means the Board of Directors of Transnet;
- 1.2 "Board" means the Board of Directors of Transnet from time to time;
- 1.3 "Company" means Transnet;
- 1.4 "Companies Act" means the Companies Act No. 71 of 2008, as amended and includes any regulation issued thereunder;
- 1.5 "Corporate Plan" means the document which a state owned company is required to submit to the Shareholder and the National Treasury before the start of its financial year, which gives effect to the Statement of Strategic Intent and Shareholder's Compact;
- 1.6 "Founding Documents" means the Memorandum of Incorporation (previously known as Memorandum of Association and Articles of Association of Transnet SOC Ltd or any of its subsidiaries as the case may be;
- 1.7 "Parties" means the Shareholder and Transnet collectively, and Party shall mean any one of them as the context requires;
- 1.8 "PFMA" means the Public Finance Management Act No. 1 of 1999, as amended;
- 1.9 "Shareholder's Compact" means this agreement including the annexures hereto, which sets out the key performance measures and indicators to be attained, in support of the Statement of Strategic Intent and to the extent necessary seeks to clarify the objectives of Transnet in the context of the Statement of Strategic Intent, entered into in accordance with the provisions of the PFMA;
- 1.10 "Shareholder" means the Government of the Republic of South Africa as represented by the Shareholder Representative and his/her successor in law;
- 1.11 "Shareholder Representative" means the Minister of Public Enterprises;

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- 1.12 "Statement of Strategic Intent" means the document which sets out the agreed mandate and strategy for Transnet;
- 1.13 "Subsidiary" means a subsidiary of Transnet or any of its subsidiaries over which it exercises ownership control as defined in terms of the PFMA;
- 1.14 "Transnet" means Transnet SOC Ltd, a public company registered and incorporated as such in accordance with the laws of the Republic of South Africa and pursuant to the Legal Succession to the South African Transport Services, 1989 (Act No. 13 of 1989) with registration number 1990/000900/30, and having its registered head office at 47th Floor, Carlton Centre, Commissioner Street, Johannesburg.

2. FUNCTION OF SHAREHOLDER'S COMPACT

- 2.1 The purpose of this Shareholder's Compact is to clarify and confirm:
 - 2.1.1 Transnet's Mandate;
 - 2.1.2 The strategic objectives to be attained by Transnet; and
 - 2.1.3 The key performance areas and indicators to measure Transnet's performance during the period of the Shareholder's Compact.
- 2.2 As part of broader legislative compliance, Transnet shall at all times adhere to the legal framework providing for the prevention and combating of fraud and corruption, particularly within the context of procuring goods and services, competing for and executing contracts.

3. FOUNDING DOCUMENTS AND GOVERNANCE FRAMEWORK

- 3.1 The Parties agree that the Founding Documents of Transnet shall be reviewed and amended, where required, to ensure that agreed principles and enduring rights and obligations regarding the relationship between the Parties are incorporated and that the Founding documents are comprehensively consistent with the provisions of the

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Companies Act, PFMA, Legal Succession to South African Transport Services Act, National Treasury Regulations and Transnet's Mandate.

- 3.2 The Board shall ensure that Transnet and its subsidiaries comply with the provisions of the Companies Act, the PFMA and any other legislation, including regulations and consider guidelines issued by the National Treasury and/or the Shareholder Representative.

Transnet shall ensure that Transnet:

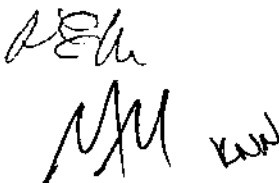
- 3.2.1 Concludes performance agreements with all its significant subsidiaries that are comprehensively and consistently compliant with the spirit, rights, obligations and undertakings stipulated in the Shareholder's Compact.
- 3.3 If there is any conflict or inconsistency among the provisions of the Founding Documents or the Statement of Strategic Intent or the Corporate Plan and this Shareholder's Compact, the Parties shall take whatever steps that may be necessary to amend the documents to remove the conflict or inconsistency. For so long as the conflict exists on Founding Documents, the MOI shall take precedence and thereafter the Statement of Strategic Intent.

4. MANDATE

The Parties agree that:

- 4.1 The underlying mandate for Transnet remains as determined by the company's Founding Documents, by prevailing legislation and by this Shareholder' Compact.
- 4.2 Transnet's key role is to assist in lowering the cost of doing business in South Africa, enabling economic growth and security of supply through providing appropriate ports, rail and pipeline infrastructure as well as operations in a cost effective and efficient manner within acceptable benchmark standards.

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4.3 The mandate may be amplified from time to time through a Statement of Strategic Intent from the Shareholder.

5. **STRATEGIC OBJECTIVES**

5.1 The Parties agree that the strategic objectives of Transnet fall into five main areas, namely:

5.1.1 Reduce the total cost of logistics as a percentage of transportable GDP;

5.1.2 Effect and accelerate modal shift by maximising the role of rail in the national transport task;

5.1.3 Leverage the private sector in the provision of both infrastructure and operations where required;

5.1.4 Integrate South Africa with the region and the rest of the continent; and

5.1.5 Optimise the social and economic impact of all interventions undertaken by the SOC in the achievement of these objectives.


5.2 The Parties acknowledge and agree that the focus of Transnet shall be on the following Key Performance Areas:

5.2.1 Develop and agree on a methodology to quantify and reliably measure Transnet's contribution to reducing the total cost of logistics as a percentage of transportable GDP;

5.2.2 Transformation of the surface transport market through dedicated management with a mandate to deliver an integrated domestic intermodal transport system, industry solutions, long term infrastructure and reliable, cost effective services whilst aggressively growing rail's market share in those contested sectors of the economy;

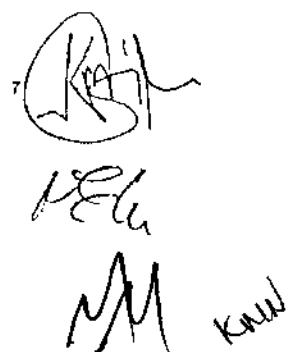
5.2.3 Ensure the provision of critical logistics infrastructure and capacity over the short term, however, aligned to a long term national plan that is geared towards meeting the growing demands of the total national economy;

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- 5.2.4 Oversee a sustainable capital investment approach characterised by intelligent investment decisions, financial prudence and commercial sustainability to meet industry demands and customer expectations over the medium term;
- 5.2.5 Develop and implement a collaborative approach to private sector participation on a case by case basis with the intention to leverage collective resources in the provision of infrastructure and transport services in a way that does not compromise those strategic assets required to support the rollout of the capital expenditure programme;
- 5.2.6 Operational excellence across the entire organization informed by global best practise and driven by a performance culture that is firmly entrenched within the organisation;
- 5.2.7 On-going compliance with policy and regulation. In addition compliance to the policy environment with a view to support government in driving regional integration, economic transformation, beneficiation, industrialisation, aggressive job creation and the development of a supplier base that meets Broad Based Black Economic Empowerment ("BBBEE") criteria;
- 5.2.8 The implementation of global best practises with respect to safety, skills development and procurement. In terms of safety, a fundamental respect for the value of human life and resources. In terms of skills development the need to maintain and develop the intellectual capacity of the company and lastly with respect to procurement the need for transparent governance and tangible benefits for all social, economic and environmental stakeholders;
- 5.2.9 The introduction and establishment of a robust Centre of Excellence to drive research and the deployment of new and cutting-edge technologies to address the need for competitiveness, growing demand and cost savings;
- 5.2.10 Sustainable growth encompassing corporate social investment and environmental responsibility. This area of focus is becoming increasingly important as Transnet becomes increasingly prominent within the economy.

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6. STRATEGIC INITIATIVES

The Parties agree and undertake to support the strategic initiatives as listed in Annexures A through G.

In addition, Transnet is required to report on a quarterly basis on the National Corridor Performance Measurement (NCPM) with respect to the following:

- a) Full cooperation and participation of Transnet to assist the Department in the execution of the NCPM project.
- b) Full participation of Transnet with respect to enabling an understanding of the Corridor, its participants, key operational statistics and Transnet's involvement and activities.
- c) On-going data inputs for the policy view within NCPM
- d) Transnet to ensure migration from monthly data to weekly data on all operational indicators, where appropriate
- e) Transnet to ensure automation of data capturing process to NCPM system
- f) Provision of 2011/12 data to complete the requirement for historical data.

7. KEY PERFORMANCE INDICATORS AND EVALUATION

The Parties agree that:

- 7.1 Transnet's performance in relation to the strategic objectives will be measured with reference to both qualitative and quantitative Key Performance Indicators (KPIs) as set out in format, content and coverage of Annexure A, B, C, D, E, F and G.
- 7.2 Transnet shall report on all Shareholder's Compact KPIs, and results achieved by, the company and its subsidiaries in the Annual Report and Quarterly Reports.
- 7.3 Transnet shall align its Corporate Plan to the Shareholder's Compact.

8. SIGNIFICANCE AND MATERIALITY

In accordance with the provisions of Treasury Regulations 28.3, the framework for significance and materiality is set out in Annexure E.

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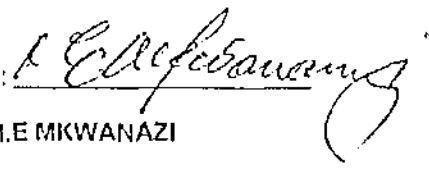
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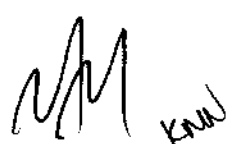
- 9.1 This Shareholder's Compact is valid for period of one year.
- 9.2 The Parties hereby record and acknowledge that the they are required, in terms of the Treasury Regulations, to annually conclude a shareholder's compact and agree that this Shareholder's Compact shall remain in full force and effect until a new Shareholder's Compact is concluded as required by the Treasury Regulations.
- 9.3 The process for the annual conclusion of a new Shareholder's Compact may be initiated by any one of the Parties through written notice. Upon receipt of such notice by the other Party, the Shareholder's Representative and the Board shall commence negotiation.

10. NO AMENDMENT

- 10.1 This Shareholder's Compact constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understanding regarding the subject matter hereof.
- 10.2 It is recorded, acknowledged and agreed that no Party shall be entitled to amend the key performance areas and/or key performance indicators as detailed in Annexures "A" through "D" of this Shareholder's Compact.

Signed: 
M.K.N. GIGABA
Minister of Public Enterprises
Shareholder Representative
Date: 2013/06/25

Signed: 
M.E MKWANAZI
Chairperson
Transnet SOC Ltd
Date: 25/06/2013



ANNEXURE A: "STRATEGIC DEVEREES"

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ANNEXURE B: OPERATIONAL PERFORMANCE

Transnet Group

Key Performance Area	Key Performance Indicator	Unit of Measure	2013/14 Target
Financial value creation	Return on total average assets ^(a)	%	≥ 8.0
	Cash interest cover	Times	≥ 3.3
	Gearing	%	≤ 46.6
	Opex as a % of revenue	%	≤ 57.1
Innovation	Research and development cost	Rm	194

(a) Excluding Port Regulator claw backs

Transnet Freight Rail

Key Performance Area	Key Performance Indicator	Unit of Measure	2013/14 Target
Financial	Return on total average assets	%	≥ 11.4
Tariffs	Average tariff Increases	%	≤ CPI+2
Market share	Total Volume	mt	≥ 229.7
	Bulk		
	- Export Coal	mt	≥ 77.0
	- Export Iron Ore	mt	≥ 61.5
	- Export Manganese (PE)	mt	≥ 5.1
	- Export Manganese (DBN)	mt	≥ 1.3
	- Export Coal non RBCT	mt	≥ 5.2
	- Eskom Coal	mt	≥ 11.8
	- Domestic Coal	mt	≥ 8.9
	- Chrome and Ferrochrome	mt	≥ 5.2
	- Domestic Iron Ore	mt	≥ 7.9
	- Domestic Manganese	mt	≥ 1.9
	- Mineral mining	mt	≥ 13
	- Other	mt	≥ 2.5
	Intermediate manufacturing and manufacturing		
	- Agriculture	mt	≥ 4.6
	- Bulk liquids	mt	≥ 2.1
	- Iron and Steel	mt	≥ 0.8
	- Wood and wood products	mt	≥ 2.5
	- Fertilisers	mt	≥ 0.1
	- Industrial chemicals	mt	≥ 0.9
	- Cement	mt	≥ 7.3
	- Intermodal Wholesale	mt	≥ 7.8
	- FMCG long distance	mt	≥ 0.8
	- Automotive	mt	≥ 0.5 (489374FBU)

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ANNEXURE B: OPERATIONAL PERFORMANCE (Continued)

Transnet Freight Rail (Continued)

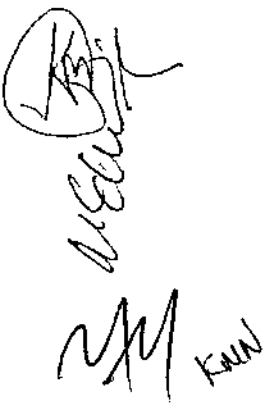
Key Performance Area	Key Performance Indicator		Unit of Measure	2013/14 Target
Productivity	Asset utilisation	Iron Ore	Gtkm/Ntkm	≤ 1.41
		Export Coal	Gtkm/Ntkm	≤ 1.58
		General Freight ^(a)	Gtkm/Ntkm	≤ 1.67
	Density	SSaldanha	Tonkm/Routekm	≥ 55.30
		RBaycor	Tonkm/Routekm	≥ 36.2
		Natalcor	Tonkm/Routekm	≥ 6.7
		NEastcor	Tonkm/Routekm	≥ 5.7
		Sentracor	Tonkm/Routekm	≥ 4.3
		Capecor	Tonkm/Routekm	≥ 3.9
		NWestcor	Tonkm/Routekm	≥ 3.8
		Eastcor	Tonkm/Routekm	≥ 3.2
		Southcor	Tonkm/Routekm	≥ 2.6
		Northcor	Tonkm/Routekm	≥ 1.6
Service	On-time departure	- Coal Export	Average deviation from scheduled times (minutes)	≤ 120
		- Export Iron Ore		≤ 60
		- General Freight		≤ 225
	On-time arrival	- Coal Export	Average deviation from scheduled times (minutes)	≤ 240
		- Export Iron Ore		≤ 120
		- General Freight		≤ 260

^(a) GFB Asset utilisation will be further broken down in 2014-15 Shareholder Compact

Transnet Engineering

Key Performance Area	Key Performance Indicator	Unit of Measure	2013/14 Target
Financial	External revenue	Rm	R2633m
Innovation	Research and development cost	Rm	R150m
^(a) Volume growth	Train cancellations due to Traction	%	≤ 6
	Net volume lost due to traction	Mt	≤ 7
	Traction delays	%	≤ 40





^(a) Volume growth to be separated into Export iron ore, export coal and GFB for the 2014-15 Shareholder's Compact



ANNEXURE B: OPERATIONAL PERFORMANCE (Continued)
Transnet National Ports Authority

Key Performance Area	Key Performance Indicator		Unit of Measure	2013/14 Target	
Productivity	Anchorage	- Durban	Hours	≤ 46	
		- Cape Town		≤ 25	
		- Port Elizabeth		≤ 84	
		- Ngqura		≤ 32	
		- Richards Bay		≤ 30	
	(a) Ship Turnaround Time	Containers			
		- Durban	Hours	≤ 59	
		- Cape Town		≤ 30	
		- Port Elizabeth		≤ 26	
		- Port of East London		≤ 60	
		- Richards Bay		≤ 110	
		- Ngqura		≤ 29	
		Dry bulk			
		- Coal (R.B.C.T)	Hours	≤ 47	
		- Iron Ore (Saldanha)		≤ 55	
		- Manganese (P.E)		≤ 69	
	Berth Occupancy	- Durban	Percentage (%)	≤ 85	
		- Cape Town		≤ 70	
		- Port Elizabeth		≤ 50	
		- Ngqura		≤ 75	
	Berth Utilisation	- Durban	Percentage (%)	≤ 80	
		- Cape Town		≤ 70	
		- Port Elizabeth		≤ 60	
		- Ngqura		≤ 75	
		- East London		≤ 40	
		- Richards Bay		≤ 40	

^(a) Shipping delays to be quantified and reported on a quarterly basis

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ANNEXURE B: OPERATIONAL PERFORMANCE (Continued)

Transnet Port Terminal

Key Performance Area	Key Performance Indicator	Unit of Measure	2013/14 Target	
Financial	Return on Total Average Assets	%	≥ 5.8	
Tariff Increases	Average Tariff Increase (Containers)	%	≤ 6	
Productivity	Dwell Time	DCT - Pier 1		
		- Imports	Days	≤ 3
		- Exports	Days	≤ 5
		- Transshipment ^(a)	Days	≤ 10
		DCT - Pier 2		
		- Imports	Days	≤ 3
		- Exports	Days	≤ 6
		- Transshipment	Days	≤ 10
		CTCT		
		- Imports	Days	≤ 3
		- Exports	Days	≤ 5
		- Transshipment	Days	≤ 15
	Moves per gross crane hour ^(b)	DCT - Pier 1	Moves/GCH	≥ 28
		DCT - Pier 2		≥ 30
		CTCT		≥ 32
		Nggura		≥ 32
Service Delivery	Train turnaround time	DCT - Pier 1	Hours	≤ 6
		DCT - Pier 2	Hours	≤ 6
		CTCT	Hours	≤ 6
		Saldanha ^(c)	Minutes	≤ 105
		Richards Bay	Hours	≤ 12
		Port Elizabeth	Hours	≤ 12
	Truck turnaround time	DCT - Pier 1	Minutes	≤ 35
		DCT - Pier 2	Minutes	≤ 35
		CTCT	Minutes	≤ 35
		Nggura	Minutes	≤ 35
		Richards Bay	Minutes	≤ 35

^(a) TPT shall not encourage transshipment dwell times of greater than 5 days
^(b) TPT shall report on Moves/GCH for the Ports of Richard Bay and East London on a quarterly basis
^(c) Rake process time inside tippler – Subject to service design review

Transnet Pipelines

Key Performance Area	Key Performance Indicator	Unit of Measure	2013/14 Target
Service reliability	Ordered vs. Delivered volumes (% of deliverables within 5% of order)	%	≥ 95
	Planned vs. Actual Delivery time (% of deliverables within 2 hours of plan)	%	≥ 80
	Operating cost per Ml km (Nominal R/Ml.km) (Real R/Ml.km)	Rand	≤ 122
Capacity utilisation	NMPP- Actual usage : capacity at the time (Ml/week)	Ratio	≥ 49.84
Market share ^(a)	Total petroleum products	Billion litres	≥ 16.75

^(a) Volumes to be expressed as market share in Annual report

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ANNEXURE C: SOCIAL IMPACT
Human Capital

Key Performance Area	Unit of Measure	2013/14 Target
Skills development	Training spend	% of personnel costs
	Technician trainees	Number of learners
	Engineering Trainees	Number of Learners
	Artisan trainees	Number of learners
(a) Employment creation	Sector specific trainees	
	Jobs created (Transnet permanent employees)	Number of learners
	DIHR (for all Transnet operational divisions)	Number of jobs
	Employee fatalities	Weighted average
Safety		Number of fatalities
Productivity	Revenue per employee	R million




(a) Transnet is required to report on direct and indirect jobs created within the quarterly and annual reports. Employment resulting from the procurement activity shall be reported separately within the quarterly reports and Annual report.

Corporate Social Investment

Corporate Social Investment	Total CSI budget	R257m
Phelophepha I and Phelophepha II health care trains	Operating budget	R95m
Rural station in Eastern Cape, Northern Cape, North West, Limpopo, Free State, KwaZulu-Natal	Dental treatment	17,425
	Spectacles issued	28,700
	Individual counseling	700
	Counseling workshops	31,000
	Teenage girls education	3,600
	Health, diabetic, cancer screening	36,000
	Community volunteer training	720
	Prescriptions	58 125

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ANNEXURE C: SOCIAL IMPACT (Continued)
Other Social Development

Educator Development		Results improvement in Maths, science, English: Y1: 5%, Y2: 10%	R12.3m
Makana (EC), Matroos (FS), Moretele (NW), Mubababa and Durban South (KZN), Sekhukhune (L)	350 teachers		
	98% attendance		
	95% course completion		
	Learner performance improvement (Maths, Science, English): yr1: 5%; yr 2: 10%		
Orphan youth programme			R2m
Sports development			R30m
Container assistance			R10m
Transnet employee volunteer programme (Inanda (Durban), Motherwell (PE), Diepsloot (Jhb))			R26.4m

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ANNEXURE D: ECONOMIC IMPACT

Key Performance Area	Unit of Measure	^(a) With PPPFA exemption	^(a) Without PPPFA exemption
Local Content	% of total spend	70	70
CSDP (\$D value)	% of contract value invested in RSA	45	35
Skills development	% of total spend	6	6
BBBEE	% of total spend	87	70
Black Women Owned	% of total spend	8	5
Black Owned	% of total spend	15	10
Black Youth Owned	% of total spend	2	0.5
QSE/EME	% of total spend	15	10
People Living with Disability	% of total spend	0.5	0.25

^(a) The appropriate scenario shall be deployed depending on the status of the PPPFA exemption as at 31 March 2013

QSE = Qualifying Small Enterprise (Annual turnover 5m-35m)
EME = Exempted Micro Enterprise (Annual turnover of <5m)

ANNEXURE E: SIGNIFICANCE AND MATERIALITY FRAMEWORK

This appendix sets out the standing in terms of Sections 54 of the PFMA and provides guidance for the determination of the materiality limit in terms of section 55 (2) of the PFMA

PFMA	Description	Exemption from Section 54 of the PFMA
S54(2) (d)	Acquisition or disposal of a significant asset	1. If acquisition does not exceed 2% of the 31 December 2012 audited asset base value (which equates to R 3.9 billion), however the Department should receive a detailed notification for all acquisition and disposal of assets above R 2 billion.
S54(2) (b)	Acquisition or disposal of a significant partnership, trust, joint ventures, etc.	1. If partnership is specified in business plan. 2. If participation is not specified in corporate business plan but risk is R100m or below.
S54(2) (c)	Acquisition or disposal of a significant shareholding in a company.	1. If participation or disposal is specified in corporate business plan. 2. If participation or disposal is not specified in corporate business plan but capital risk is R100m or below.
S4(2) (e)	Commencement or cessation of a significant business activity.	1. If such commencement/cessation is specified in corporate business plan. 2. If such commencement/cessation is not specified in corporate business plan but capital at risk is R100m or below.

The Shareholder representative hereby determines the materiality limit for reporting in terms of section 55 (2) (b) (i), (ii) and (iii) is R25 million.

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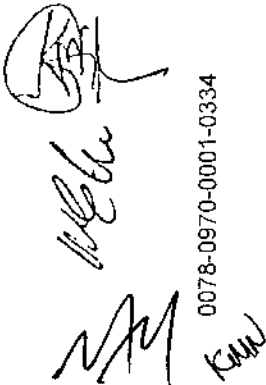



ANNEXURE F: CAPITAL EXPENDITURE

Project	Estimated Total Cost (ETC) Rm	Date of completion	(a) Est. % completion at year end 31/03/2013	Target % completion at year end 31/03/2014	(b) Schedule Performance Index	(c) Cost performance index
Projects which have reached the execution phase - Front End Loading (FEL) 4						
1. Coal Line expansion to 81 mt	5,100	Mar-18	18	32	≥ 0.90	≥ 0.90
2. Acquisition of 95 Electric Locomotives for GFB	2,659	Mar-14	10.2	20.7	≥ 0.90	≥ 0.90
3. Acquisition of wagons for MDS (d)	19,595	Beyond 2019	10	19.00	≥ 0.90	≥ 0.90
4. Ngqura Container Terminal Ph2A	1,099	Mar-14	10	65	≥ 0.90	≥ 0.90
5. New Multi-Product Pipeline	23,400	Dec-13	76	98	≥ 0.90	≥ 0.90
6. Reconstruction of sheetpile quaywalls at Maydon Wharf	1,514	Dec-16	14	15	≥ 0.90	≥ 0.90
7. Saddle carrier replacement (a)	1,309	Mar-16	0	11	≥ 0.90	≥ 0.90
8. Acquisition of 465 Diesel locomotives for MDS volume growth	13,262	Beyond 2019	0	0	≥ 0.90	≥ 0.90
9. Acquisition of 599 Electric Locomotives for MDS volume growth	24,884	Beyond 2019	0	0	≥ 0.90	≥ 0.90
Projects which are yet to reach the execution phase						
10. Expansion of the Ore Line to 82,5mt (i)	10,888	Dec-17	FEL 3: 23	FEL 3: 100	na	na
11. Coal export line expansion to 97 Mtpa (i)	6,219	Beyond 2019	0	0	na	na
12. Manganese expansion to 16mt (i)	11,345	Mar-21	FEL 3: 71	FEL 3: 100	na	na
13. Swaziland rail link (i)	5,000	Mar-18	FEL 2: 75 FEL 3: 4	FEL 2: 100 FEL 3: 100	na	na
14. Waterberg expansion to 16mt (i)	5,090	Beyond 2019	FEL 3: 25	FEL 3: 100	na	na
15. Deepening of DCT berths	4,500	Mar-19	0	0	na	na

(a) Percentage of completion certified as per acceptable standards
(b) Scheduled Performance Index=Budget cost of work performed/Budget of work scheduled
(c) Cost Performance Index=Budgeted costs of work performed/Actual cost of work performed
(d) The majority of projects making up these grounds do not yet have the appropriate Delegation of Authority approval.
(e) The majority of projects making up these Major groups are at various FEL stages and therefore there Estimated Total Cost is subject change
(f) Updated risk assessment per project reported on quarterly basis.

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ANNEXURE G: ENERGY EFFICIENCY

Electricity Energy Efficiency

Division	Unit of Measure	% Efficiency gain YoY
TFR Traction	g/kkWh	≥ 1%
TFR Real Estate	kWh/m2	≥ 2%
TP	kWh	≥ 5%
TPL	lkm/kWh	≥ 1%
TPT	ton/kWh	≥ 2%
TNPA	employee/kWh	≥ 4%
TRE	man-hour/kWh	≥ 4%



Fuel Energy Efficiency

Division	Unit of Measure	% Efficiency gain YoY
TFR Traction	g/litre	≥ 1%
TPT	ton/litre	≥ 2%
TRE	man-hour/litre	≥ 4%

Reporting Standards applied

Sustainability Report 2013	Global Reporting Initiative Guidelines, United Nations Global Compact Principles
Integrated Report 2013	King III, Companies Act, International Integrated Reporting Council framework

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"MG20"

Melissa Mkwana, Chairperson

TRANSNET



Our Ref No: MM/18192

Minister Malusi Gigaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Fax: 012 431 1039

Dear Minister Gigaba

APPLICATION TO THE SHAREHOLDER MINISTER IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT FOR THE ACQUISITION OF 100 DUAL VOLTAGE ELECTRIC LOCOMOTIVES FOR THE EXPORT COAL LINE

The purpose of this letter is to obtain approval from the Shareholder Minister for the acquisition of 100 dual voltage electric locomotives for the Export Coal Line at an estimated total cost of R4,840 billion. This is being done in accordance with the Public Finance Management Act (PFMA).

The investment to acquire 100 dual voltage locomotives for the Coal Line was initially approved by the Board of Directors on 24 January 2014 at an estimated total cost of R3,871 billion which is within the threshold of the Board's limit, however subsequent to the contract negotiation process it has transpired that the ETC of the investment is now R4,840 billion and approval from the Shareholder Minister in terms of S54(2)d is required.

The difference in cost can be attributable to:

- Entering into a fixed price contract thereby shielding the Company against any potential deterioration of the Rand against the US Dollar.
- Escalation in labour cost
- Increase in material costs
- Inflation and forward looking trends

The acquisition of 100 Dual Voltage electric locomotives for the Export Coal Channel is being undertaken to mitigate against MDS volume loss in the interim. Due to the unforeseen delay in the tender process for the manufacture of 1064 locomotives, the 100 dual voltage locomotives are to be used for the Export Coal Line, however this will facilitate the cascading of locomotives from the Coal Export Line to the General Freight Business (GFB) thereby adding tractive capacity to enable GFB to capture MDS volumes while the 1064 contract proceeds into execution. As the 1064 contract produces locomotives the older GFB fleet will be retired.

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*Executive

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Group Company Secretary: ANC Cebe

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TRANSNET



Page 2


This will result in savings in energy consumption, maintenance costs and a standardised fleet resulting in more efficient maintenance practices. In-depth details regarding the above project are contained in the business case provided (annexure A).

Attached for your ease of reference is the business case together with the excerpts of the Board of Directors minutes. As indicated earlier at the time of approval the Board was the final approval body for the investment, hence the excerpts of minutes (annexure B) reflect the previously approved estimated total cost.

It is recommended that the Shareholder Minister approves the investment to acquire 100 dual voltage electric locomotives for the Export Coal Line at an estimated total cost of R4,840 billion.

Please do not hesitate to contact my office if you require further information or an engagement with the Transnet team.

Kind regards


Mafika Mkwanaazi
Chairman
Date: 10/04/2014


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public enterprises

Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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DECISION MEMORANDUM

DEPARTMENT OF PUBLIC ENTERPRISES PRIVATE BAG/PRIVAATSAK X15 2014 -05- 20 HATFIELD 0028 DEPARTEMENT VAN OPENBARE ONDERNEMINGS
--

TO : MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES

FROM : MS. KGOMOTSO MODISE
DEPUTY DIRECTOR - GENERAL : TRANSPORT

FILE REF : 16/1/10/1

IDMS REF : 172893

SUBJECT : TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL LOCOMOTIVES

DATE : 19 MAY 2014

1. PURPOSE

- 1.1** The purpose of the memo is to advise Minister in regard to Section 54 of the Public Finance Management Act, No.1 of 1999, (PFMA) on Transnet's application for approval of the acquisition of 100 Dual Voltage Electric Locomotives for Transnet's coal line at an estimated cost of R4,8 billion. Transnet's original section 54 application is attached hereto as Annexure "B".
- 1.2** To request Minister to sign the letter attached hereto as Annexure "A", to the Chairperson of Transnet, approving the application if in agreement with the contents thereof.

TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES**2. SUMMARY**

- 2.1. Transnet submitted an application for the approval of the acquisition of the 100 Dual Voltage Electric Locomotives on 10 April 2014. The Department has reviewed the application and met with Transnet on 24 April 2014 to obtain clarification on the application.
- 2.2. Having reviewed the business case and engaged Transnet, the Department is of the view that the business case in its current format has not provided all the critical information necessary to allow for a proper assessment.
- 2.3. Whilst understanding that the Market Demand Strategy (MDS) targets must be achieved by Transnet as committed, the Department does have a number of concerns in regard to this application. Through the engagement with Transnet, the Department has requested additional information to obtain further clarity in regard this acquisition.
- 2.4. As a partial mitigation of the lost revenue caused by the delay in the acquisition of 1064 locomotives, Transnet has applied for an acquisition of 100 locomotives as a temporary measure to meet their volume targets.
- 2.5. Even though certain concerns remain, the application is supported and it is much appreciated that Transnet is implementing alternative plans to meet MDS targets.

3. ANALYSIS AND FINDINGS**3.1. History of the application**

Transnet projects to the value of R2 billion and above require a notification to the DPE as per the agreed and binding Shareholders Compact of 2013/14. Transnet failed to notify the Department, prior to commencing with supplier negotiations as required, while the project costs were estimated below R3.9 billion. It was only on submission of the section 54 application (when the estimated cost reached the threshold of R3.9 billion) that this project was first brought to the attention of the Department. It is of great regret that Transnet failed to adhere to the signed Shareholders Compact of 2013/14 and the Department feels that Transnet belittled the agreement with no justifiable reason as Transnet admitted it was an error of judgement not to submit the notification post the Board's approval in January 2014. This is unacceptable and the Department highly flags this and requires Transnet to take note this behaviour is utterly unacceptable.

TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES**3.2. The rationale of the business case**

The acquisition will comprise the procurement of 100 dual voltage electric locomotives for the export coal channel and is undertaken to mitigate against volume losses due to delays in the acquisition of the 1,064 GFB locomotives. This acquisition will allow Transnet to cascade 125 much needed locomotives to the General Freight Business (GFB).

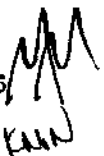
The 100 class 19E locomotives will sustain the coal line electric fleet at a capacity of 81 million tons per annum, standardizing the fleet on this type of locomotive with significant operational and cost advantages.

3.3. Project strategic fit

The performance of the first two years of the MDS was depicted by lacklustre volume performance in contrast to the aggressive capital investments. Transnet has not met the MDS volume forecast for the past two years, to a large degree the volume targets were based on unrealistic assumptions built into the MDS plan. The 2014/15 MDS targets as per the Corporate Plan were revised downwards, however the Department remains concerned as to how realistic these volumes are. The 100 locomotives business case is underpinned by the 2014/15 Corporate Plan volume forecast and if previous years trends are anything to go by, the merit of the business case remains questionable. Despite the investment plan to create capacity for the road to rail migration, Transnet's volume attraction strategy remains unclear. In the absence of a clear volume attraction strategy, the returns on these capital investments remain uncertain in the short term. Over the long term, however, the Department is comfortable that the investment in these locomotives will bear fruit.

3.4. Economic Outlook

The project proposes to relieve chokepoints on the provincial rail system which will allow it to respond to the nation's call to increasing economic output and in turn reach the national developmental goals in alignment with economic policies. There is no doubt that the 100 class 19E locomotives transaction will contribute to the commerce and the health of both the national and the provincial (Kwa-Zulu Natal and Mpumalanga through the export coal line) economies, however the business case has not provided much



TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

information to quantify the socio-economic benefits. It is in this regard that the following information is requested from Transnet regarding this project:

- 3.4.1. The total economic output (GDP-value added) of the project?
- 3.4.2. Further information about the types of jobs/skills to be created through this transaction. The SOC is further requested to specify how many jobs are expected to be created and retained in downstream enterprises?
- 3.4.3. While the Department appreciates that there is a business need for these locomotives, it is vital to understand as to how much idle capacity Transnet Engineering (TE) would have in the absence of this transaction and would indicate if there would be job losses as a result of this idle capacity?

3.5. Operational consideration

- 3.5.1. As per the business case, one year's delay on the 1064 acquisition could result in a 30mt volume loss (R7,9 billion) and a two year delay could result in a further 56mt volume loss (R14,7 billion). Transnet has therefore investigated the risk mitigation options and have proposed a strategy whereby the above risk will be partially mitigated by the urgent acquisition of 100 class 19E electric locomotives from China South Rail (CSR) through an expedited procurement process.
- 3.5.2. The deployment of the 100 19E locomotives on the Coal export line will enable the release of 125 locomotives to the GFB network. This will result in 16,4mt of General Freight not being lost in the period (cumulative) between 2013/14 to 2016/17. The 2013 updated fleet plans which supported expansion of capacity for increased export coal volume demand, predicated 112 new locomotives for the coal business and these locomotives would be in the 19E category. The fleet planning process therefore supports Transnet's risk mitigation strategy to procure 100 class 19E locomotives for the export coal line.
- 3.5.3. The accelerated acquisition of these locomotives enables the protection of GFB volume loss for the MDS by allowing 125 locomotives to be deployed to the GFB network. MDS income and targets will amount to R4,16 billion for the 100 19E locomotives for the period 2013/14 to 2016/17. This initiative and risk mitigation strategy will support the road to rail migration strategy which is already under threat due to the MDS volume targets being downgraded as a result of the economic outlook and revised customer demand.
- 3.5.4. Despite the benefit of increased traction capacity from additional locomotives, this project would be expected to also yield efficiency benefits; however, these benefits



TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

have not been quantified in the business case. In the absence of scientifically quantified benefits linked to the investment programme, it is almost impossible to hold the SOC accountable to deliver on efficiency improvements that are expected to be derived from the capital investment. Transnet is therefore requested to provide quantified and measurable efficiency gains that should be extracted from this acquisition.

- 3.5.5. A further motivating factor for the urgent acquisition of the 100 19E locomotives was that the 1064 electric locomotives supports 22 ton axle mass limits whilst the 19E locomotives will support heavy haul axle mass limits such as the 26mt required for the coal line. As these locomotives are known and meet the requirements, acquisition time is shorter as no prototyping will be required. Through the 95 locomotive programme, CSR already has a working arrangement with TE to continue production at Koedoespoort facilities which will expedite delivery.
- 3.5.6. TE is currently maintaining and repairing 19E locomotives which demonstrates that they are accustomed to maintenance regimes of the more modern dual voltage electric locomotives. Limited training will be required and optimum utilisation of the current facilities will be met.
- 3.5.7. The current class 7E and 10E series of the coal fleet are nearing the end of their useful life, thereby increasing maintenance costs and decreasing reliability, this further attests that this is a temporary measure. The Deployment of these locomotives to the GFB network will however mitigate the risk that the delay of the 1064 locomotive acquisition places on the MDS.
- 3.5.8. The release of the locomotives to the GFB network is expected to protect approximately 7,2mt per annum of general freight.
- 3.5.9. The 19E locomotives are dual voltage and are modern capable locomotives proven in service and will improve service quality through improved reliability and reduced maintenance costs. Also, these locomotives will provide benefits such as:
- 3.5.9.1. Reliability and operational efficiency
 - 3.5.9.2. Reduced operational expenditure and capitalised maintenance
 - 3.5.9.3. Energy savings locomotive fleet plan standardisation
 - 3.5.9.4. The locomotives to be cascaded from the coal line to the GFB line will primarily be class E. Transnet have stated that exact allocation to the geographic areas will be determined at the time of cascading according to operational priorities. The following areas have been highlighted in the



TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

cascading plan: Manganese exports through Ngqura, Thabazimbi to Pyramid south, Maputo exports, and General freight on coal line.

3.5.10. In regard to the above corridors, Transnet is requested to provide reasons as to why the above corridors were selected and in addition, Transnet is further requested to the volume impact of this transaction per corridor. This will enable the Department to track the volume benefits of this acquisition.

3.6. Financial analysis

3.6.1. Purchase price

The total cost of the project was originally estimated at R3.871 billion, marginally lower than the R3.9 billion threshold. The project was approved by the Board at R3.871 billion in January 2014 and a notification provided to the Department only on 10 April 2014. However, the amount has risen to R4.8 billion, requiring a section 54 application.

The R4.8 billion consists of 100 locomotives purchased at a price of R44 million each (total R4.4 billion) plus a contingency fund of 10% (R440 million).

3.6.2. Mitigation of risk in terms of finance

The MDS shortfall that is mitigated by the early acquisition of the 100 coal locomotives is estimated at a total of R4,163 billion. The table below reflects the financial implications that need to be mitigated.

Expected income protected by the acquisition of 100 coal locomotives					
Category	2013/14	2014/15	2015/16	2016/17	Total
Average R / Ton	225.4	244.7	255.4	264.0	
100 Coal Locomotives	2.4	2.4	4.4	7.2	16.4
Income Protected in R'm	541	587	1 134	1 901	4 163

3.6.3. Cost benefits

The Class 19E dual voltage electric locomotives are modern locomotives, which have proven their reliability and have regenerative capacity. As such, several benefits are expected with positive financial implications, including:

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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

- 3.6.3.1. Reliability and operational efficiencies leading to fewer failures and subsequently decreased operational costs;
- 3.6.3.2. Energy savings, which imply energy cost savings; and
- 3.6.3.3. Standardisation of the locomotive fleet will lead to effective maintenance practices, reduced spares and special parts, implying cost savings in maintenance and capitalised maintenance.

3.6.4. Concerns over the transaction

Despite the positive outcomes that this transaction is expected to deliver, there are a number of concerns that still need to be cleared with Transnet, i.e.:

- 3.6.4.1. The maintenance of the locomotives deployed to GFB does not appear to have been included in the calculation of the NPV. Considering that these are older locomotives, the costs are expected to be high and may reduce the NPV value. Transnet is to validate and confirm the age of these locomotives. This will assist in a more accurate estimation of the expected maintenance costs, life span and efficiency levels.
- 3.6.4.2. If the deployed locomotives were not idle, the lost revenue is also expected to be incorporated in the NPV calculation and this is not the case.
- 3.6.4.3. Does the traction power provided by the new 100 locos equal the power that is currently supplied by the 125 locos?
- 3.6.4.4. Is there idle capacity in the coal line?
- 3.6.4.5. Over and above acquisition of 100 locomotives, the below other risk mitigation strategies were noted from Transnet:
 - 3.6.4.5.1. Changes in operating methodology through Project Shongololo which allows Transnet to run longer trains;
 - 3.6.4.5.2. Efficiencies obtained through new fleet of 143 Class 43 diesels;
 - 3.6.4.5.3. 60 Class 43 Diesel to be delivered during current year;
 - 3.6.4.5.4. 95 Electrics from CSR delivery during current year;
 - 3.6.4.5.5. Exploiting the dual voltage capability of the 110 Class 19E locomotives on the Coal Line thereby enabling older locomotives to be cascaded to GFB; and
 - 3.6.4.5.6. 125 locomotives to be cascaded to GFB resulting in a ramp up to 7,2mt of capacity.


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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

3.6.5. "Do nothing" analysis

The following table indicates the full extent of what is expected should the 100 coal locomotive project not be executed:

MDS Numbers at risk in a "Do Nothing" scenario						
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Base Case						
Revenue	36 690	45 382	53 852	62 146	72 541	81 622
Operating expenses	20 616	22 640	25 057	28 279	31 434	35 336
EBITDA	16 074	22 742	28 796	33 866	41 107	46 286
One Year delay						
Revenue	36 327	44 096	50 512	56 163	64 513	72 480
Operating expenses	20 514	22 367	24 594	27 680	30 802	34 704
EBITDA	15 813	21 729	25 917	28 483	33 711	37 776
Variation						
Revenue	363	1 286	3 340	5 983	8 028	9 142
Operating expenses	102	273	463	599	632	632
EBITDA	261	1 013	2 879	5 383	7 396	8 510
% Variation						
Revenue	1.0%	2.8%	6.2%	9.6%	11.1%	11.2%
Operating expenses	0.5%	1.2%	1.8%	2.1%	2.0%	1.8%
EBITDA	1.6%	4.5%	10.0%	15.9%	18.0%	18.4%

As the table indicates, by 2018/19 the EBITDA will be a significant 18.4% below what was projected in the 2013/14 Corporate Plan. The impact of the locomotive shortage increases annually on the financials of the company but even more devastating will be the loss of market share to road hauliers, which will take Transnet longer to recover from.

3.6.6. Funding

Funding is included in the 2014/15 Corporate Plan, which, like other projects thus far, will be funded by a one third external funding resource and two thirds from internally generated funds.

3.7. Risk

Material issues raised in the last communication remain and are detailed as follows:

- 3.7.1. More detailed information is needed to ascertain the assurances that Transnet is providing to the Shareholder that by procuring the 100 locomotives, the MDS volume projections will be achieved.

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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

- 3.7.2. Transnet needs to provide clarity in regard to the deviation from the original mitigation plan on the 1064 locomotive project delays. The purchase of an additional 100 coal locomotives did not form part of the original mitigation plan against the 1064 locomotives delay risk, therefore Transnet needs provide reasons from the deviation of the initial risk mitigation plan.
- 3.7.3. In relation to the confined procurement plan for this application; from a risk perspective the concern is the possible litigation challenges that can arise from other possible suppliers, thus impacting on the project execution and delivery timelines. Transnet's is therefore requested to provide a mitigation plan against this risk.
- 3.7.4. Considering that this is a R4.84 billion transaction, the closed tender process could have been looked into rather than the confinement option which exposes Transnet to increased litigation risk. This issue needs to be explored further.
- 3.7.5. The business case has not provided a proper risk assessment of the project and the mitigations thereof. This will further assist in the Department's assessment of this business case.

3.8. Procurement Strategy

From a supplier development and localisation perspective, it is extremely concerning that the Department has been approached by a supplier who has raised complaints against CSR and its performance against localisation targets set.

In addition, the below still remains a requirement for assessment:

- 3.8.1. Contract for 95 locomotives with CSR with particular reference to CSDP targets and most importantly, performance against supplier development and localisation obligations in this regard, including associated penalties.
- 3.8.2. CSR contract for 1064 locomotive transaction and the details of CSDP and associated penalties that are being set.
- 3.8.3. Any other contract with CSR either for locomotives or other rolling stock and performance against supplier development and localisation, including associated penalties.

We need Transnet to enforce serious performance penalties on this 100 loco contract, as with all the rest.



TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES**3.9. Legal analysis**

The below are concerns from a legal perspective:

- 3.9.1.** Transnet has confined 100 Class 19E electric locomotives to China South Railway ("CSR") (entailing it is procuring the locomotives without an open tender procurement process being conducted or other qualifying bidders being invited). Transnet bases its decision for electing the confinement procurement procedure on urgency.
- 3.9.2.** The election of a confinement option for a transaction worth R4.84 billion creates some degree of discomfort. As a result, the Department required Transnet to furnish the Department with its Procurement Procedure Manual to enable the Department to determine the acceptability of the chosen option under the circumstances and assess whether the election of the confinement procurement procedure for a transaction of this magnitude (R4.84 billion) is indeed in compliance with Transnet's procurement policies and procedures.
- 3.9.3.** The team has reviewed Transnet's Procurement Procedure Manual ("PPM") and confirms that confinement to CSR is in line with the PPM and that the reason given by Transnet as a basis for having elected the confinement option falls within one of the circumstances in which the confinement option is permitted. In terms of the PPM, Transnet can opt for the confinement of tenders in circumstances when for instance, owing to genuine unforeseeable urgency or a restrictive market (goods / services only obtainable from one/limited number of suppliers), it would not be possible, practical or economically viable to invite open tenders.
- 3.9.4.** The team is however of the view that a closed tender procurement mechanism would have been appropriate given the bad publicity that Transnet has received in the past for having elected the confinement route for high value transactions. A closed tender procurement procedure still affords transparency, while a confinement procurement procedure in a transaction of this magnitude arouses suspicion of corruption from media and the general public and poses reputational risk. Transnet, being a state owned company should steer clear from such reputational risks and endeavour to conduct business in a manner that inspires


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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

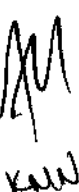
trust and honesty; and uphold the highest standards of corporate ethics, transparency and governance.

3.9.5. As Transnet correctly states in the PPM, the misuse of confinements has the potential to entrench monopolies and as such is at odds with the imperatives of the New Growth Path which seeks to encourage open competition and the introduction of new entrants into the market. Accordingly, it is important that all Transnet's suppliers and business associates are given a fair and equitable opportunity to do business with Transnet.

3.9.6. The officials of the Department responsible for assessing the transaction have been informed by the Transnet officials that Transnet has already awarded the contract to and concluded an agreement with CSR subject to the suspensive condition that Transnet obtains the required section 54 PFMA approval. As stated in the letter attached hereto, the Department has requested a copy of the agreement that Transnet concluded with CSR in respect of this transaction. This will assist in providing the officials of the Department reviewing the application with an in depth understanding of the transaction that Transnet is entering into and enable the officials to properly assess the risks pertaining to the proposed transaction.

3.9.7. Moreover, with Transnet having deviated from the open tender procedure and the original estimated price of the transaction having increased by 27%, the Department needs to assess from the provisions of the agreement, if Transnet would derive value for its money. Reviewing the agreement will also assist the team in determining whether the socio-economic objectives of the transaction are aligned with the Government's socio-economic policy framework, including: local content and supplier development thresholds, skills development, poverty alleviation, etc.

3.9.8. The Department has verified that Transnet has, as required by section 54(2) of the PFMA and paragraphs 4.1 and 4.2 of the Practice Notes on applications under section 54 of the PFMA by public entities, also submitted a copy of the PFMA application to the Minister of Finance.


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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

3.9.9. In terms of the Practice Notes on applications under section 54 of the PFMA by public entities (which among other things provide guidelines on information to be submitted to the executive authority in support of an application) board approval (i.e. extract of board resolution that gave effect to the proposed transaction), is required. The PFMA application submitted by Transnet to the Department consisted of among other things, certified excerpt from the minutes of the special Board of Directors meeting held on 24 January 2014.

3.9.10. In terms of this excerpt from the minutes, the Board of Directors of Transnet has approved that Transnet acquire the 100 dual voltage electric locomotives required for the Export Coal Line at an estimated amount of R3,8 billion. However, in the PFMA application, the chairman of Transnet is requesting that the Minister approves the investment in and procurement of the 100 locomotives at an estimated total cost of R4,8 billion. This results in there being a difference of R1,04 billion (27%) between the amount approved by the board for the transaction and the amount that Transnet seeks the Minister's approval for the transaction on.

3.9.11. According to Transnet the price has, subsequent to approval of the transaction by the Board of Directors of Transnet, increased due to:

3.9.11.1. fixed price rand based contract;

3.9.11.2. labour escalation;

3.9.11.3. material escalation; and

3.9.11.4. inflation and forward looking trends.

3.9.11.5. In light of the above, the Department requests that Transnet provides the Department with a resolution of the Board of Directors of Transnet approving the acquisition of the 100 locomotives at the current transaction amount of R4.84 billion.

3.9.12. In terms of section 54(3) of the PFMA, a response by the executive authority (the Minister) pertaining to the outcome of the public entity's section 54 PFMA application, has to be given to the public entity within thirty (30) days. Transnet submitted the PFMA application on 10 April 2014. The Department was however, unable to meet the thirty (30) day period prescribed in the PFMA for assessment of a PFMA application due to the fact that Transnet furnished the Department with insufficient information.



TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES

3.9.13. In this regard, it is recommended that the Minister urges the board of directors of Transnet to ensure that in the future, Transnet management submits PFMA applications that contain detailed information on the transactions that Transnet is seeking the Minister's approval on and that such applications are in full compliance with the provisions of section 54 of the PFMA and the Practice Notes on applications under section 54 of the PFMA by public entities.

4. CONCLUSION

Based on the above noted information, the Department recommends that Minister approves the application of the acquisition of 100 Dual Voltage Electric Locomotives on condition that Transnet addresses the concerns and supply the information to address the concerns raised.

5. FINANCIAL IMPLICATIONS

None for the Department

6. CONSULTATION/PROJECT TEAM

Monique Anke, Malerato Goba, Dion Harold, Kgomoetsego Seameco, Vongani Masondo, Lebohlang Ntwampe, Femida Mahomed, Phillip Mphalo and Ngoako Huma

7. RECOMMENDATION

7.1. It is recommended that Minister takes note of the following:

7.1.1. Transnet submitted a Section 54 PFMA application for approval to acquire a 100 locomotives for a contract value, which will enable Transnet to cascade 125 locomotives to the General Freight Business;

7.1.2. Transnet opted to follow a confinement procurement process in order to expedite this acquisition, the Department is however concerned that this process may result in a number of procurement risks;

7.1.3. The business case submitted did not contain all the information that the Department required to perform a full assessment, however the Department does appreciate the merit of the business case

7.1.4. In the absence of this acquisition, Transnet faces a significant volume loss thereby resulting in placing the MDS implementation at high risk.

TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES


7.1.5. The Department recommends that the Minister approves the locomotive acquisition on condition that Transnet addresses the concerns raised above and provides the information requested by the Department.


7.2. It is also recommended that Minister signs the letter to the Transnet Chairman attached hereto as "Annexure B", if in agreement to the contents thereof.

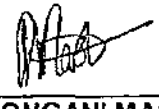

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TRANSNET PFMA APPLICATION FOR THE ACQUISITION OF 100 COAL EXPORT LOCOMOTIVES


Memorandum prepared by:



MALERATO GOBA
D: TRANSPORT
DATE: 19/05/2014



DION HAROLD
D: TRANSPORT
DATE: 19/05/2014



VONGANI MASONDO
D: LG
DATE: 19/05/2014

REVIEWED AND SUPPORTED:



NGOAKO HUMA
CD: TRANSPORT
DATE: 19/05/2014


MATSIETSI MOKHOLO
DDG : LG
DATE: 19/05/2014



KGOMOTSO MODISE
DDG: TRANSPORT
DATE: 19/05/2014


MR.TSHEDISO MATONA
DIRECTOR-GENERAL
DATE: 19/5/2014


RECOMMENDED / NOT RECOMMENDED / COMMENTS
I believe from Transnet that this is hurried with a view to piggyback the production schedule for the part of the 1064 allocated to CSR, and it is clear they started off not expecting to do the S&S4 application. I note the memo rightly berates them for their shortness and for information gaps, but overall supports the business case, with indicated conditions.


MR. MALUSI GIGABA, MP
MINISTER
DATE: 2014/05/23

APPROVED / NOT APPROVED / COMMENTS


MR. GRATITUDE
MAGWANISHE, MP
DEPUTY MINISTER
DATE: 2014/05/23

NOTED / COMMENTS


KAW



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

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Private Bag X9079, Cape Town, 8000 Tel: 021 461 6376/7 Fax: 021 461 2381/461 1741

Mr. Mafika Mkwanazi
Chairman
Transnet SOC limited
P.O. Box 72501
Parkview
Johannesburg
2122

Tel: 011 308 2309
Fax: 011 308 2312

Dear Mr. Mkwanazi

Application to the Shareholder Minister in terms of the Public Finance Management Act (PFMA) for the acquisition of 100 dual voltage electric locomotives for the export coal line

Your application dated 10 April 2014 refers.

Whilst understanding that the Market Demand Strategy targets must be achieved by Transnet as committed, matters of concern remain existent in the latest application received in aim of mitigating the delay of the 1064 locomotives delivery.

I appreciate that this acquisition will assist in realizing a portion of the Market Demand Strategy volumes and also avoid revenue losses, thereby contributing to the road to rail migration. While volume growth and retention is the basis of the business case to acquire these additional locomotives, the



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

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Chairman
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trend from previous years depicts that Transnet has consistently moved significantly lower than forecasted volumes. This therefore fuels the concern of the Department as to how realistic the assumptions are, which underpin the forecasted volume growth and therefore the capital investment programme needed to meet the assumed volume targets. While Transnet is encouraged to continue to stimulate the economy through capital investment, it remains a key focus of the Department to ensure that the capital programme is optimized and investments are made in the right areas.

In an effort to understand Transnet's rationale in the investment allocation, Transnet is requested to indicate the current capacity of the corridors in which the cascaded locomotives are expected to be deployed, as well as the reasons as to why those corridors were selected. In addition, Transnet is further requested to provide the incremental volumes expected to be derived for each of those corridors as a result of the deployment. This will assist and enable the Department to track the volume benefits of this acquisition.

Despite the benefit of increased traction capacity from additional locomotives, this project would be expected to also yield efficiency benefits. However, these benefits have not been quantified in the business case. In the absence of scientifically quantified benefits linked to the investment programme, it is almost impossible to hold Transnet accountable to deliver on efficiency improvements that are expected to be derived from the capital investment. Transnet is therefore requested to provide quantified and reliably measurable efficiency gains that should be extracted from this acquisition. This information should be provided by specific corridors or by business units as per the deployment of these locomotives.

I am also aware that post the submission of this application; there were engagement between officials of the Department and those of Transnet. As per those engagements, the following information was requested from Transnet and is still outstanding:

- Transnet was requested to supply the determined impact/total value add of the project to GDP.
- Since Transnet has already concluded the contract for this acquisition, subject to PFMA approval, I therefore request that Transnet furnish me with a copy of the agreement concluded with China South Railway (CSR) as this will provide an in depth understanding of the transaction that Transnet is entering into and enable the Department to properly assess the risks pertaining to the proposed transactions.


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- Considering that the 100 locomotives was not indicated by Transnet as part of the original mitigation action for the risk of delays in the 1,064 locomotives delivery, Transnet needs provide reasons for the deviation from the initial risk mitigation plan.
- In relation to the confined procurement plan for this application; from a risk perspective the concern is the possible litigation challenges that can come from other possible suppliers, thus impacting on the project execution and delivery timelines. More information on Transnet's mitigation plan in this regard is therefore required.
- Transnet to provide further information about the types of jobs/skills to be created through this transaction. The SOC is further requested to specify how many jobs are expected to be created and retained in downstream enterprises.
- Considering that this is a R4.84 billion transaction, the closed tender process could have been looked into rather than the confinement option as this would reduce Transnet's risk exposure to litigation challenges. Transnet is therefore requested to provide a full explanation as to why a closed tender process was not considered for this transaction.
- The business case has not provided a proper risk assessment of the project and the mitigations thereof. This would further assist in the Department's assessment of this business case.
- From a Procurement and Supplier Development (SD) perspective, since the tender was confined to one supplier, the Department would like review the SD commitments, the enforceability of these commitments and the current performance of this supplier against set targets on contracts that are currently in place. Transnet is therefore requested to provide all contracts with China South Rail (CSR) as well as a report on how CSR is performing against current SD commitments.
- Indication of whether other alternatives were considered is not evident in the business case. Whilst the 100 locomotives acquisition is one mitigation factor that is expected to partially mitigate the delays in 1064 locomotives delivery, what other alternatives were considered to mitigate the impact of the delay of the 1064 locomotive delivery.

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- Moreover, the amount indicated in the certified excerpt from the minutes of the special Board of Directors meeting held on 24 January 2014 differs from the amount indicated in the Transnet's section 54 application. I therefore request a resolution of the board of directors approving the transaction at the current transaction amount of R4.84 billion as the one indicated in the section 54 application relates to the initial approved amount of R3.9 billion.

Lastly, it is of grave concern to me that Transnet has failed to notify me timeously of a transaction which is of such significance in your business, even if the projected quantitative value was initially estimated below the monetary threshold for approval.

The significance and materiality framework agreed to in the 2013/14 Shareholder Compact, clearly stipulates that Transnet should provide me with notification on all acquisition and disposal of assets above R2 billion. It would therefore have been my expectation that after the Board had approved this acquisition, prior to entering into negotiations with the supplier, Transnet would have provided a notification. This failure to provide a notification timeously, has denied the Department an opportunity to review and engage on pertinent issues regarding this acquisition earlier in the process. Going forward, Transnet should involve the Department far earlier in its project planning phase so as to allow for alignment between the Department and Transnet.

In spite of the concerns raised above, I do acknowledge the business need for the acquisition of these additional 100 locomotives for the coal line in order to avail more locomotives to be cascaded to the General Freight Business. I therefore, grant Transnet the approval to acquire the 100 locomotives subject to Transnet addressing the concerns raised above and providing the Department with the outstanding information as outlined above.



The Department therefore requests Transnet to fully submit the requested information on or before 19 June 2014. As per normal, continual interaction is imperative so as to ensure that there is no misalignment/confusion on the expectation.

I trust that you will find the above in order.

Yours sincerely



MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2014/05/23


Kw

Siyamthanda Skota

From: Siyamthanda Skota
Sent: Friday, May 23, 2014 12:17 PM
To: 'Lydia Matebisi Transnet Corporate JHB'
Cc: 'malerato.goba@dpe.gov.za'; Ngoako Huma; Butie Tsafane; Nonhlanhla Mokoena
Subject: Application to the shareholder Minister in terms of the PFMA for acquisition of 100 dual voltage electric locomotives for the export coal line
Attachments: Sministry14052312170.pdf

Good afternoon Lydia

Kindly receive the attached letter for the attention of the chairperson, Mr Mkwanazi.
Please confirm receipt.

Kindest regards,
Mr. Siyamthanda Skota
Office of the Minister
Department Of Public Enterprises

+27 (0)12 431 1118 | +27 (0)12 431 1039 | Siyamthanda.Skota@dpe.gov.za
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public enterprises
Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA



RM
KAW

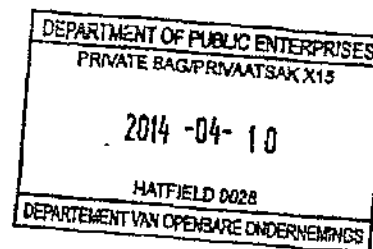
Moflan Mhweni, Chairperson

TRANSNET



Our Ref No: MM/18192

Minister Malusi Gigaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028



Fax: 012 431 1039

Dear Minister Gigaba

APPLICATION TO THE SHAREHOLDER MINISTER IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT FOR THE ACQUISITION OF 100 DUAL VOLTAGE ELECTRIC LOCOMOTIVES FOR THE EXPORT COAL LINE

The purpose of this letter is obtain approval from the Shareholder Minister for the acquisition of 100 dual voltage electric locomotives for the Export Coal Line at an estimated total cost of R4,840 billion. This is being done in accordance with the Public Finance Management Act (PFMA).

The investment to acquire 100 dual voltage locomotives for the Coal Line was initially approved by the Board of Directors on 24 January 2014 at an estimated total cost of R3,871 billion which is within the threshold of the Board's limit, however subsequent to the contract negotiation process it has transpired that the ETC of the investment is now R4,840 billion and approval from the Shareholder Minister in terms of S54(2)d is required.

The difference in cost can be attributable to:

- Entering into a fixed price contract thereby shielding the Company against any potential deterioration of the Rand against the US Dollar.
- Escalation in labour cost
- Increase in material costs
- Inflation and forward looking trends

The acquisition of 100 Dual Voltage electric locomotives for the Export Coal Channel is being undertaken to mitigate against MDS volume loss in the interim. Due to the unforeseen delay in the tender process for the manufacture of 1064 locomotives, the 100 dual voltage locomotives are to be used for the Export Coal Line, however this will facilitate the cascading of locomotives from the Coal Export Line to the General Freight Business (GFB) thereby adding tractive capacity to enable GFB to capture MDS volumes while the 1064 contract proceeds into execution. As the 1064 contract produces locomotives the older GFB fleet will be retired.

Transnet SOC Ltd
Registration Number
1990/000900/30

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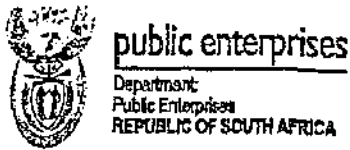
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Directors: HE Mhweni (Chairman) S. Helder (Group Chief Executive) MA Fenucci Y Forbes MD Gerdien AP Moussem N Nkomo MR Njoku JM Sharma JD Shosang E Thabane DLJ Tshope A Singh (Group Chief Financial Officer) Executive

Group Company Secretary: ANC Debe

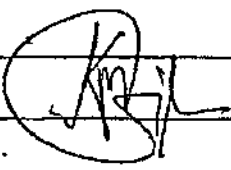

www.transnet.net


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Ministry - Incoming Correspondence / Request

MINISTER

Date received:	11 April 2014
From	Mafika Mkwanazi Chairman: Transnet
Subject:	Application to the Shareholder Minister in terms of Public Finance Management Act for the Acquisition of 100 Dual Voltage Electric Locomotives for the Export of Coal Line.
Dear Minister	
Please find attached request from Transnet requesting Minister's approval for the acquisition of 100 dual voltage electric locomotives for the Export Coal Line at an estimated total cost of R4. 840 billion.	
Regards, Butle	
Action/Comment	Copy to DM and DG Copy to Transport, Legal and Strategic Partnerships to assess and advise.
Minister of Public Enterprises Comments:	Assessment and advise awaited.
Date: 2014/04/13	


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TRANSNET



Page 2


This will result in savings in energy consumption, maintenance costs and a standardised fleet resulting in more efficient maintenance practices. In-depth details regarding the above project are contained in the business case provided (annexure A).


Attached for your ease of reference is the business case together with the excerpts of the Board of Directors minutes. As indicated earlier at the time of approval the Board was the final approval body for the investment, hence the excerpts of minutes (annexure B) reflect the previously approved estimated total cost.

It is recommended that the Shareholder Minister approves the investment to acquire 100 dual voltage electric locomotives for the Export Coal Line at an estimated total cost of R4,840 billion.

Please do not hesitate to contact my office if you require further information or an engagement with the Transnet team.

Kind regards


Mafika Mkwana
Chairman
Date: 10/24/2014


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Annexure A

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BUSINESS CASE
**MITIGATION OF MDS VOLUMES AT RISK THROUGH THE INVESTMENT IN AND
PROCUREMENT OF 100 CLASS 19E EQUIVALENT DUAL VOLTAGE ELECTRIC LOCOMOTIVES**
PURPOSE

1. The purpose of this submission is to obtain approval from the Shareholder Minister of 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 Class 19E equivalent electric locomotives required for the Coal Export Line in the estimated amount of R4,840 billion (excluding borrowing costs);

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 Class 19E 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.
4. The Class 19E dual voltage electric are modern capable locomotives. They have proven themselves in service and will improve service quality through improved reliability and reduced maintenance costs.
5. This submission proposes an accelerated procurement to mitigate General Freight MDS volumes at risk by confining 100 Class 19E electric locomotives to China South Rail (CSR). 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 2.4 mt (14/15) to 7.2 mt (16/17) and the cumulative income protected is R4 163m (13/14 - 16/17).
6. The confinement to CSR 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 programmatic element of the 1064 procurement enables locomotive quantities per annum to be adjusted to circumstances.
9. The proposed transactions do not increase the risk related to the 1064 tender process.

Handwritten signatures and initials:
 [Signature]
 [Signature]
 KAW

Annexure A

TRANSNET



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BUSINESS CASE

MITIGATION OF MDS VOLUMES AT RISK THROUGH THE INVESTMENT IN AND PROCUREMENT OF 100 CLASS 19E EQUIVALENT DUAL VOLTAGE ELECTRIC LOCOMOTIVES

PURPOSE

1. The purpose of this submission is to obtain approval from the Shareholder Minister of 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 Class 19E equivalent electric locomotives required for the Coal Export Line in the estimated amount of R4,4 billion (excluding borrowing costs);

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.
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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 programmatic element of the 1064 procurement enables locomotive quantities per annum to be adjusted to circumstances.
9. The proposed transactions do not increase the risk related to the 1064 tender process.

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10. Socio-economic benefits will be realised in line with existing commitments and expectations.
11. 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

12. The investment to acquire 100 locomotives for the Coal Line was initially approved by the Board of Directors on 24 January 2014 at an estimated total cost of R3,871 billion which is within the threshold of the Board's limit, however subsequent to the contract negotiation process it has transpired that the ETC of the investment is now R4,4 billion and approval from the Shareholder Minister in terms of S54(2)d is required.
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 62 "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, post MDS approval.
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
Coal Fleet (26 ton axle)		
112 (100 19E)	97.5	<ul style="list-style-type: none"> Probable downward volume revision. Contracts currently being signed for 10 years for 80 mt as coal reserves, sources and Eskom demand are evaluated. 112 targeted for expansion to 97.5 mt Current fleet of 10E, 7E and 11E require near term replacement. 100 (off the 112) switched to fleet replacement pending finality of and commitment to long term coal export expansion and requested per this submission 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.
GFB (22 ton axle)		
50 EMD		<ul style="list-style-type: none"> 50 "like new" EMD diesels were delivered between December 2009 and March 2010 on open tender.
100 GE (Class 43)		<ul style="list-style-type: none"> In 2008 these locomotives were identified as a "quick fix" with 81 to sustain the aging fleet and 19 for volume expansion. GE won the tender, which was confined to three companies, and the locomotives were delivered between May 2011 and January 2013.
776	155 mt	<ul style="list-style-type: none"> In April 2011 the Fleet Plan was presented to the "new" Transnet Board for 776 GFB locomotives for 155.8 mt.
95 CSR and 43 GE		<ul style="list-style-type: none"> 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. The 95 and 43 locomotives were determined and limited by the uncommitted funds in the then Five year Capital program The diesels were delivered between January 2013 and June 2013. The 95 CSR are planned for delivery March 2014 to March 2015.
1064	170 mt	<ul style="list-style-type: none"> August 2011 the locomotive requirements for 175 mt were presented being 1202 locomotives (776+446). With the 138 already approved the balance of the GFB fleet plan was 1064 locomotives. (1202-138) In March 2012 the 1064 approval process commenced in tabling the business case at Transnet Freight Rail Investment Committee. The 1064 procurement is expanded in the body of the document below.
60		<ul style="list-style-type: none"> 60 Class 43 requested to fill the gap in the first year of the 1064 resulting from the delay in procurement.

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

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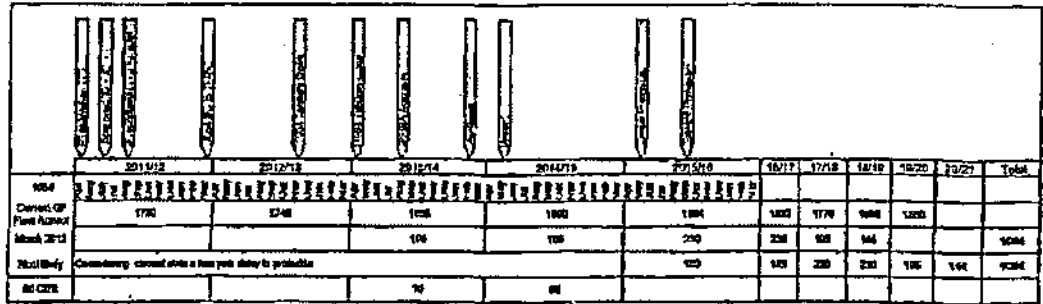
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- 16. The essential points relating to this proposal are:
 - a) The 100 Class 19E locomotives are for the coal line and were always part of the TFR locomotive fleet plan. See Para 34 and following. They release locomotives that can be used on GFB for the year that the 1064 program is delayed.
- 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 Class 19E not being part of the 1064 locomotive process are covered under the Procurement Strategy Para 52(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

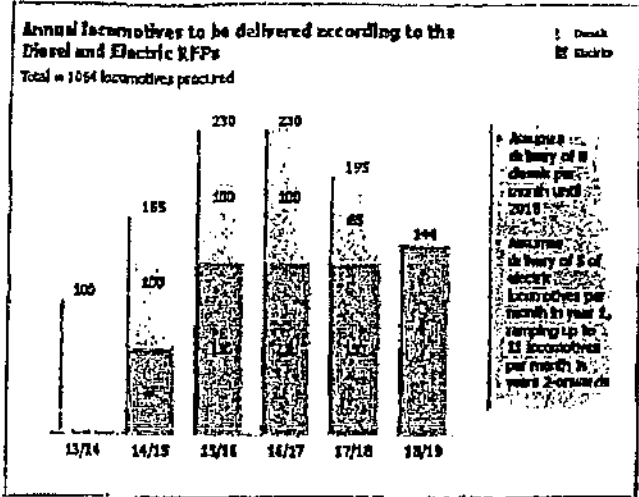
- 20. TFR's Corporate Plan sets out the *7 Year Market Demand Strategy (MDS) 2013/14- 2019/20* to virtually double General Freight volumes to 170 mt by 2019/20. This requires an integrated and synchronised approach across locomotives, wagons, infrastructure and personnel and these aspects were covered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



- 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, and it is expected that adjudication will be finalised by November 2013 and contracts awarded by February 2014.
- 27. 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

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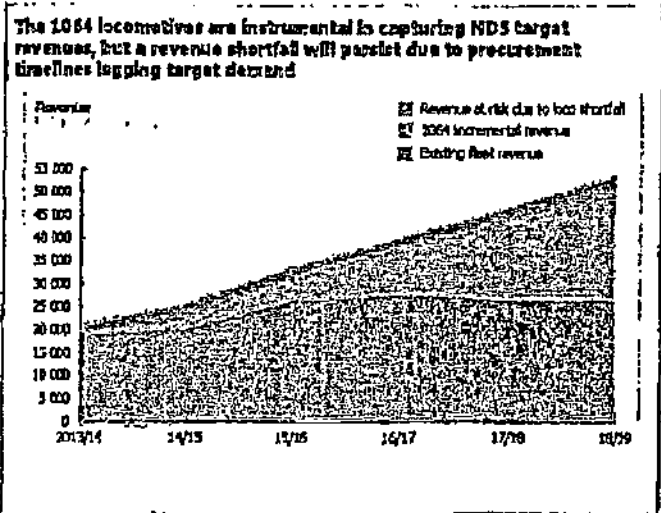
delivery timelines that were modelled as per the RFPs and used as the base case assumption. It indicates that at the end of 2014/15 we would be behind by a total of 265 new locomotives which would have a major impact on MDS volumes.



28. 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 MDS.

Impact of the 1064 Delay

29. 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.



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30. 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	1285	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	2013/14
One Year Delay	16/17
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	309	678	1004	1194	1153	903

Shortfall Total	2013/14
Two Year Delay	16/17
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.

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MOTIVATION**MDS Risk Mitigation**

31. 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

32. Note that this submission is not a full risk mitigation. Further the benefits in 2013/14 is from Project Shongololo which are the new operating procedures introduced on the Coal Export Line.
33. 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:

34. 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 13/14-16/17) 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.
35. 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.
36. 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.
37. 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.
38. 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

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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.

39. 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.

40. 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

41. 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.

42. 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.

43. 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

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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

44. 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

45. The 100 Class 19E business case articulates the benefits of the earlier than previously planned delivery of the locomotives to the Coal Export Line.
46. 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.
47. 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

PROJECT BENEFITS

48. Protection of GFB MDS income and targets amounting to R4 163 m for the 100 Class 19E over the period 2013/14-2016/17.
49. Coal Export volumes and income are protected through improved reliability.
50. Sustainability objectives as per the Transnet Sustainability framework are met threefold:
- 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.
 - Sustainability from a **social perspective** is met through the optimisation of manufacturing facilities, job creation and proactive stakeholder engagement.
 - 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.
51. The programme will support the shift from road to rail as the cascaded locomotives take up the shortfall in the General Freight market.
52. Benefits specific to the 100 Class 19E include:
- Energy savings will be achieved with an 18% improvement in KVA requirements over the old technology Class 7E and Class 10E locomotives.

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- b) The regenerative capability of the new locomotives introduces further energy savings of between 22% and 25%.
- 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.

PROCUREMENT STRATEGY

Rationale for not being part of the 1064 process

53. The procurement process was carefully considered and was not taken into the 1064 locomotive process. Aspects considered were:
- a) **Type:** The 100 19E equivalents 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.

Analysis and Implications of Procurement Options

54. 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
55. **Go out on tender:** With this option, which affords transparency, the locomotives become available beyond the 1064 timeframe and hence this is not a viable option as it does not address the urgency. It does not address MDS volumes and causes a 20mt gap from 2014 to 2016.
56. **Do Nothing:** This option puts the MDS volumes at risk that this proposal wishes to mitigate. The implications are:

Base case - RM	Budget	Projections				
2013-14 Corporate Plan	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Revenue	36 690	45 382	53 852	62 146	72 541	81 622
Operating Expenses	20 616	22 640	25 057	28 279	31 434	35 336
EBITDA	16 074	22 742	28 795	33 866	41 107	46 286

One Year Delay RM	Budget	Projections				
2013-14 Corporate Plan	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Revenue	36 327	44 096	50 512	56 163	64 513	72 480
Operating Expenses	20 514	22 367	24 594	27 680	30 802	34 704
EBITDA	15 813	21 729	25 917	28 483	33 711	37 776

57. **Confine:** This addresses the urgency of the proposal but has potential negative implications regarding public. For these reasons (and as outlined above) this is not part of the 1064 process and will not impact on that process.
- a) The locomotives are known, meet requirements and prototyping is not required

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- b) The CSR facilities are available for immediate production which will result in significant delivery acceleration based on the learning of the 95 locomotive production processes. CSR has capacity to produce 2000 locomotives per annum.
- c) 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
- d) Confinement of the contract to CSR meets the grounds for confinement per the most recently BADC approved PPM.
- e) Both the extension and confinement are acceptable procurement mechanisms per the PPM in this instance.

58. **Extend current 20E contract for 95 CSR Locomotives:** The 20E currently on order is a 22 ton per axle GFB locomotive and is not intended for heavy haul use on the Coal Export Line. The first delivery is awaited, the locomotive has still to be tested and it is at present unproven. Only after extensive type testing will it be possible to say whether and to what extent it can replicate the heavy haul capabilities of the 19E. Additionally, extension would not be an acceptable procurement mechanism per the PPM given the material amendment to contract which could be challenged.

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 to 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.

59. **Implications:** The 1064 tender is currently under adjudication. It is one of 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 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

- 60. For reasons of urgency, the confine / extend contract option is the recommended option.
- 61. 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

- 62. 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:

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- 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."
63. The project is motivated on the basis of Para (a) where a genuine unforeseeable urgency has arisen.
- a) Item 12 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 timeous 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.
64. 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 largely identical with those already supplied and to be supplied.
 - c) Transnet would incur wasted time and money in approaching the market (b) and (c) are relevant due to the fact that:
 - 1. CSR has been adjudicated as the best bidder during the 95 locomotive tender process. Both these tenders include Board approved Procurement methodology of maximising supplier development whilst ensuring highest standards of quality and best possible commercial offering. Transnet has recently 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.

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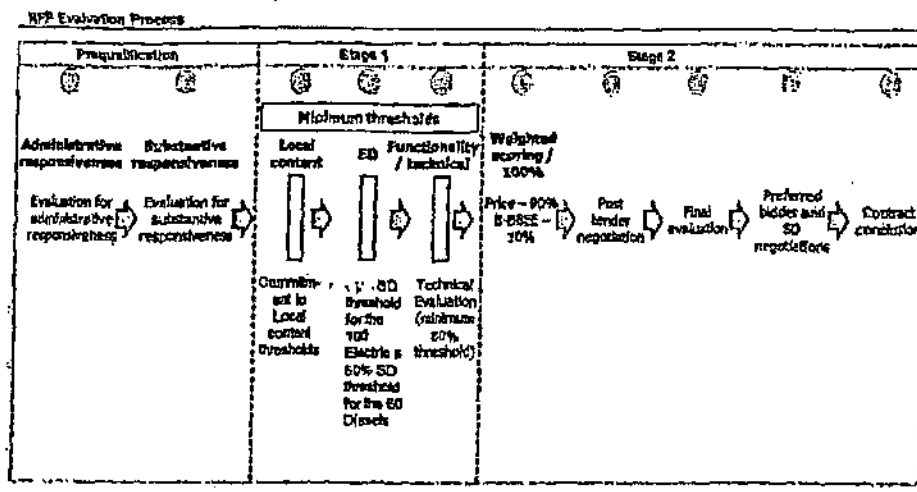
- ii. Production of the current MARS contract has been completed and based on previous procurement methodology where supplier development was not a key focus area and the Mitsui consortium did not fare well in the two most recent tenders issued by Transnet, continuation with Mitsui via a confinement would place 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 the 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.
65. TE is currently maintaining and repairing the Class 19E Electric series which means that they are accustomed to maintenance regimes of 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 practices will result in shorter mean time to repair. Common practices will be addressed through maintenance of the 95 locomotive series, 599 elements that CSR is shortlisted for this fleet.
66. From a socioeconomic perspective the following jobs will be retained in assembly facilities;
- a) Approximately 400 jobs are estimated to be created over the period for electric assembly and further jobs will be retained in downstream enterprises.
 - b) Based on SD offerings made in recent tenders, Transnet believes it can achieve maximum SD possible of at least 70% for the electric locomotives.
67. Considering the volume at risk and the urgent requirement for the Coal Line locomotives to cascade the current fleet to General Freight, it was decided to confine the procurement to CSR.

Contracting strategy

68. Confine and award to China South Rail (CSR) for 100 Class 19E locomotives.
69. The reasons for the different confinement and extension strategies have been highlighted in the sections above.

Evaluation Methodology

70. 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.



71. 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.
- 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-BBEE – scorecard (10%) will be used 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-BBEE Improvement plan (FRC Future)
- 10) **Conclude contract** – the parties sign a contract and addendums to formalize the agreement.

72. 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.

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- 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)

73. Meeting Local Content (3) is a prerequisite to proceeding to SD threshold (4) evaluation.
74. 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%

75. 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 5 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%

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

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Supplier Development (SD)	
Category	Weighting
Investment in plant – bidders monetary commitment to investment in plant and equipment	10%
Downstream procurement – bidders commitment to supporting 2 nd , 3 rd tier suppliers, etc.	25%
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 ED development	15%
Total & Threshold > 65% for Electric and > 60% for Diesel's	100%

Award Conditions – 100 Class 19E Equivalent

77. Approval to award the business to CSR is requested subject to SD compliance with the following:
- The delays in the 1064 acquisition will result in the delivery of the 0164 locomotives extending beyond the current 7 year MDS capital plan.
 - The 1064 budget will be adjusted commencing the 2014/15 7 year cycle for the delayed delivery 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 continuous replenishment of new locomotives.

Financial Impact to Group

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

Ratios Transnet Group - As is	Budget 2013/14	Projections				
		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 (%)	46.5	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

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

Ratios: Transnet Group One (1) Year Delay	Budget 2013/14	Projections				
		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

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

Ratios: Transnet Group Two (2) Year Delay	Budget 2013/14	Projections				
		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

82. The transaction will be aligned with the Government of South Africa's socioeconomic policy framework, including CSDP, NGP, NDP, SSI, and IPAP2.
83. Meeting the MDS growth targets supports the National Development Program in the industrialisation of SA's mineral resources.
84. The program supports the sustainable development of a South African locomotive production industry.
85. Economic benefits include:
- Using idle capacity available in South Africa
 - 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%.
 - Ability to reinstate / retain local jobs as the skills pool already exists.

PROJECT RISKS

86. Both projects face several risks that could affect their overall economic viability:
87. **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.
88. 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.
89. Exchange Rate Fluctuations:

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- a) For the 100 Class 19E confined to CSR, 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.
90. Tariffs not being realised:
- a) 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.
- b) 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.
91. Tariff exposure to commodity downturns:
- a) 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.
- b) 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.
92. **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.
93. **Project Interdependencies:**
- a) 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.
- b) 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.
94. Project risks will be mitigated during implementation by a **dedicated cross-functional project team** to manage the contract.

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Office of Ayanda Ceba, Group Company Secretary

ANNEXURE B

TRANSNET

TO WHOM IT MAY CONCERN

CERTIFIED EXCERPT FROM THE MINUTES OF THE SPECIAL BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 14/1 HELD ON 24 JANUARY 2014 AT 16:10 IN BOARDROOM 4901, 49TH FLOOR, CARLTON CENTRE, 150 COMMISSIONER STREET, JOHANNESBURG

4.1 Acquisition of additional 100 Class 19E equivalent Dual Voltage Electric Locomotives and 60 Class 43 Diesel Locomotives

RESOLVED that the Board;

- Noted the risk to TFR MOS volumes through insufficient traction power resulting from the delay in the procurement of the 1064 Locomotives.
- Approved the investment in and procurement of 100 Electric Locomotives required for the Coal Export Line estimated at R3.8bn (excluding borrowing costs).
- Approved the confinement and award of the procurement for the 100 Electric Locomotives to CSR.
- Approved the investment and amendments to the Fleet Plan to procure 60 Class 43 Diesel Locomotives for General Freight estimated at R1.8bn (excluding borrowing costs).
- Approved an extension of the current Class 43 Diesel Locomotives contract for 60 additional locomotives to General Electric South Africa Technologies (Pty) Ltd.
- Delegated authority to the GCE to sign and conclude all relevant documents to give effect to the resolution, including the award and process approval.

14/1/14

Certified a true excerpt.

Kind regards



AYANDA CEBU
Group Company Secretary
Transnet SOC Ltd
Date: 24 February 2014

Transnet SOC Ltd
Registration Number
1992/000900/30

Carlton Centre
150 Commissioner Street
Johannesburg
2001

P.O. Box 72501
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F +27 11 308 2430

Directors: M. Mavundla (Chairperson) B. Molefe (Group Chief Executive) M. Tshwete T. Forbes M. Gorden M. Kroskova M. Moko M. R. J. M. M. Sharma M. Shumba
& Tshwete M. J. Tshwete A. Singh (Group Chief Financial Officer)
Executive

Group Company Secretary: ANC Ceba

www.transnet.co.za




"MG22"



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0015 Tel: 012 431 1115 Fax: 012 431 1039
Private Bag X9078, Cape Town, 8000 Tel: 021 451 6375/7 Fax: 021 461 2381/461 1741

Mr. Mafika Mkwanazi
Chairman
Transnet SOC limited
P.O. Box 72501
Parkview
Johannesburg
2122

Tel: 011 308 2309
Fax: 011 308 2312

Dear Mr. Mkwanazi

Application to the Shareholder Minister in terms of the Public Finance Management Act (PFMA) for the acquisition of 100 dual voltage electric locomotives for the export coal line

Your application dated 10 April 2014 refers.

Whilst understanding that the Market Demand Strategy targets must be achieved by Transnet as committed, matters of concern remain existent in the latest application received in aim of mitigating the delay of the 1064 locomotives delivery.

I appreciate that this acquisition will assist in realizing a portion of the Market Demand Strategy volumes and also avoid revenue losses, thereby contributing to the road to rail migration. While volume growth and retention is the basis of the business case to acquire these additional locomotives, the

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trend from previous years depicts that Transnet has consistently moved significantly lower than forecasted volumes. This therefore fuels the concern of the Department as to how realistic the assumptions are, which underpin the forecasted volume growth and therefore the capital investment programme needed to meet the assumed volume targets. While Transnet is encouraged to continue to stimulate the economy through capital investment, it remains a key focus of the Department to ensure that the capital programme is optimized and investments are made in the right areas.

In an effort to understand Transnet's rationale in the investment allocation, Transnet is requested to indicate the current capacity of the corridors in which the cascaded locomotives are expected to be deployed, as well as the reasons as to why those corridors were selected. In addition, Transnet is further requested to provide the incremental volumes expected to be derived for each of those corridors as a result of the deployment. This will assist and enable the Department to track the volume benefits of this acquisition.

Despite the benefit of increased traction capacity from additional locomotives, this project would be expected to also yield efficiency benefits. However, these benefits have not been quantified in the business case. In the absence of scientifically quantified benefits linked to the investment programme, it is almost impossible to hold Transnet accountable to deliver on efficiency improvements that are expected to be derived from the capital investment. Transnet is therefore requested to provide quantified and reliably measurable efficiency gains that should be extracted from this acquisition. This information should be provided by specific corridors or by business units as per the deployment of these locomotives.

I am also aware that post the submission of this application; there were engagement between officials of the Department and those of Transnet. As per those engagements, the following information was requested from Transnet and is still outstanding:

- Transnet was requested to supply the determined impact/total value add of the project to GDP.
- Since Transnet has already concluded the contract for this acquisition, subject to PFMA approval, I therefore request that Transnet furnish me with a copy of the agreement concluded with China South Railway (CSR) as this will provide an in depth understanding of the transaction that Transnet is entering into and enable the Department to properly assess the risks pertaining to the proposed transactions.

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- Considering that the 100 locomotives was not indicated by Transnet as part of the original mitigation action for the risk of delays in the 1,064 locomotives delivery, Transnet needs provide reasons for the deviation from the initial risk mitigation plan.
- In relation to the confined procurement plan for this application; from a risk perspective the concern is the possible litigation challenges that can come from other possible suppliers, thus impacting on the project execution and delivery timelines. More information on Transnet's mitigation plan in this regard is therefore required.
- Transnet to provide further information about the types of jobs/skills to be created through this transaction. The SOC is further requested to specify how many jobs are expected to be created and retained in downstream enterprises.
- Considering that this is a R4.84 billion transaction, the closed tender process could have been looked into rather than the confinement option as this would reduce Transnet's risk exposure to litigation challenges. Transnet is therefore requested to provide a full explanation as to why a closed tender process was not considered for this transaction.
- The business case has not provided a proper risk assessment of the project and the mitigations thereof. This would further assist in the Department's assessment of this business case.
- From a Procurement and Supplier Development (SD) perspective, since the tender was confined to one supplier, the Department would like review the SD commitments, the enforceability of these commitments and the current performance of this supplier against set targets on contracts that are currently in place. Transnet is therefore requested to provide all contracts with China South Rail (CSR) as well as a report on how CSR is performing against current SD commitments.
- Indication of whether other alternatives were considered is not evident in the business case. Whilst the 100 locomotives acquisition is one mitigation factor that is expected to partially mitigate the delays in 1064 locomotives delivery, what other alternatives were considered to mitigate the impact of the delay of the 1064 locomotive delivery.


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- Moreover, the amount indicated in the certified excerpt from the minutes of the special Board of Directors meeting held on 24 January 2014 differs from the amount indicated in the Transnet's section 54 application. I therefore request a resolution of the board of directors approving the transaction at the current transaction amount of R4.84 billion as the one indicated in the section 54 application relates to the initial approved amount of R3.9 billion.

Lastly, it is of grave concern to me that Transnet has failed to notify me timeously of a transaction which is of such significance in your business, even if the projected quantitative value was initially estimated below the monetary threshold for approval.

The significance and materiality framework agreed to in the 2013/14 Shareholder Compact, clearly stipulates that Transnet should provide me with notification on all acquisition and disposal of assets above R2 billion. It would therefore have been my expectation that after the Board had approved this acquisition, prior to entering into negotiations with the supplier, Transnet would have provided a notification. This failure to provide a notification timeously, has denied the Department an opportunity to review and engage on pertinent issues regarding this acquisition earlier in the process. Going forward, Transnet should involve the Department far earlier in its project planning phase so as to allow for alignment between the Department and Transnet.

In spite of the concerns raised above, I do acknowledge the business need for the acquisition of these additional 100 locomotives for the coal line in order to avail more locomotives to be cascaded to the General Freight Business. I therefore, grant Transnet the approval to acquire the 100 locomotives subject to Transnet addressing the concerns raised above and providing the Department with the outstanding information as outlined above.

The Department therefore requests Transnet to fully submit the requested information on or before 19 June 2014. As per normal, continual interaction is imperative so as to ensure that there is no misalignment/confusion on the expectation.

I trust that you will find the above in order.

Yours sincerely



MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2014/05/23


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"MG23"



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

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I trust that you will find the above in order.

Yours sincerely



MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2014/05/23


Kw

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Our Ref: Mr. T R Tshabalala/Miss. Y Silindane/
Miss. K Slaffa/jp/G01182

Your Ref: Mr. Ernest Nekhavhambe

Date: Friday, 12 April 2019

Fundudzi Forensic Services (Pty) Limited
51 Empire Road
Parktown, Johannesburg

FUNDUDZI FORENSIC SERVICES (PTY) LTD
REG No. 2009/010757/07
51 EMPIRE ROAD, PARKTOWN 2193
TEL: 011 403-2526

By Hand

Dear Mr. Nekhavhambe,

OUR CLIENT: MR. MALUSI GIGABA
RE: FORENSIC INVESTIGATIONS INTO VARIOUS ALLEGATIONS AT DPE

16:55
12 April 2019

- [1] The above matter and our previous correspondence bear reference.
- [2] Although:-
 - [2.1] the period afforded to our client to respond to your questions contained in your letter of request document (*"the request letter"*) was unreasonable, with the annexures to the questions having only been furnished to our offices seven working days ago;
 - [2.2] in some of your interrogatories, reference is made to certain documentation which has not been furnished;
 - [2.3] you have previously conducted an investigation into Transnet also at the instance of National Treasury, wherein you similarly requested our client to answer certain questions, which he did, and you apparently thereafter finalized a report, (either in final or interim form), relating thereto, yet you have failed to furnish our client with a copy of this report;
 - [2.4] it is not known what your present terms of reference are and the legal framework within which the current investigation is being conducted and the questions posed to our client,

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we have endeavoured to respond to your questions within this very short period of time and this is done strictly without prejudice to any of our client's rights.

- [3] We therefore need to, as we hereby do, make it clear to you at the outset that what is contained herein should not be construed as a closed list of facts or grounds upon which our client may rely on at a later stage, should a need arise.
- [4] Our client has instructed us to respond to your questions *seriatim* as follows:-

[4.1] Process in the appointment of board directors at SOC's

[4.1.1] Ad question 1.1.1. *"What was the reason you did not continue with the existing framework?"*

Answer: [a] As far as our client is aware, the Department of Public Enterprise ("the department") had a template for the SOC's which needed to be carried into the SOC's memorandum of incorporation. There was a distinction drawn between the appointment of non-executive board directors and that of executive board directors.

[b] Generally, leading up to the annual general meetings of the SOC's, the relevant department would conduct a skills gap analysis in respect of non-executive board directors, with the purpose of strengthening the relevant boards' capacities and if necessary the recommendation of a candidate[s] with the requisite skills, experience and relevant expertise to:

[i] address the challenges faced by the SOC's and align it with Government's strategic objectives; and

[ii] enhance representation to meet the country's demographics and Government's equity objectives.

[c] The departments' analysis/audit would be conducted in cases relating to the appointments, re-appointments, rotations and/or retirements of non-executive board directors. The department would use a list of candidates that it had on its database and attend to the process of vetting the



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candidate(s);

- [d] Having conducted the aforesaid analysis/audit, the department would then recommend candidate(s) for appointment or retirement or rotation to the Minister of Public Enterprise ("the Minister"). Should the Minister concur with the recommendations of the department, the Minister would sign a cabinet memorandum relating to such recommendations for cabinet approval;
- [e] Following cabinet's approval, the Minister would then appoint the new non-executive director(s) to the board for a fixed term of three years, subject to annual review;
- [f] The Minister would communicate the appointment of the new non-executive director(s) to the existing board, the new nominee(s) and other relevant stake holders after obtaining cabinet approval;
- [g] Generally the appointment(s) would become effective at the annual general meeting of the relevant company;
- [h] In respect of executive directors, the procedure known to our client was as follows:
 - [h.1] when a vacancy occurs or a need arises, the board would resolve on whether to appoint a candidate to serve in the executive position of the company;
 - [h.2] the board would identify, nominate, evaluate and appoint a candidate(s) for the relevant executive position provided that the Minister [in his/her capacity as a representative of Government as a shareholder] supported the proposed appointment of such candidate(s), prior to the appointment by the board;
 - [h.3] the board would then decide on the method of searching for a suitable candidate(s) for the executive position(s). This process may take different forms and would be in terms of the SOC's internal policies, which may include:


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- [h.3.1] advertisement of the vacancy and/or appointment of an executive entity to assist with the search for a suitable candidate(s); and/or
- [h.3.2] internal and external searches.
- [h.4] in addition to the procedure described in paragraphs h.3.1 to h.3.2 *supra*, the board directors would also be entitled to nominate possible suitable candidates for the executive position;
- [h.5] the board or a committee nominated by it would shortlist possible suitable candidates for interviews. Following the interviews, the possible shortlisted and interviewed candidates would complete a number of assessments to be conducted by an independent psychologist who would compile a comprehensive report on each candidate. Based on the interviews, the assessment results and accumulated scoring, the board or committee or panel would agree on the order of preference of these candidates;
- [h.6] thereafter the board would present the successful candidate(s) to the Minister for his/her approval and endorsement; and
- [h.7] following notification to cabinet the Minister would proceed with the appointment of the successful candidate(s).
- [i] What is contained in paragraphs [a] to [h.7] *supra* constitutes the framework which our client is aware of as having existed when he was appointed into office as the Minister of Public Enterprises and which was applied during his tenure as the Minister. To the extent that you are referring to a framework which is at variance with the framework as set out *supra*, then in that event, our client advises that he is not aware of such framework and you are requested to furnish these offices with the particulars of such framework. If the framework



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contended for by you was in writing, a copy is requested. If the framework contended for by you was verbal or tacit, the full details thereof are requested.

[4.1.2] Ad question 1.1.2. *"What process was followed in the appointment of board members during your tenure as Minister of DPE?"*

Answer: As far our client is aware, the procedure followed is as described in paragraphs [a] to [h.7] *supra*.

[4.1.3] Ad question 1.1.3. *"Was there a set policy and procedure manual in respect of the appointment of board members?"*

Answer: In respect of executive directors, the department had a template for the SOC's which each SOC could adopt and incorporate into its own memorandum of incorporation with any amendment it deemed fit. In respect of non-executive directors, the process described in paragraphs [a] to [h.7] *supra* applied.

[4.1.4] Ad question 1.1.4. *"Who was tasked with the recruitment of board members?"*

Answer: Kindly refer to the answer already given in paragraphs [a] to [h.7] *supra*.

[4.1.5] Ad question 1.1.5. *"How were the candidates vetted?"*

Answer: Kindly refer to the answer already given in paragraphs [a] to [h.7] *supra*.

[4.1.6] Ad question 1.1.6. *"Did you conduct interviews with the candidates envisaged to be appointed as board members?"*

Answer: Our client did not conduct interviews with the candidates envisaged to be appointed as board members/directors.

[4.2] Mahlangu's role as advisor

[4.2.1] Ad question 2.1 *"What was Mahlangu's role as your advisor?"*

Answer: Mr. Mahlangu was appointed in terms of Section 12A of Public Service Act 103 of 1994 as our client's special advisor. As our client's advisor, Mr. Mahlangu's responsibility was to advise our client on matters



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relating to our client's duties as the Minister.

[4.2.2] Ad question 2.2 *"What was Mahlangu's role in respect of the appointment of board members?"*

Answer: Please refer to the answer given in paragraph 4.2.1 *supra*.

[4.3] Transnet – Governance matter

[4.3.1] Ad question 3.1.1 *"What was Mahlangu's mandate within the Minister's office?"*

Answer: Please refer to the answer given in paragraph 4.2.1 *supra*.

[4.3.2] Ad question 3.1.2 *"Why was the e-mail dated 12 December 2011 sent to your private e-mail and not an official e-mail?"*

Answer: Our client used the e-mail address of nkanyezi.gigaba@gmail.com as his primary e-mail address during his tenure as the Minister of Public Enterprises.

[4.3.3] Ad question 3.1.3 *"Was Thembakazi Mnyaka given an opportunity to present her case to you as the Minister?"*

Answer: Mr. Mkhwanazi had raised concerns to our client regarding the divisive role played by Ms. Mnyaka on the board and our client convened Ms. Mnyaka for a discussion on the matter, which, of course, she denied. Our client then advised Ms. Mnyaka from the board to which she declined. Subsequently, the department advised our client that Ms. Mnyaka be retired from the board, to which our client agreed and this decision was subsequently implemented.

[4.3.4] Ad question 3.1.4 *"Did you or the department follow up on Mkhwanazi's allegations against Thembakazi Mnyaka prior to the decision to remove her from the board?"*

Answer: This became unnecessary after Ms. Mnyaka's removal from the board.

[4.4]

[4.4.1] Ad question 3.2.1 *"Why was the reduction of the board used as a reason for the removal of Thembakazi Mnyaka, Don Mkhwanazi and Iqbal Sharma whilst it is*



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Page | - 7 -

evident in Mahlangu's e-mail dated 12 December 2011 that, that was not the case?"

Answer: Although the retirement of these three members had the effect of reducing the number of board directors, our client sees no relevance of this and as such this question is a *non sequitur*. In any event, you are requested to furnish us with the particulars relating to the alleged reduction of the board and insinuation that is attached to this question. In this regard, our client requires (a) copy of the department's decision memorandum and cabinet memorandum relating to such reduction (b) the resolution of the board of Transnet approving such reduction and (c) the names of the directors who were supposedly removed and those that remained (d) the resolution of the board of Transnet which supposedly resolved on the removal of these directors (e) the documents lodged with the Companies and Intellectual Property Commission to give effect to the supposed removal of these directors. As far as our client is aware, the retirement of Mr. Don Mkhwanazi was based on the department's decision memorandum dated 26 May 2011 annexed hereto as "A"

[4.5]

[4.5.1] *Ad question 3.2.2 "Were Mahlangu's concerns as outlined in the e-mail to you communicated with Melancton Makobe, if not, why were they not communicated with him?"*

Answer: Our client is not aware of whether the concerns raised by Mr. Mahlangu were communicated to Mr. Makobe.

[4.6] Appointment of Rajesh Naithani

[4.6.1] *Ad question 4.1 "Attached to Mahlangu's email was document titled "Rajesh Naithani narrative" explaining a summary narrative on Naithani. According to the narrative document, "SAA has considered India to be a strategic route that requires to be fully exploited. The nomination of Dr Naithani is meant to assist in understanding the Indian market and to open up opportunities for SAA."*

[4.2] *We noted that the document was authored by "Ashu":*

[4.2.1] *"Did Mahlangu disclose where he*



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received the document from?"

Answer: No.

[4.2.2] *"Had you previously met with Naithani before his appointment motivation was sent to you?"*

Answer: No.

[4.2.3] *"Were you instructed by any parties outside of DPE to appoint Naithani, if yes, by whom?"*

Answer: No.

[4.2.4] *"Were you aware of Naithani's appointment with Ashu Chauha and Guptas before you appointed him to the SAA Board?"*

Answer: No.

[4.6.1] Ad Questions 4.3 and 4.4

Answer: Our client notes the e-mail described as MG4.

[4.6.2] Ad Question 4.5.1 *"Did Mahlangu disclose that he received the document from Ashu?"*

Answer: No.

[4.6.3] Ad Question 4.5.2 *"Why was there a need to appoint someone from India to the SAA board?"*

Answer: The reasons for appointing Dr. Naithani would be contained in a department's decision memorandum which our client is not in possession of, which would have served as the basis for the cabinet memorandum number 5 of 2012 annexed hereto as "B"

[4.6.4] Ad Question 4.5.3 *"Was Naithani not strategically placed at SAA to ensure that SAA closes down the Mumbai - Johannesburg route to make way for Gupta linked airline?"*

Answer: No, Dr. Naithani's appointment and the reasons thereof would be contained in a



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decision memorandum of the department which our client is not in possession of and this should be obtained from the department. In any event, this question is a *non sequitur*.

[4.6.5] Ad Question 4.5.4 *"As the Minister, were you satisfied that Naithani was the right candidate for SAA, if yes, how did you make that determination?"*

Answer: Yes. Our client relied on the recommendations of the department as contained in the memorandum presented by the department to our client. Our client had no reason to doubt the recommendation of the department in this regard. The full reasons thereof would be contained in a decision memorandum which the department should have, as our client does not have it. Given that board members were appointed for a fixed term subject to annual review, upon the subsequent assessment of Dr. Naithani's contribution to the board, our client decided to remove him from the board.

[4.6.6] Ad Question 4.6.1 *"How was Naithani appointed in the two sub-committees?"*

Answer: The information sought is not within our client's knowledge as the process would have been internal within the SAA board and does not involve the Minister.

[4.6.7] Ad Question 4.6.2 *"Was there a specific reason Naithani was appointed to the Tender Process Committee and Remuneration and Human Resource Committee?"*

Answer: Kindly refer to the answer given in paragraph 4.6.6 *supra*.

[4.6.8] Ad Question 4.6.3 *"Did you play any role in the appointment of Naithani in the two committees?"*

Answer: No.

[4.6.9] Ad Question 4.6.4 *"Was Naithani not strategically placed in Tender Process Committee to look after the interests of the Guptas or Gupta associates?"*

Answer: No. Kindly refer to the answer given in



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paragraph 4.6.6 *supra*. In any event, the question is a *non sequitur*.

[4.7] Objection to Mahlangu's proposed list

[4.7.1] Ad Question 5.2.1 *"Were there any consultations relating to the proposed list of board members of SAA?"*

Answer: The question is vague in that it does not set out which parties it refers to and also does not set out where the obligation to consult is founded. Suffice to state that as far as our client is aware, the process of the appointment of board members of SAA was attended to in the manner described in paragraphs [a] to [h.7] *supra*.

[4.7.2] Ad Question 5.2.2 *"Who was part of the consultations?"*

Answer: The question is vague and our client is not able at this stage to respond thereto. Our client reserves his rights to respond thereto once further particulars are furnished.

[4.7.3] Ad Question 5.2.3 *"Why did Nkomo raise objections that there was no consultation?"*

Answer: Our client does not know why Nkomo raised objections that there was no consultation process. This question should be addressed to Nkomo.

[4.7.4] Ad Question 5.2.4 *"What action did you take as the Minister after Nkomo raised her concerns?"*

Answer: Our client does not recall this given that he did not want to micromanage the appointment of board members as it could have created an impression that our client had an interest. As far as our client is concerned, there were sufficient internal processes within the department to consult, and when there were concerns regarding consultation, our client referred the issue back to the process.

[4.8] Appointment of Salim Essa on the Infraco board

[4.8.1] Ad Question 6.2.7.1 *"How was Salim Essa identified to be the board member of Infraco?"*



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Answer: As far as our client is aware, Salim Essa was appointed through a process articulated above relating to non-executive board directors. Kindly refer to the decision memorandum of the department dated 5 September 2011, annexed hereto as "C".

[4.9] Vetting of Salim Essa

- [4.9.1] Ad Question 7.2.1 "*As the Minister did you discuss Essa's directorships with him before you appointed him to the Infraco board?*"

Answer: No

- [4.9.2] Ad Question 7.2.2 "*Were you concerned with the potential conflict of interest that may have existed when you appointed Essa to the Infraco?*"

Answer: Our client is mystified about what conflict of interest is being referred to. Please furnish with us with the particulars relevant hereto in order for us to take instructions. As indicated in MG7, the process of appointing Mr. Essa was done in accordance with the processes of the department as indicated at the beginning of this letter.

- [4.9.3] Ad Question 7.2.3 "*Did you assign any DPE staff members to have a discussion with Essa in respect of his directorships, if yes, who did you assign and what was the outcome?*"

Answer: No.

[4.10] Anoj Singh's CV

- [4.10.1] Ad Question 8.1.1 "*Did you have any discussion with Mahlangu in respect of the appointment of Singh as the CFO of Transnet?*"

Answer: No.

- [4.10.2] Ad Question 8.1.2 "*What was your role in the appointment of Anoj Singh as the CFO of Transnet?*"

Answer: At the time that our client was appointed as the Minister, Mr. Singh was already appointed as the acting chief financial officer of Transnet. The board of Transnet made a request to our client through a letter dated



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19 December 2011, annexed hereto as "D" from the then chairperson of Transnet, Mr. Mafika Mkwanazi informing our client about the resolution of the board to appoint Mr. Singh as the chief financial officer of Transnet with effect from 1 January 2012 and sought our client's approval. The department recommended the appointment of Mr. Singh as the chief financial officer of Transnet through its decision memorandum dated 27 January 2012 annexed hereto as "E". The appointment of Mr. Singh was approved by cabinet as evidenced by the cabinet memorandum dated 9 October 2012 annexed hereto as "F". At the time of the appointment of Mr. Singh, he was already serving on the boards of *inter alia*, Nedbank and the Land Bank. Thus, if there were concerns regarding Mr. Singh and his appointment, these other institutions would have known and this should have been raised with our client when Mr. Singh's appointment was presented to Cabinet. Not a single member of Cabinet had raised concerns concerning his appointment.

[4.10.3] Ad Question 8.1.3 *"Did Mahlangu inform you where he obtained Anoj Singh's CV?"*

Answer: No.

[4.10.4] Ad Question 8.1.4 *"Why was Mahlangu sending Anoj Singh's CV to Tshediso Matona?"*

Answer: This question should be directed to Mr. Mahlangu.

[4.10.5] Ad Question 8.1.5 *"What role did you play in the appointment of Anoj Singh as the CFO of Transnet?"*

Answer: This question is a repeat of the question in 8.1.2 and consequently the answer in paragraph 4.10.2 is repeated herein.

[4.11] Relationship with the Guptas

[4.11.1] Ad Question 9.1 *"Do you have any relationship with the Guptas?"*

Answer: No.



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- [4.11.2] Ad Question 9.2 "*if the answer to the above is yes, what was/is the nature of the relationship with the Guptas or their associates?*"

Answer: The question has become academic and falls away in view of the answer given in paragraph 4.10.1 *supra*.

- [4.11.3] Ad Question 9.3 "*Did Ashu Chawla, Gupta family and their associates/Salim Essa have any influence on the appointment of board members at the various SOC boards?*"

Answer: Our client is not aware of any influence which Ashu Chawla, Gupta family and their associates/Salim Essa may have had on the appointment of board members at the various SOC's boards.

- [4.11.4] Ad Question 9.4 "*Did Ashu Chawla, Gupta family and their associates/Salim Essa benefit in any transactions at the various SOC following the appointment of board members recommended by Mahlangu or you to the department?*"

Answer: Our client is not aware of any benefit which Ashu Chawla, Gupta family and their associates/Salim Essa derived from any transactions at the various SOC [sic] on the recommendation of any of the officials of the department.

- [4.11.5] Ad Question 9.5 "*Did you receive any benefit from the Guptas or their associates, following the appointment of board members recommended by Mahlangu to the department?*"

Answer: No.

- [5] You will note that our client has requested further particulars to some of the questions which are so vague as to be incapable of a precise response. In addition thereto, our client is not able to fully answer to some of the questions which relate to the matters which are alleged to have occurred more than seven years ago. Owing to the lapse of this period, our client would need access to the relevant documents in the possession of the department, which he had asked for and was only furnished with some of these documents.
- [6] It is for the aforesaid reason that this letter and response should under no circumstances be construed should as an admission, waiver, acquiescence, election or representation for purposes of estoppel



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whatsoever, and our client's rights remain expressly reserved.

- [7] In conclusion, our client has instructed that you previously conducted an investigation into the Transnet locomotives acquisition in which you requested answers from him, which he gave. The report relating to this investigation has not been furnished to our client, despite the fact that he may be an affected party (in view of the fact that you had sought answers from him). You are requested to furnish your report on the Transnet investigation by return hereof, together with your terms of reference relating to the current investigation into the department at the instance of National Treasury. In addition hereto and in so far as you refer to e-mails, in particular, e-mails between Mr. Mahlangu and our client, you are hereby requested by return, to furnish us with proof that the access to the said e-mails were obtained lawfully as our client has never consented to you accessing his e-mails and has never been made aware of any order of court authorising you access to his e-mail account.
- [8] All of our client's rights remain expressly reserved, including but not limited to supplementing his answers at a later stage, should a need arise.

Yours Faithfully,

Sgd: T.R. TSHABALALA

TSHABALALA ATTORNEYS

Per: Reginald Tshabalala/Yolanda Silindane/Kim Slaffa

E-mail: jazmin@tshabalala.com / yolanda@tshabalala.com / kim@tshabalala.com



[Handwritten signature]
Kaw

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

TO : MR. MALUSI GIGABA, MP
MINISTER

FROM : MATSIETSI MOKHOLO
DDG: LEGAL AND GOVERNANCE

DEPARTMENT OF PUBLIC ENTERPRISES
PRIVATE BAG 914/PRIVAATSAK 915
2013-05-20
1014 HLD 0028
OPENBARE ONTPANING

IDMS REF : 154950

SUBJECT : EXTENSION OF THE PREFERENTIAL PROCUREMENT POLICY
FRAMEWORK ACT (PPFA) REGULATIONS TO THE LOCOMOTIVE
PROCUREMENT

DATE : 5 FEBRUARY 2012

The memorandum seeks to get the Minister's approval for a letter to the Minister of Finance that requests that the Instruction Note issued by the Minister of Finance pertaining to the Transnet locomotive fleet procurement is reissued so as to exclude certain elements of the PPPEA.

2.1 The procurement of 1064 locomotives is the the largest procurement of equipment in Transnet's history, with a projected cost of R32 billion.

2.2 In December 2011, the SOC reporting to the DPE were granted exemption from selected PPPFA Regulations by the Minister of Finance. The essence of the exemption was to

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EXTENSION OF PPPFA TO THE LOCOMOTIVE FLEET PROCUREMENT

exempt the SOC from the application of the 80/20 and 90/10 preference points system and the use of functionality as a threshold criterion. In terms of the exemption, the SOC would need to comply with any instructions from National Treasury relating to setting minimum local content thresholds for procurement from designated sectors (Regulation 9(1)).

- 2.3 Transnet issued a public advertisement on 13/7/2012 informing potential suppliers that tender documents pertaining to the procurement of the 1064 locomotives would be available for collection on the 20/7/2012. On 16/7/2012, (i.e. after the procurement was advertised) the Treasury issued an Instruction Note which both imposed minimum local content thresholds and enforced the application of the 90/10 points system. This was problematic for a number of reasons:
- Issuing an Instruction Note for Rolling Stock after a tender had already been advertised, when both the Minister of DPE and the CEO of Transnet announced that the procurement was imminent at least four months prior to its release, appears negligent. The DPE is aware that National Treasury was in possession of the relevant information for the Instruction Note from the DTI seven months before the procurement. Effectively changing the policy related rules for the procurement at the last minute creates a level of uncertainty in SOC procurement that is untenable.
 - In the Instruction Note, the Treasury effectively reimposed a regulation (the 90/10 rule) from which the SOC had been explicitly exempted in December 2011. It is questionable whether National Treasury is legally empowered to, in effect, revoke the general exemption that was granted for a period of a year for any individual procurement at its sole discretion.
 - Of note, is that the PRASA fleet procurement had a 15 point supplier development component with National Treasury's approval – in the context of the Instruction Note, when Transnet approached Treasury around the need to include a supplier development points, Treasury denied this request. This suggests a substantial inconsistency which creates further uncertainty in the environment.
- 2.4 The application of the 90/10 rule effectively increases the risk that Transnet will pay opaque and costly premiums for the localisation of designated items whilst removing Transnet's ability to incentivise suppliers to localise in areas that are viable but that are excluded from the Instruction Note.

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EXTENSION OF PPPFA TO THE LOCOMOTIVE FLEET PROCUREMENT

- 2.5 On 7 December 2012, the Minister sent a letter to the Board of Transnet, requesting them to continue with the locomotive procurement as if they had exemption from the PPPFA. Should Transnet continue with the procurement on this basis, without a clear resolution with Treasury having been met, the procurement could be challenged by a supplier as illegal. The ramifications of having the locomotive tender declared illegal will be to fundamentally delay the implementation of the Market Demand Strategy and seriously damage Transnet's credibility in the supplier markets. The locomotive fleet tender is currently scheduled to be closed at the end of April 2013. Consequently, the locomotive procurement situation needs to be resolved as soon as possible, regardless of any resolution to the broader issue of SOC exemption from the provisions of the PPPFA.
- 2.6. Based on historical experience, it is extremely unlikely that this situation will be resolved rapidly at an Officials level. Given the urgency of the situation, it is consequently recommended that the Minister sends the attached letter to the Minister of Finance requesting him to urgently re-issue the Instruction Note relating to the locomotive fleet procurement having withdrawing any reference to Transnet complying with the 90/10 rule in the procurement. Should the Minister of Finance not be in agreement with this proposal, it is proposed that an urgent bi-lateral meeting be convened with the Minister of Finance before 20 March 2013.

3. FINANCIAL IMPLICATIONS

None arising from this memorandum.

4. RECOMMENDATION

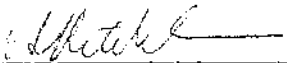
It is recommended that the Minister:

- 4.1 Notes the significant threat posed to Transnet's locomotive fleet procurement by the Instruction Note issued by National Treasury that effectively withdraws Transnet's exemption to the PPPFA issued by National Treasury in November 2011 for the purposes of the procurement.
- 4.2 Sign the attached letter to the Minister of Finance requesting him to reissue the Instruction Note relevant to the locomotive fleet procurement having withdrawn any reference in the Note to Transnet complying with the 90/10 rule as defined in the PPPFA.





EXTENSION OF PPPFA ON DPE SOC

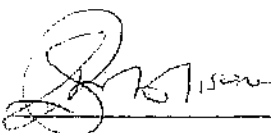
Memorandum prepared by:



EDWIN RITCHKEN
STRATEGY ADVISOR
DATE: 28/2/13

Memorandum reviewed and supported by:



KGOMOTSO MODISE
DDG: TRANSPORT
DATE: 28/2/2013


M. A. MATSIETSI MOKHOLO
DDG : LEGAL AND
GOVERNANCE
DATE: 08/03/2013

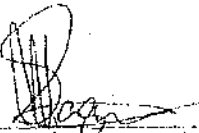

JACKY MOLISANE
DDG : STRATEGIC
PARTNERSHIPS
DATE: 11/03/2013


MR TSHEDISO MATONA
DIRECTOR-GENERAL
DATE: 20/3/2013

DATE:
The tone of the draft letter
is ~~was~~ angry, and I don't think
it would serve the desired
purpose.


MR MALUSI GIGABA, MP
MINISTER
DATE: 20/04/13

APPROVED / NOT APPROVED / COMMENTS
I agree with the DG that the contents of
the letter are not cordial. I suggest the
last paragraph be ~~edited~~ rectified and made
more cordial.


MR. BULELANI GRATITUDE
MAGWANISHE, MP
DEPUTY MINISTER
DATE: 20/04/13

NOTED/COMMENTS
I need a briefing on this
matter.



This letter is extremely urgent

I want the letter rectified as indicated

It had cut on p 2, and I must
find it on my desk tomorrow

W. C. W. G.

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W. C. W. G.
K. W. G.



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Pravin Gordhan
Minister of Finance
Private Bag X 115
Pretoria
0001

Tel: 012 315 5372
Fax: 012 323 3262

Dear Colleague

Re: The Preferential Procurement Policy Framework Act (PPPFA) and the
Transnet Locomotive Fleet Procurement

With reference to your letter received on 12 December 2012 regarding the extension of the PPPFA to the State Owned Companies (SOC). There is a particularly urgent situation surrounding the Transnet Locomotive Fleet Procurement that I believe requires immediate action and resolution.

In December 2011, the SOC reporting to the DPE were granted exemption from selected PPPFA Regulations by your office. The essence of this was to exempt the SOC from the application of the 80/20 and 90/10 preference points system and the use of functionality as a threshold criterion. In terms of the exemption, the SOC would need to comply with any instructions from National Treasury relating to setting minimum local content thresholds for procurement from designated sectors (Regulation 9(1)).

Transnet issued a public advertisement on 13/7/2012 informing potential suppliers that tender documents pertaining to the procurement of the 1064 locomotives would be available for collection on 20/7/2012. On 16/7/2012, i.e. after the procurement was advertised, your Office issued an Instruction Note which both imposed minimum local content thresholds and enforced the application of the 90/10 points system. This has created the following situation that must be addressed:

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- The Instruction Note for Rolling Stock was issued after the tender had already been advertised, and often both myself and the CEO of Transnet had announced that the procurement was imminent at least four months prior to its release. The DPE is aware that National Treasury was in possession of the relevant information for the Instruction Note from the DTI seven months before the procurement. Effectively changing the rules for the procurement of this magnitude at the last minute creates a level of uncertainty, and risks in SOC procurement process.
- In the Instruction Note, the Treasury effectively reimposed a regulation (the 90/10 rule) from which the SOC had been explicitly exempted by your Office in December 2011 for a period of one year. National Treasury, in effect, revoked the general exemption that was granted for any individual procurement at its sole discretion. This also creates an environment of extreme uncertainty in the SOC procurement environment.
- Of note, is that the PRASA fleet procurement had a 15 point supplier development component in the evaluation process with the approval of National Treasury. On receiving the Instruction Note, when Transnet approached the relevant National Treasury officials around the need to include supplier development points in the locomotive fleet procurement, Treasury flatly refused this request. This suggests an inconsistency in National Treasury's practice which creates a further level of uncertainty in the SOC procurement environment.

In my view, as communicated to you in my letter dated 10/10/2012, the application of the 90/10 rule effectively increases the risk that Transnet will pay opaque and costly premiums for the localisation of designated items whilst removing Transnet's ability to incentivise suppliers to localise in areas that are viable but that are excluded from the Instruction Note.

Under the uncertain circumstances created by the issuing of the Instruction Note, and given the strategic importance from an industrial development perspective of the locomotive procurement, I have told Transnet to continue with the procurement as if they are exempt from the 90/10 provisions of the PPPFA. I am therefore requesting you as a matter of urgency to re-issue the Instruction Note withdrawing any reference to Transnet complying with the 90/10 rule.

I look forward to your understanding and cooperation in this regard.

Yours sincerely

MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES

Date:



Malusi Gigaba

"MG26"



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: (012) 431 1113/1150 Fax: (012) 431 1039
Private Bag X9079, CAPE TOWN, 8000 Tel: (021) 461 6370/7469 6160 Fax: (021) 466 2381/461 1741

Mr Pravin Gordhan
Minister of Finance
Private Bag X 115
Pretoria, 0001

Tel 012 315 5372
Fax 012 323 3262

Dear Colleague

The Preferential Procurement Policy Framework Act (PPPFA), Its Regulations and National Treasury (NT) Instruction Note on Rolling Stock and the Transnet Locomotive Fleet Procurement

I refer to your letter received on 12 December 2012 regarding the extension of the PPPFA to State Owned Companies (SOC).

I would like to assure you of my support for the stance taken by the NT on the issues related to the PPPFA contained in your letter. Your suggestion on restricting exemptions to strategic projects which needs to be addressed on a case by case basis is a pragmatic approach which needs to be explored in detail as soon as possible. I am also of the view that a coherent, robust and transparent framework needs to be applied to these case by case assessments which will create a level of certainty in a complex SOC procurement environment.

However, there is an urgent situation surrounding the Transnet Locomotive Fleet Procurement that I believe requires immediate action and resolution. This urgency emanates from the potential impact on Transnet's ability to deliver on their Corporate Plan commitments and the legal risks and challenges that Transnet will possibly be exposed to due to uncertainty for both Transnet and potential suppliers regarding the implications of NT's Instruction Note for Transnet's procurement.

In principle, I share NT's concern with the potential premium paid by Government for Supplier Development, Localisation and B-BBEE. However, I believe there are competitiveness and competition concerns associated with markets for certain components designated in the NT Instruction Note which need to be considered to avoid unintended contradictory outcomes to the objectives being pursued in NT's Instruction Note.

The DPE together with Transnet is of the view that their locomotive prices are benchmarked based on previous transactions and prevailing international pricing. Based on analysis performed by Transnet, we believe that Transnet's procurement methodology allows for the possibility to exceed the minimum local content thresholds specified in the NT Instruction

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Note. In this approach, it is possible to aim for up to 70% localisation for diesel locomotives with the potential price premium associated with cost of localisation being estimated to be 9.1% initially and 77% localisation for electric locomotives with the potential price premium cost of localisation being 8% initially, with a total price premium averaging out at approximately 2% in total. This percentage is calculated as the average price premium paid for the locomotives including learning curve over the course of production.

National benefits arising from the approach proposed by Transnet will result in enhanced national capability across a range of sectors resulting in multiplier benefits of localising where R1 of a locomotive is expected to have multiplier downstream benefits of 2.74 times as much (with regard for example to job creation, skills development, additional taxation, exports etc.). This comes at an average price premium of less than 2% in the 60% to 75% localisation range.

In Transnet's estimates, using multiplier data published as part of IPAP2 (2011) the benefit to the South African economy will be of the order of R68 billion approximately for an expected total premium on the 1064 locomotives of approximately R400 million resulting in a benefit to cost ratio of 170 to 1 in favour of localisation.

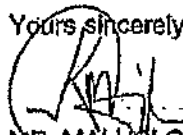
Furthermore the potential effect of the designation of certain components would be to entrench industry concentration or create single source suppliers. Based on analysis conducted for it, Transnet believes that the Instruction Note could create a premium of R3m to R4m per locomotive. The same analysis demonstrates that allowing OEMs some freedom to determine where localisation is applied would result in localisation price premiums of only 2% to achieve much higher levels of localisation of more than 70%.

I acknowledge that these issues merit deeper investigation. However I'm persuaded that there are substantial socio-economic and industrial development benefits that could be derived from Transnet's locomotive fleet procurement if the tender was allowed to proceed as advertised, which was done prior to the issuance of the NT's Instruction Note. I am thus hereby appealing for your support for us to let Transnet conclude this procurement process with exemption from the Instruction Note's re-instatement of the 90/10 provision of the PPPFA in SOC capital procurements.

In addition, to ensure that the procurement is effectively leveraged to achieve the broader industrial and socio-economic objectives that we both equally seek to promote, I would agree with the process suggested by yourself of having senior officials from DPE, NT, DTI and Economic Development Department consider terms and conditions for exemptions that can be applied on a case by case basis, and that can be used to monitor the current Transnet locomotive procurement process as it unfolds.

I thank you once again for your assistance on this matter and will keenly await your response.

Yours sincerely,


MR. MALINGI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES

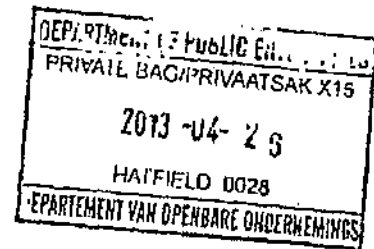
Date: 2013/04/16


Kw

"MG27"



MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA



Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3282
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Ref. M3/15/21 (1149/13)

Mr Mafisi Gqaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Dear Mafisi,

THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 (PPPFA), ITS REGULATIONS AND NATIONAL TREASURY INSTRUCTION NOTE ON ROLLING STOCK AND THE TRANSNET LOCOMOTIVE FLEET PROCUREMENT

I refer to your letter dated 16 April 2013 regarding the above mentioned matter.

I concur with your view to leverage on this procurement to derive substantial socio-economic and industrial development objectives.

On scrutiny of the Transnet tender document published in July 2012, it is noted that the tender was structured in a manner that is not in conflict with the National Treasury's instruction note issued in July 2012.

In light of the above, I am of the view that Transnet should proceed with the evaluation of the tender in terms of the criteria stipulated therein.

Yours sincerely

PRAVIN J GORDHAN
MINISTER OF FINANCE
Date: 26-04-2013



"MG28"

public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

16/1/12/1 DECISION MEMORANDUM

DEPARTMENT OF PUBLIC ENTERPRISES
PRIVATE BAG/PRIVAATBAK X15
2014 -05- 19
HATFIELD 0028
DEPARTEMENT VAN OPENBARE ONDERNEMINGS

TO : MR. MALUSI GIGABA, MP
MINISTER

FROM : MS. KGOMOTSO MODISE
DEPUTY DIRECTOR-GENERAL : TRANSPORT

FILE REF : 16/2/R

IDMS REF : 172802

SUBJECT : RESPONSE TO GENERAL ELECTRIC SOUTH AFRICA (GESA)-LETTER
OF GRATITUDE REGARDING TRANSNET'S PROCESSES FOR THE
DIESEL LOCOMOTIVES ACQUISITION

DATE : 15 MAY 2014

1. PURPOSE

To request the Minister to sign the response letter addressed to the General Electric South Africa (GESA) President and Chief Executive Officer (attached hereto as "Annexure B") regarding GESAs comments on the tender process transparency for the 465 diesel locomotives, if in agreement with the contents thereof.

2. SUMMARY

The Minister received a letter (attached hereto as "Annexure A") from the General Electric South Africa's (GESA) President and Chief Executive Officer, Mr Tim Schweikert, dated 27 March 2014. The letter expressed gratitude to Minister, the Department and Transnet regarding the transparency, fairness and objectivity of the Transnet Freight Rail tender TFRAC-HO-8609 for the supply of 465 diesel locomotives. GESA is one of two successful bidders that was awarded the contract to supply the 465 diesel locomotives in Transnet's 1064 locomotive acquisition.

Lefapha la Dikgwabo tsa Puso • Lefapha la Dikgwabo tsé Mmusó • UMnyango wezinkampani zikaHulumeni • Muhasho wa Mabindu a Muvhuso • Departement van Openbare Ondernemings • Kgoro ya Dikgwabo tsé Setshaba • Ndzwulw ya Mabhindzu ya Mfumo • LiTiko leTemabhezini eHulumende • ISebe lezaMashishini oMbuso

• Confidential •

16/1/12/1
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RESPONSE TO GENERAL ELECTRIC SOUTH AFRICA (GESA) LETTER OF GRATITUDE REGARDING TRANSNET'S PROCESSES FOR THE DIESEL LOCOMOTIVES ACQUISITION

In 2012, Transnet embarked on a tender process for the acquisition of 1064 locomotives to support the General Freight Business by increasing its rolling stock in order to capture more volumes. Transnet awarded four companies, i.e. CSR Zhuzhou Electric locomotive; CNR Rolling stock SA; GESA and Bombardier Transportation SA, the contracts to supply the 1064 locomotives. CSR Zhuzhou Electric Locomotive and Bombardier Transportation SA will supply 599 electric locomotives, whilst General Electric SA Technologies and CNR Rolling Stock SA will provide 465 diesel locomotives.

3. FINDINGS AND ANALYSIS

3.1. The 1064 locomotive acquisition process followed a procurement strategy that was approved by the Transnet Board of Directors and was designed to ensure transparency, fairness and value maximisation and includes the following key aspects:

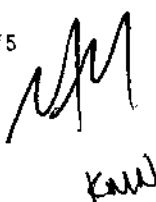
- Alignment to Government's socio-economic policy framework;
- Skills development and job creation;
- Open tender process; and
- Evaluation methodology that includes weighting for price (60%), supplier development (20%) and Broad-based Black Economic Empowerment (20%).

3.2. In its 1064 locomotive section 54 PFMA application, Transnet committed to reform all its procurement activities in order to align them in an integrated manner with national developmental goals, relevant legislation that enforces the goals and relevant governmental supply chain management approaches that are cost-effective. Transnet's procurement of rolling stock and in particular the 1064 locomotives provides a unique opportunity for both localised assembly and localised manufacture of component parts, but in addition an opportunity to strategically re-position the rolling stock industry.

3.3. Transnet also committed to promote open competitive bidding as its default procurement mechanism since this is the best means of obtaining value for money and all Transnet procurement shall be done in a way that ensures that Transnet obtains quality goods and services at competitive prices. It was therefore decided to follow an open tender process for the locomotives acquisitions.

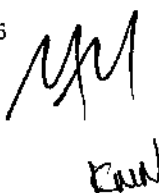
3.4. The procurement strategy, which informed the RFPs, focussed on the following aspects:

- Black economic empowerment is broad-based and is all inclusive;


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RESPONSE TO GENERAL ELECTRIC SOUTH AFRICA (GESA)-LETTER OF GRATITUDE REGARDING TRANSNET'S PROCESSES FOR THE DIESEL LOCOMOTIVES ACQUISITION

- Procurement that focuses consistently on areas that have the potential for creating employment on a large scale; and
 - Includes the local content percentages as detailed in the National Treasury Instruction Note issued on 16 July 2012 that highlights a local content percentage of 55 percent for diesel and 60 percent for electric locomotives.
- 3.5. In driving the localisation and transformation objectives, Transnet formulated the tender evaluation methodology that increases the weighted scoring for supplier development and Broad-Based Black Economic Empowerment (B-BBEE), i.e. the 60/20/20 approach, 60% for price, 20% for supplier development and 20% for B-BBEE. This approach to localisation targets was expected to create 30% greater total economic benefit than the traditional 90/10 approach which is required by the Preferential Procurement Policy Framework Act (PPPFA), 90% being price and 10% B-BBEE. The 1064 procurement was granted exemption from the PPPFA and thereby allowing Transnet to apply the 60/20/20 approach.
- 3.6. The process was supervised by the Board of Directors through a sub-committee – the Board Acquisitions and Disposals Committee which was made up of independent non-executive directors. Transnet confirmed that none of the local or empowerment partners of any of the bidders failed Transnet's conflicts of interest test. All the winning bidders met Transnet's strict requirements, including technical ability; price; Broad Based Black Economic Empowerment; and localisation among others.
- 3.7. The letter from GESA bears testimony to Transnet's successful deployment of its procurement strategy for the 1064 locomotives procurement.
- 3.8. It is critical that the procurement is leveraged to position South Africa as an export hub for locomotives and associated components into Africa. In particular, we do not want Transnet's volumes to be leveraged by OEMs like GESA so that they can be positioned to export into Africa while by-passing the South African industry. Transnet has been requested to begin negotiations with the Original Equipment Manufacturers (OEMs) to assess to what extent this can be secured.
- 3.9. The locomotive fleet procurement is a unique opportunity to develop our national industry. It is thus critical that an extremely robust monitoring mechanism is put in place to ensure on a monthly basis that the OEMs are delivering on their supplier development and localisation obligations. It is also imperative that if an OEM persists in not delivering on these



**RESPONSE TO GENERAL ELECTRIC SOUTH AFRICA (GESA)-LETTER OF GRATITUDE REGARDING
TRANSNET'S PROCESSES FOR THE DIESEL LOCOMOTIVES ACQUISITION**

obligations, that their contract is terminated. Transnet has been requested to share the provisions that it has made in this regard with the Department.

3.10. Minister is requested to sign the attached letter to General Electric South Africa.

4. FINANCIAL IMPLICATIONS

None for the Department.

5. CONSULTATION/PROJECT TEAM

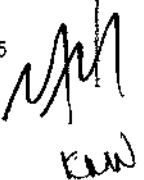
Dion Harold (Transport Enterprises), Femida Mahomed (Strategic Partnerships).

6. RECOMMENDATIONS

It is recommended that the Minister:

6.7. notes the letter from General Electric South Africa related to the Transnet 1064 locomotive tender process stating that it was fair, transparent and objective; and

6.8. signs the letter attached hereto as "**Annexure B**" to the President and Chief Executive of General Electric South Africa.

Handwritten signature and initials in the bottom right corner of the page.

RESPONSE TO GENERAL ELECTRIC SOUTH AFRICA (GESA) LETTER OF GRATITUDE REGARDING TRANSNET'S PROCESSES FOR THE DIESEL LOCOMOTIVES ACQUISITION

Memorandum prepared by:

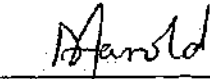


COLLEN RAMONI

ASD: TRANSPORT

DATE: 15/05/2014

REVIEWED AND SUPPORTED:



DION HAROLD

D: TRANSPORT

DATE 15/05/2014



FEMIDA MAHOMED

CD: STRATEGIC

RELATIONSHIPS


DATE: 16/05/2014



KGOMOTSO MODISE

DDG: TRANSPORT

DATE: 16/05/2014



MR. TSHEDISO MATONA

DIRECTOR-GENERAL

DATE: 19/5/2014

RECOMMENDED / NOT RECOMMENDED / COMMENTS

Please see edit to pr draft letter.
"statu quo" is inappropriate wording in
the context? Edits expected

19/5/14



MR. MALUSI GIGABA MP

MINISTER

DATE: 2014/05/23

APPROVED / NOT APPROVED / COMMENTS



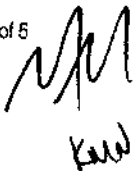
MR. GRATITUDE

MAGWANISHE, MP

DEPUTY MINISTER

DATE: 2014/05/20

NOTED / COMMENTS





public enterprises

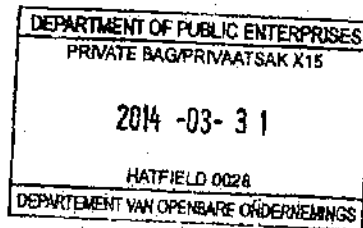
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Ministry - Incoming Correspondence / Request

MINISTER

Date Received:	01 April 2014
From:	Tim Schwelkert President & CEO: General Electric (GE) South Africa
Subject:	Thank You
<p>Dear Minister</p> <p>Please see attached letter of gratitude to Minister, DPE, Transnet Board and Senior Management for ensuring that the Transnet Freight Rail's tender TFRAC-HO-8609 for the supply of diesel locomotives was transparent, fair and objective.</p>	
<p>Regards Butle</p>	
Action/Comment	<p>Copy to DM and DG</p> <p>Copy to Transport and Legal</p>
Minister of Public Enterprises Comments:	<p><i>Draft</i> Noted. <i>Key cap</i> Response and transparency is our government's policy, which is in line with international standards and the world-acclaimed principle of good governance.</p> <p>It is our fervent desire to see the companies that won the contract complying with our policies in terms of localisation, BBE/E and delivering our much-needed locomotives on time to enable Transnet to meet its targets in terms of the Market Demand Strategy.</p>
Date:	2014/04/01

MM
faw



GE South Africa

Tim Schwellert
President & CEO

Unit 5, 130 Gazelle Avenue
Corporate Park South
Midrand 1685 South Africa

T +27-11-237-0197
tim.schwellert@ge.com

Mr Malusi Gigaba, MP
Minister of Public Enterprises
Private Bag X 15
Pretoria
0001

By email: Koketso.Modiadil@dpe.gov.za

27 March 2014

Re: Thank You

Dear Honourable Minister,

On behalf of our President and Chairman, Jeff Immelt, GE South Africa and GE South Africa Technologies (GESAT) management and staff, I would like to express my sincere gratitude to the Hon Minister, the DPE, Transnet Board and Senior Management for ensuring that the Transnet Freight Rail's tender TFRAC-HO-B609 for the supply of diesel locomotives was transparent, fair and objective.

We are pleased that GESAT is one of the two successful bidders and would like to reaffirm our commitment to working with our build partner, Transnet Engineering and local suppliers to deliver high quality product within the allocated turnaround time. Furthermore, GE remains committed and aligned to the NDP objectives of job creation, skills development, promoting regional integration and the development of "Black Industrialists" through our Supply Development Vehicle that will assist black-owned SMEs with access to funding and skills development, and the Customer innovation Centre that will become a local GE center of excellence that will lead to innovation and technology transfer to the rest of the African continent.

We look forward to our continued cordial relations with the Honourable Minister and the DPE as we continue with this exciting journey of revitalizing industrialization in this country.

Best regards,

Tim Schwellert
President & CEO - GE South Africa

General Electric Company

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**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X115, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 431 1038
Private Bag X8078, Cape Town, 8000 Tel: 021 481 6376/7 Fax: 021 463 2381/481 1741

Mr. Tim Shweikert
President & Chief Executive Officer
General Electric South Africa
Unit 5, 130 Gazelle avenue
Corporate Park South
Midrand
1685

Email: tim.shweikert@ge.com
Tel: 011 237 0197

Dear Mr. Shweikert

RE: THANK YOU

Thank you for your letter dated 27 March 2014 relative to the above matter.

I am pleased to note that Transnet's 1064 locomotive procurement process was implemented with the highest levels of transparency, fairness and objectivity. As you may be aware, transparency is a key element of our Government's policy, which is in line with international standards and world-acclaimed principles of good governance. It is our fervent desire to see companies like General Electric South Africa who were the successful bidders for the locomotive tender, complying with our policies in terms of localisation, supplier development, Broad-Based Black Economic Empowerment (BBBEE); and delivering our much needed locomotives on time to enable Transnet to meet its targets in terms of its Market Demand Strategy (MDS).

The locomotive fleet procurement is a unique opportunity to develop our national industry and therefore delivery by OEMS against localisation and supplier development contractual obligations is critical and will be monitored closely by Transnet as well as the Department of Public Enterprises. It is also imperative that this procurement is leveraged to position South Africa as an export hub for locomotives and associated components into Africa and I have requested Transnet to engage OEMS in this regard.

I urge you to advise the Department of progress regularly so that we are fully aware of the project schedule.

Yours sincerely



MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2014/05/23



"MG30"

**public enterprises**

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

TO : MR. MALUSI GIGABA
MINISTER

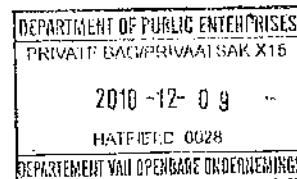
FROM : MS. URSULA FIKELEPI
ACTING DIRECTOR-GENERAL

FILE REF : 16/1/1

IDMS REF : 121157

**SUBJECT : APPOINTMENT, RE-APPOINTMENT AND TERMINATION OF TRANSNET
BOARD MEMBERS**

DATE : 8 DECEMBER 2010



1. In Transnet's Annual General Meeting held on 24 July 2010, it was resolved that the non-executive directors of Transnet be re-appointed, in terms of Article 95 of Transnet's Articles of Association, until the finalisation of a review conducted by the Representative of the Sole Member of the Company (minutes of the meeting attached as Annexure "A").
2. In light of the Board Review, the Department prepared letters of appointment of the new Board members and re-appointment of some of the current Board members (attached as Annexure "B") and the termination of the term of some of the current Board members (attached as Annexure "C").
3. The Minister is requested to sign the attached letters.



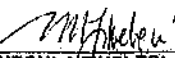
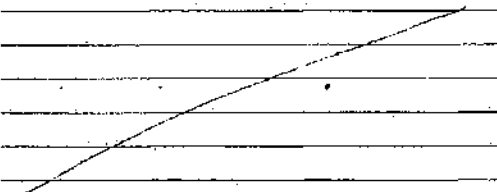

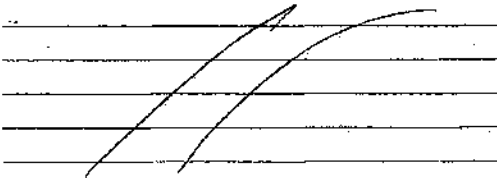
Lelapha la Dikgwabo tsa Puso • Lelapha la Dikgwabo tsa Mmuso • Umnyango wezinkampani zikafutsheni • Muhasho wa Mabindu a Muvhuso • Departement van Openbare Ondernemings • Kgoro ya Dikgwabo tsa Setshaba • Ndzawulo ya Mabhindzu ya Mlomo • Litiko la Temabhisini aHulumenda • ISebe lezaMashishini eMbuso

- Confidential -

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8112

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Kand

APPOINTMENT, RE-APPOINTMENT AND TERMINATION OF TRANSNET BOARD MEMBERS

<p>Memorandum prepared by:</p> <div></div> <p>MELANCHTON MAKOBE CD: LEGAL COUNSEL DATE: 8/12/2010</p>	
<p>REVIEWED AND SUPPORTED:</p> <div></div> <p>RAISIBE LEPULE ACTING DDG: TRANSPORT DATE: 8/12/2010</p>	
<div></div> <p>MS URSULA MKELEPI ACTING D-G DATE: 08/12/2010</p>	<p>RECOMMENDED / NOT RECOMMENDED / COMMENTS</p> <div></div>
<div></div> <p>MR. MALUSI GIGABA (MP) MINISTER DATE: 2010/12/09</p>	<p>APPROVED / NOT APPROVED / COMMENTS</p> <div></div>


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MINUTES OF THE 20TH ANNUAL GENERAL MEETING OF TRANSNET LIMITED HELD ON 24 JULY 2010 AT 09:00 IN BOARDROOM 4901, 49TH FLOOR, CARLTON CENTRE OFFICE TOWERS, 150 COMMISSIONER STREET, JOHANNESBURG

Resolution No/
For Attention

1 WELCOME AND CONSTITUTION OF MEETING

The Chairman welcomed all present, in particular the Minister of Public Enterprises, Ms BA Hogan, MP, the Representative of the Sole Member of the Company. The Representative of the Sole Member of the Company being present, the meeting was duly constituted.

In terms of Article 39 of the Articles of Association of the Company, the Chairman of the Transnet Board shall be the Chairman at every meeting of the members of the Company.

1.1 PRESENT

Ms BA Hogan, MP Minister of Public Enterprises and Representative of the Sole Member of the Company

1.2 In attendance

Prof GK Everingham	Acting Chairman
Ms NNA Malyumza	Non-Executive Director
Mr MJ Hankinson	Non-Executive Director
Ms N Ntshingila	Non-Executive Director
Ms K C Ramon	Non-Executive Director
Ms NBP Gcaba	Non-Executive Director
Mr PG Joubert	Non-Executive Director
Mr MP Moyo	Non-Executive Director
Mr CF Wells	Acting Group Chief Executive
Mr A Singh	Acting Group Chief Financial Officer
Dr A Shaw	Acting Director-General: Department of Public Enterprises: Transport Sector
Ms R Lepule	Acting Deputy Director-General: Department of Public Enterprises: Transport Sector
Ms O Ruthnam	Chief of Staff: Department of Public Enterprises
Mr P Mkhombo	Chief Director: Legal and Governance: Department of Public Enterprises
Mr A I Seedat	Chief Director: Department of Public Enterprises
Mr A Mmoto	Secretariat: Department of Public Enterprises
Mr T Kalan	Deloitte & Touche
Mr T Mariday	Deloitte & Touche
Mr M Mthimkulu	Sizwe Ntshuba VSP
Mr VD Kahla	Group Executive: Office of the Group Chief Executive
Ms K Moodley	Acting Group Company Secretary

1.4 Apologies

Mr E Godogwana, MP Deputy Minister of Public Enterprises
Dr ND Haste, OBE Non-Executive Director

2 SAFETY BRIEFING AND EVACUATION PROCEDURES

The safety briefing and evacuation procedures for the 49th floor were taken as read and noted.

3 NOTICE OF THE MEETING

It was noted that the Notice convening the Annual General Meeting had been given in accordance with the provisions of the Companies Act.

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2

Resolution No/
For Attention

The Notice of the Annual General Meeting be taken as read and adopted.

4 APPROVAL OF THE MINUTES OF THE ANNUAL GENERAL MEETING HELD ON 11 AUGUST 2009

The minutes of the Annual General Meeting held on 11 August 2009 were approved, as tabled.

ADDRESS BY THE REPRESENTATIVE OF THE SOLE MEMBER OF THE COMPANY

The Representative of the Sole Member of the Company provided a summary of the Strategic Intent Statement of Government and stated the following:

- Transnet is a critical component in the national economy, predominately due to its facilitation of South Africa's domestic and international trade;
- Transnet's on-going build programme is significant in facilitating the construction of necessary infrastructure to ensure that South Africa's rail, ports, and pipelines are not a supply constraint to future economic growth;
- Although the market downturn in the past 18 months has had a negative effect on Transnet's profit and revenue, the turnaround has commenced, which should be favourable to Transnet in the future; however this also re-introduces the challenge of delivering sufficient port, rail and pipeline capacity;
- A significant challenge faced by Transnet is the ability of each Operating Division to deliver efficient, cost effective services that are aligned to the needs of its customers. This challenge is particularly acute in TFR, where there has been slow improvement in service efficiency, resulting in many customers moving their business from rail to road freight services. A recent customer survey conducted by the Department of Public Enterprises highlighted that customers have lost faith in Transnet's ability to execute its strategic role. The Shareholder's Compact was therefore structured with a strong orientation to address these needs and overall efficiencies;
- The conversion of the Shareholder's expectations into corporate strategy remains a critical challenge and the focus of the Transnet Board should be to:
 - Improve service levels and efficiencies, which should include introducing strong disincentives for poor performance and embedding a performance culture to ensure that Transnet's mandate to lower the costs of doing business is achieved;
 - Sustain the capital investment programme whilst maintaining a healthy balance sheet and ensuring that the new infrastructure is utilised to make tangible improvements in transport service delivery, particularly rail;
 - Meet the policy and regulatory challenges in the various sectors. The Department of Public Enterprises is committed to actively engaging with the Department of Transport to ensure that the policy environment is clear;
 - Collaborate with Government to achieve measurable performance targets in the sectors within which Transnet operates; and
 - Find innovative ways to involve the private sector with a view to enhancing Transnet's service offering.

The Representative of the Sole Member of the Company thanked the Transnet management and Board of Directors for their commitment to growing freight market share, service reliability and asset utilisation, as detailed in the Shareholder's Compact, and for its achievements in the 2009/2010 financial year. She stated that the Corporate Plan for the current financial year is highly commendable.

5 ADOPTION OF THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2010 INCLUDING THE DIRECTORS' AND AUDITORS' REPORTS

The Representative of the Sole Member of the Company made the following comments prior to adopting the Annual Financial Statements:

- Transnet has received the Ernst and Young award for the best 2009 State-Owned Enterprise annual report;

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3

Resolution No/
For Attention

- The marginal increase of Transnet's operating expenses as a result of a robust cost cutting exercise is commendable. This resulted in Transnet increasing its EBIT by 9.2%, however the increases in depreciation, net finance costs and the impairment of assets have resulted in the net profit for the year decreasing from R4.5 billion to R3 billion, a decrease of 32.9%. The impact of an aggressive capital expenditure programme and the economic downturn has been factored in, however, the inability of revenue to adequately absorb these impacts is of concern;
- Total revenue increased by 6% on the back of a tariff increase of 6.5% and volume growth of minus 0.6%. Core revenue (rendering of services) decreased by 0.3%. Significant efforts have not been expended to convert road freight business to road, which would have contributed to an improvement in revenue. Significant improvement, in this regard, must be made by the end of the current financial year; and
- Whilst pockets of operational achievements exist, efficiency still remains a concern.

The Chairman stated that the meeting should take note that the external auditors had cause to report a reportable irregularity in terms of Section 45 of the Auditing Profession Act No. 26 of 2005, which relates to the acquisition of the 50 'like new' locomotives.

The Representative of the Sole Member of the Company RESOLVED that :

- The Company's Annual Financial Statements for the year ended 31 March 2010 together with the Directors' Report be taken as read and adopted; and
- In accordance with the provisions of Section 301 (3) of the Companies Act, the Auditors' Report be taken as read and adopted.

10/20/1

6 APPOINTMENTS

6.1 Election of the Chairman of the Board of Directors in terms of Article 69 of the Company's Articles of Association

6.2 Re-election of Directors who retire by rotation at the Annual General Meeting, and appointment of new directors in terms of Articles 71 and 94.4 of the Company's Articles of Association

The Representative of the Sole Member of the Company requested the meeting's indulgence to table an amendment to the resolutions contained in Item 6 of the pack.

The Representative of the Sole Member of the Company RESOLVED that, the following non-executive directors be re-appointed, in terms of Article 95, until the finalisation of a review conducted by the Representative of the Sole Member of the Company:

Prof GK Everingham (Acting Chairman)
Ms NNA Malyumza
Dr ND Haste, OBE
Ms NR Ntshingila
Mr MJ Hankinson
Ms NBP Gcaba
Mr PG Joubert
Ms KC Ramon
Mr MP Moyo

10/20/2

7 CONFIRMATION OF DIRECTORS' FEES FOR THE YEAR ENDED 31 MARCH 2010

The Representative of the Sole Member of the Company RESOLVED that the non-executive directors' emoluments for the year ended 31 March 2010 be confirmed at R5 426 000.00.

10/20/3

Handwritten signature and initials, possibly 'AM' and 'KAW'.

CONFIDENTIAL

4

Resolution No/
For Attention

8 FIXING OF DIRECTORS' FEES FOR THE YEAR ENDING 31 MARCH 2011

The Representative of the Sole Member of the Company tabled an amendment to the resolution contained in item 8 of the pack.

The Representative of the Sole Member of the Company **RESOLVED** that the Directors' emoluments for the year ending 31 March 2011 be fixed at the following scales:

Chairman of the Board of Directors	R1 000 000
Non-executive directors	R 300 000
Add-on for Committee Membership	R 75 000
Add-on for Committee Chairmanship	R 150 000

10/20/4

with no increase but subject to the recommendations of the Remuneration Panel on the appropriate level of remuneration.

9 AUTHORISATION OF AUDIT COMMITTEE TO FIX AND APPROVE THE AUDITORS' FEES FOR THE YEAR ENDED 31 MARCH 2010

The Representative of the Sole Member of the Company **RESOLVED** that the Group Audit Committee of the Company be authorised to fix the Auditors' remuneration at R58 113 000.00 for the year ended 31 March 2010.

10/20/5

10 APPROVAL THAT NO DIVIDENDS BE DECLARED FOR THE YEAR ENDED 31 MARCH 2010

The Representative of the Sole Member of the Company **RESOLVED** that, in accordance with the Company's approved Dividend Policy, no dividend be declared for the year ended 31 March 2010, however, the potential dividend must be utilised for strategic priorities.

10/20/6

(The external auditors were excused from the meeting).

11 RE-APPOINTMENT OF THE AUDITORS TO PERFORM THE AUDIT FOR THE YEAR ENDING 31 MARCH 2011

The Representative of the Sole Member of the Company noted that 2010/11 is a critical year in terms of the Transnet quantum leap strategy and to change the auditors during this year would be detrimental to the Company. She stated that various companies, agencies, institutions and individuals were engaged by the Department of Public Enterprises on the re-appointment of Auditors and based on the views obtained, the Representative of Sole Member of the Company proposed that Deloitte & Touche, assisted by Sizwe Ntsaluba VSP, be re-appointed as external auditors of the Company for the audit 2010/2011 subject to a commitment by the Board of Directors of the Company to appoint a new external audit firm on 1 April 2011.

The Representative of the Sole Member of the Company called for representations from the meeting on the aforementioned proposal.

Ms Ramon, Acting Chairman of the Audit Committee of the Company made the following representations and concluded that it would not be prudent to change the audit firm on 1 April 2010:

- Key to the Transnet external audit is continuity and the auditors have since their initial appointment rendered a good service. Significant progress has been made with regard to the relationship between Deloitte & Touche and the audit firm Sizwe Ntsaluba VSP to achieve the percentage of time allocated;
- The auditors provided assurance on the GMTN programme in 2009 and it would be inappropriate to change the auditors soon after the circular has been issued; and

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5

Resolution No/
For Attention

- The lead partner, Mr Kalan, was rotated off the Transnet account commencing from 1 April 2010.

Mr Hankinson added that changing the auditors at this stage would cause tremendous disruption in the accounting profession and Transnet due to the magnitude of the audit and the skills required.

Mr Joubert stated that the choice of auditors is limited, due to Ernst and Young being contracted by Transnet to provide an internal audit function to the Company.

Mr Moyo stated that the Audit Committee has taken a decision to change the external audit company in 2013.

Dr Shaw stated that good corporate governance and the Public Service guidelines issued by the Auditor-General dictates that audit companies should be replaced at five year intervals.

Having noted the representations, the Representative of the Sole Member of the Company RESOLVED that:

- (i) Deloitte and Touche, assisted by Sizwe Ntsaluba VSP be re-appointed as the external auditors of the Company until the next Annual General Meeting of the Company; and
- (ii) That the Board of Directors of the Company advise the Representative of the Sole Member of the Company within 3 months of this Annual General Meeting, of the principles to inform steps to be taken by the Company to rotate its external auditors, for approval by the Shareholder.

10/20/7

(The external auditors re-joined the meeting).

12 NOTING OF THE SHAREHOLDER'S COMPACT FOR THE YEAR ENDING 31 MARCH 2011

The Representative of the Sole Member of the Company noted the Shareholder's Compact for the year ending 31 March 2011, as contained in the pack.

13 NOTING OF THE OTHER BOARDS THAT THE TRANSNET NON-EXECUTIVE DIRECTORS HAVE BEEN MEMBERS OF FOR THE YEAR ENDED 31 MARCH 2010

The Representative of the Sole Member of the Company noted the membership of Transnet Non-Executive Directors on other boards for the year ended 31 March 2010, as listed in the pack.

14 APPOINTMENT OF THE GROUP AUDIT COMMITTEE MEMBERS TO SERVE UNTIL THE 2011 ANNUAL GENERAL MEETING

Mr Kahla proposed an amendment to item 14, and stated that it should read as follows:

The Group Audit Committee is constituted as a Committee of the Board of Directors of the Company as contemplated in Section 76 (4)(d) and 77 of the Public Finance Management Act, 1999, and the Regulations made thereunder and with effect from the commencement of Section 94(7) of the Companies Act, 2008.

The Representative of the Sole Member of the Company RESOLVED that:

- (i) The following non-executive directors be appointed as the members of the Group Audit Committee by means of a single resolution and on such terms and conditions to be determined by the Company, until such time as the Representative of the Sole Member of the Company has made further determinations on the rotation of the members of the Board of the Company:
Ms KC Ramon (Chairman);
Mr PG Joubert;
Ms NNA Matyemza; and
Mr MP Moyo.

10/20/8



CONFIDENTIAL

6

Resolution No/
For Attention

15 PROPOSED AMENDMENT TO THE EXISTING ARTICLES OF ASSOCIATION OF
TRANSNET LIMITED ("THE COMPANY")

The Representative of the Sole Member of the Company RESOLVED that :

- (i) The existing Article 69 of the Articles of Association of the Company be deleted in its entirety and replaced with the following new Article 69:
 - (a) "The Company in General Meeting shall designate the Chairman.
 - (b) The Board of Directors shall appoint the Managing Director of the Company who shall be referred to as the Group Chief Executive and determine any terms and conditions applicable to such appointments after consultation with the Shareholder.
 - (c) The Board of Directors shall appoint the Chief Financial Officer and inform the Shareholder accordingly. The Shareholder shall appoint the Chief Financial Officer as a member of the Board of Directors."

10/20/9

16 CLOSURE

The Chairman thanked the following attendees:

- The external auditors for the manner in which they managed the audit for 2009/2010;
- The acting Group Chief Executive and the acting Chief Financial Officer for steering the Board with extreme commitment, competence and integrity; and
- The members of the Board for their encouragement and support.

He further thanked the Minister and the Deputy Minister of the Department of Public Enterprises and staff for their continuous advice and reassurance.

The Minister extended her appreciation and thanks to the Board of Directors of the Company for their incredible performance under difficult circumstances. She commended the Acting Chairman of the Board of Directors for his extreme diligence.

The Minister further thanked the acting Group Chief Executive and the acting Chief Financial Officer for their extraordinary work in managing the Company. Finally, the Minister thanked her team, in particular Dr Shaw for his advice and analysis on important matters pertaining to Transnet.

There being no further business to conduct, the Chairman declared the meeting dissolved.

CHAIRMAN

GROUP COMPANY SECRETARY

DATE

DATE





MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Halfway, 0020 Tel: 012 431 1111 Fax: 012 431 1010
Private Bag X9019, Cape Town 8000 Tel: 021 401 63767 Fax: 021 455 2391461 4241

Mr Mafika Mkwanazi
P.O. Box 24
Cramer View
2060

Tel: 011 0237203
Email: mafika@nkwali.co.za

Dear Mr Mkwanazi

Appointment as Non-Executive Director and Chairperson to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director and Chairperson of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

Your fee structure will be based on the DPE-approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09



Handwritten signature and initials, possibly 'Raul'.



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director and Chairperson of the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr M Mkwanazi

Date

Handwritten signature
Kw

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:04 AM
To: 'malika@nkwali.co.za'
Subject: Appointment as Non-Executive Director and Chairperson to the Board of Transnet
Attachments: img-Z10113411-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Mkwanazi.

Kind regards,

Butie Tsalane
Office of the Minister

Handwritten signature
Kwadi



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Halfway, 4028 Tel: 012 421 1151 Fax: 012 421 1030
Private Bag X9079, Cape Town, 8000 Tel: 021 461 62/6/7 FMS: 021 465 238/1461 1741

Mr Donald Mkhwanazi
P.O. Box 956
Westville
3630

Tel: 031 2669937
Fax: 031 2666054
Email: ddb@rmweb.co.za

Dear Mr Mkhwanazi

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

Your fee structure will be based on the DPE approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.


[Handwritten signature]
KMW

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kam



I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr D Mkhwanazi

Date:

[Handwritten signature]
KAW

Message Confirmation Report

10-DEC-2010 08:18 FRI

Fax Number : 0124311039
Name :Name/Number : 00312666054
Page : 3
Start Time : 10-DEC-2010 08:17 FRI
Elapsed Time : 00'40"
Mode : STD BCM
Results : [O.K.]MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICAMr Donald Mkhwanazi
P.O. Box 956
Wesleyville
3630Tel: 031 2669937
Fax: 031 2668054
Email: ddm@mwweb.co.za

Dear Mr Mkhwanazi

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 9:28 AM
To: 'drbm@mweb.co.za'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10104417-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba; Minister of Public Enterprises for the attention of Mr Mkhwanazi.

Kind regards,

Butie Tsalane
Office of the Minister

[Handwritten signature]
Kwazi



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X10, Hatfield 0026 Tel: 012 431 1118 Fax: 012 431 1039
Private Bag X4079, Cape Town, 8000 Tel: 021 461 4376/7 Fax: 021 462 2381/161 1741

Mr Peter Malungani
P.O. Box 52191
Saxonwold
Rosebank
2132

Tel: 011 447 9745
Fax: 011 447 4851

Dear Mr Malungani

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

Your fee structure will be based on the DPE-approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.


I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
Kun

I trust you will find the above in order.

Yours sincerely


MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


KMN

Message Confirmation Report

10-DEC-2010 08:19 FRI

Fax Number : 0124311039
Name :

Name/Number : 00114474651
Page : 3
Start Time : 10-DEC-2010 08:18 FRI
Elapsed Time : 00' 40"
Mode : STD BOM
Results : [O.K.]



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Mr Peter Malungani
P.O. Box 52181
Saxonwold
Rosebank
2132

Tel: 011 447 0745
Fax: 011 447 4651

Dear Mr Malungani

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance for the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

Your fee structure will be based on the OPE-approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
Kau

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:57 AM
To: 'admin@peu.co.za'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10124406-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Malungani.

Kind regards,

Butie Tsalane
Office of the Minister



Handwritten signature and initials, possibly 'Kau'.



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Halfway, 0928 Tel: 012 431 1116 Fax: 012 431 1039
Private Bag X6079, Cape Town, 8000 Tel: 021 451 6330 Fax: 021 465 2981/481 1741

Mr Israel Skosana
P.O. Box 98938
Sloane Park
Bryanston
2152

Tel: 011 7064957
Fax: 011 4637588

Dear Mr Skosana

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

Your fee structure will be based on the DPE-approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

Handwritten signature
Kau

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kaul



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr I Skosana

Date

[Handwritten signature]
Kw

Message Confirmation Report

10-DEC-2010 08:14 FRI

Fax Number : 0124311039
Name :Name/Number : 00114637588
Page : 3
Start Time : 10-DEC-2010 08:13 FRI
Elapsed Time : 01'11"
Mode : STD G3
Results : [O.K.]MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICARepublic of South Africa: 10-DEC-2010 08:14 FRI
Transnet: 00114637588Mr Iurani Skosana
P.O. Box 98338
Stoane Park
Bryanston
2152Tel: 011 7064957
Fax: 011 4637588

Dear Mr Skosana

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:59 AM
To: 'israelis@kapelainvestments.co.za'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10124351-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Skosana.

Kind regards,

Butie Tsalane
Office of the Minister





**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 421 1028
Private Bag X0029, Cape Town, 8000 Tel: 021 461 6375/7 Fax: 021 465 2309/461 1741

Ms Nazmeera Moola
Level 6, The District
41-45 Lowry Road
Cape Town

Tel: 083 601 4742
Email: nazmeera.moola@macquarie.com

Dear Ms Moola

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
Kauw

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kant



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Ms N Moolo

Date

[Handwritten signature]
Kam

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 9:26 AM
To: 'nazmeera.moola@macquarie.com'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10104430-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Moola.

Kind regards,

Butie Tsalane
Office of the Minister



Handwritten signature and initials, possibly 'Kw'.



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 431 1035
Private Bag X9079, Cape Town, 8000 Tel: 021 461 0370 Fax: 021 465 2381/461 1741

Mr Michele Fannuchi
9 Leon Road
Riverclub
Sandton

Tel: 011 8830345
Fax: 011 8021134

Dear Mr Fannuchi

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

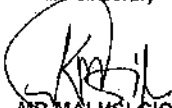
I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
KAW

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 20/01/2009


Kwadi



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr Michele Fannuchi

Date

Handwritten signature
KMD

Message Confirmation Report

10-DEC-2010 09:54 FRI

Fax Number : 0124311039
Name :

Name/Number : 00118021135
Page : 3
Start Time : 10-DEC-2010 09:53 FRI
Elapsed Time : 00'48"
Mode : STD ECM
Results : [O.K]



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private and Confidential - Not for Distribution
If you are not the intended recipient, please do not open, copy, print or disseminate this e-mail.

Mr Michele Fatnuchi
8 Leon Road
Riverside
Sandton

Tel: 011 8890346
Fax: 011 8021134

Dear Mr Fatnuchi

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended; Public Finance Management Act No. 1 of 1998, as amended; the Protocol on Corporate Governance in the Public Sector; Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance herof by signing the statement below and returning a copy to myself.



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Melfield, 0028 Tel: 012 431 1114 Fax: 012 431 1039
Private Bag X9076, Cape Town, 8000 Tel: 021 481 6378/7 Fax: 021 485 2391/481 1741

Ms Doris Tshepe
7th Floor Braamfontein Centre
23 Jorissen Street
Braamfontein
Johannesburg

Tel: 011 403 2765
Fax: 011 403 1764

Dear Ms Tshepe

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

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I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
Kwadi

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 26/12/09





public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Ms Doris Tshepe

Date

[Handwritten signature]
Kam

Message Confirmation Report

10-DEC-2010 08:11 FRI

Fax Number : 0124311039
Name :

Name/Number : 00114031764
Page : 3
Start Time : 10-DEC-2010 08:10 FRI
Elapsed Time : 00'40"
Mode : STD ECM
Results : [O.K]



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

POSTNET 011 403 2765 Tel: 011 403 2765 Fax: 011 403 2765
E-mail: info@transnet.co.za Web: www.transnet.co.za

Ms Doris Tshabe
7th Floor Braamfontein Centre
23 Jorissen Street
Braamfontein
Johannesburg

Tel: 011 403 2765
Fax: 011 403 1764

Dear Ms Tshabe

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance thereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
Kam

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 11:01 AM
To: 'doris@clh.co.za'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10124335-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Tshepe.

Kind regards,

Butie Tsalane
Office of the Minister

[Handwritten signature]
Kaw



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X111, Halfway, 0028 Tel: 012 421 1110 Fax: 012 421 1338
Private Bag X9078, Cape Town, 8000 Tel: 021 461 5376/7 Fax: 021 465 2381/811 1741

Prof Juergen Schrempf
P.O. Box 200651
80006, Munich
Germany

Tel: 009891 2061 930

Dear Prof Schrempf

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

Your fee structure will be based on the DPE-approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.


I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

MM
KW

I trust you will find the above in order.

Yours sincerely


MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kw



I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Prof J Schrempp

Date

[Handwritten signature]
Kash



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____ hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr I Sharma

Date

[Handwritten signature]
KAW

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09



KAW

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:16 AM
To: 'juergen.schrempp@balefurnest.com'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10121042-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Prof Schrempp,

Kind regards,

Butie Tsalane
Office of the Minister

Handwritten signature
Kam



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X16, Halfway, 0070 Tel: 012 431 1110 Fax: 012 431 1029
Private Bag X9070, Cape Town, 8009 Tel: 021 481 8370 Fax: 021 465 2381/461 1741

Mr Iqbal Sharma
6 Sherwood Gate
110 Rivonia Road
Sandton
2196

Tel: 011 7844805
Email: iqbalsharma3@gmail.com

Dear Mr Sharma

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
KWA

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 9:58 AM
To: 'iqbalsharma3@gmail.com'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10113443-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Sharma.

Kind regards,

Butie Tsalane
Office of the Minister



Handwritten signature and initials, possibly 'KUN'.



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Pretoria Bag X16, Halfway, 0028 Tel: 012 431 1110 Fax: 012 431 1039
Private Bag X0019, Cape Town, 8000 Tel: 021 481 6370 Fax: 021 485 2301/481 1741

Ms Tembikazi Mnyaka

P. O. Box 1506
Durban
4001

Fax: 031 3351058
Tel: 031 3351002
Cell: 079 695 3232
Email: Tembakazi@gmail.com

Dear Ms Mnyaka

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance heretof by signing the statement below and returning a copy to myself.

[Handwritten signature]
Kuro

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kamal



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Ms T Mnyaka

Date

[Handwritten signature]
KMD

Message Confirmation Report

10-DEC-2010 08:10 FRI

Fax Number : 0124311039
Name :

Name/Number : 00313351058
Page : 3
Start Time : 10-DEC-2010 08:09 FRI
Elapsed Time : 00'44"
Mode : STD BCM
Results : [O.K]



REPUBLIC OF SOUTH AFRICA

Ms Tembeka Mnyaka
P. O. Box 1506
Durban
4001
Fax: 031 3351058
Tel: 031 3351002
Cell: 079 695 3232
Email: Tembeka@ymail.com

Dear Ms Mnyaka

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

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Your fee structure will be based on the DPE approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your duties.

Handwritten signature
KAW

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 9:33 AM
To: 'Tembakazi@gmail.com'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10104404-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Mnyaka.

Kind regards,

Butie Tsalane
Office of the Minister



Handwritten signature and initials, possibly 'KUN'.



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Pretoria, 0025 Tel: 012 431 1118 Fax: 012 431 1039
Private Bag X9374, Cape Town, 8000 Tel: 021 481 63707 Fax: 021 485 2381/01 1741

Ms Ellen Tshabalala
19 Aloe Street
Bryanston Ext.3
2195

Tel: 011 2685600/-2
Email: Ellen@fortuneholdings.co.za

Dear Ms Tshabalala

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

I trust you will find the above in order.

Yours sincerely


MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kwint



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Ms E Tshabalala

Date

[Handwritten signature]
KUN

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:01 AM
To: 'ellen@fortuneholdings.co.za'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10113429-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Tshabalala.

Kind regards,

Butie Tsalane
Office of the Minister

Handwritten signature and initials in the bottom right corner of the page.



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag 215, Hatfield, 0028 Tel: 012 431 1111 Fax: 012 431 1629
Private Bag 20010, Cape Town, 8000 Tel: 021 461 0370 Fax: 021 461 2361/461 1241

Mr Harry Gazendam
435 c Kings Highway
Lynnwood
Pretoria

Tel: 011 8092613

Email: hgazendam@tsb.toyota.co.za or harrygaz@gmail.com

Dear Mr Gazendam

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

Handwritten signature
F. van der Merwe

I trust you will find the above in order. •

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kain



public enterprises

Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____ hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr H Gazendam

Date

Handwritten signature
Kum

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 9:55 AM
To: 'hgazendam@tsb.toyola.co.za'
Cc: 'harrygaz@gmail.com'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10113456-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Gazendam.

Kind regards,

Butie Tsalane
Office of the Minister





MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Pretoria 0028 Tel: 012 431 1110 Fax: 012 431 1030
Private Bag X8019, Cape Town, 8000 Tel: 021 461 6376/7 Fax: 021 466 2381/401 1741

Mr Peter Mthandazo Moyo

P.O. Box 40
Mutual Park
Pinelands
Cape Town

Fax: 021 509 5589
Tel: 021 531 8543

Dear Mr Moyo

Re-appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your re-appointment as a Non-Executive Director to the Transnet Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your re-appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on the re-appointment and wish you all the best in the discharge of your responsibilities in terms of this re-appointment.

My sincere gratitude for the services rendered on the Transnet Board. I am confident that you will continue to make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
KMD

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09



Kam



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____ hereby accept the re-appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr. P Moyo

Date

Handwritten signature
KMM

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 9:24 AM
To: peter@amabubesi.co.za
Cc: Debra@amabubesi.co.za
Subject: Re-appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10111029-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Moyo.

Kind regards,

Butie Tsalane
Office of the Minister


Kwame



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag 215, Halfway, 6009 Tel: 012 431 1119 Fax: 012 431 1039
Private Bag 20079, Cape Town, 8009 Tel: 021 401 5376/7 Fax: 021 405 2361/491 1241

Ms Nunu Ntshingila
Ogilvy-South Africa Head Office
15 Sloane Street
Bryanston
2152

Fax: 011 700 3039

Dear Ms Ntshingila

Re-appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your re-appointment as a Non-Executive Director to the Transnet Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your re-appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

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I take this opportunity to congratulate you on the re-appointment and wish you all the best in the discharge of your responsibilities in terms of this re-appointment.

My sincere gratitude for the services rendered on the Transnet Board, I am confident that you will continue to make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
Kauw

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kaba



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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Ms N Ntshingila

Date

Handwritten signature
K.M.W.

Message Confirmation Report

10-DEC-2010 08:07 FRI

Fax Number : 0124311039
Name : 1Name/Number : 00117003039
Page : 3
Start Time : 10-DEC-2010 08:07 FRI
Elapsed Time : 00:40"
Mode : STD ECM
Results : [O.K.]

MINISTER

PUBLIC ENTERPRISES

REPUBLIC OF SOUTH AFRICA

PROBES, PRINT AND MICROFILM EDITIONS ARE AVAILABLE FROM THE NATIONAL ARCHIVES AND RECORDS DEPARTMENT
P.O. Box 924, Pretoria 0001, South Africa. Tel: 012 312 3911 Fax: 012 312 3912Ms Nunu Ntshingila
Ogilvy-South Africa Head Office
15 Sloane Street
Bryanston
2152

Fax: 011 700 3039

Dear Ms Ntshingila

Re-appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your re-appointment as a Non-Executive Director to the Transnet Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

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I take this opportunity to congratulate you on the re-appointment and wish you all the best in the discharge of your responsibilities in terms of this re-appointment.

My sincere gratitude for the services rendered on the Transnet Board. I am

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:54 AM
To: 'Nunu.Ntshingila@ogilvy.co.za'
Cc: 'beverly.nkukwane@ogilvy.co.za'
Subject: Re-appointment as Non-Executive Director to the Board of Transnet
Attachments: img-210124422-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Ntshingila.

Kind regards,

Butie Tsalane
Office of the Minister

Handwritten signature and initials in the bottom right corner of the page.



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Midrand, 0028 Tel: 012 431 1110 Fax: 012 431 1039
Private Bag X9076, Cape Town, 8000 Tel: 021 481 6370/7 Fax: 021 488 2391/481 1741

Ms Nolwazi Gcaba
P.O. Box 454
Pretoria
0001

Fax: 012 673 1100

Dear Ms Gcaba

Re-appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your re-appointment as a Non-Executive Director to the Transnet Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

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I take this opportunity to congratulate you on the re-appointment and wish you all the best in the discharge of your responsibilities in terms of this re-appointment.

My sincere gratitude for the services rendered on the Transnet Board, I am confident that you will continue to make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
KAW

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kam



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the re-appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Ms N Gcaba

Date

MM
KAW

Message Confirmation Report

10-DEC-2010 08:06 FRI

Fax Number : 0124311039
Name :

Name/Number : 00126731100
Page : 3
Start Time : 10-DEC-2010 08:05 FRI
Elapsed Time : 00'54"
Mode : STD G3
Results : [O.K.]



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

REPUBLIC OF SOUTH AFRICA
MINISTER OF PUBLIC ENTERPRISES
PO BOX 454
PRETORIA 0001

Ms Nohwazi Gcaba
P.O. Box 454
Pretoria
0001

Fax: 012 673 1100

Dear Ms Gcaba

Re-appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your re-appointment as a Non-Executive Director to the Transnet Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

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My sincere gratitude for the services rendered on the Transnet Board. I am confident that you will continue to make a real contribution to the future success of Transnet.

Please confirm your acceptance herof by signing the statement below and returning a copy to myself.

Handwritten signature
KAW

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:51 AM
To: 'ngcaba@spoor.com'
Cc: 'y.kahn@spoor.com'
Subject: Re-appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10124434-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Gcaba.

Kind regards,

Butie Tsalane
Office of the Minister


Kahn



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Midrand, 0015 Tel: 012 431 1718 Fax: 012 431 1039
Private Bag X9070, Cape Town, 8000 Tel: 021 461 6375/7 Fax: 021 465 2301/461 1741

Ms Christine Ramon
P.O. Box 5486
Johannesburg
2000

Fax: 011 788 5092
Tel: 011 441 3111

Dear Ms Ramon

Review of the Transnet Board of Directors

Your letter of appointment refers.

Article 95 of Transnet's Articles of Association provides for the review of appointment of Directors to the Board by the shareholding Minister. I have conducted this review in consideration of the challenges facing the Company and its renewed role in a developmental state. In light of the outcome of the review, your appointment as a Non-Executive Director to the Board of Transnet will terminate on 13 December 2010.

I would like to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director on the Board of Transnet.

I wish you all the best in your future endeavors.

Yours sincerely

MR. MALEDI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09

Handwritten initials and signature
Kw

Message Confirmation Report

10-DEC-2010 08:05 FRI

Fax Number : 0124311039
Name :

Name/Number : 00117885092
Page : 1
Start Time : 10-DEC-2010 08:04 FRI
Elapsed Time : 00'23"
Mode : STD ECM
Results : [O.K.]



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Ms Christine Ramon
P.O. Box 5486
Johannesburg
2000

Fax: 011 788 5092
Tel: 011 441 0111

Dear Ms Ramon

Review of the Transnet Board of Directors

Your letter of appointment refers.

Article 95 of Transnet's Articles of Association provides for the review of appointment of Directors in the Board by the shareholding Minister. I have conducted this review in consideration of the challenges facing the Company and its renewed role in a developmental state. In light of the outcome of this review, your appointment as a Non-Executive Director to the Board of Transnet will terminate on 13 December 2010.

I would like to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director on the Board of Transnet.

I wish you all the Best in your future endeavors.

Yours sincerely

MR. MALLOS GABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 20/12/09

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:42 AM
To: 'christine.ramon@sasol.com'
Cc: 'paula.fernandes@sasol.com'
Subject: Review of the Transnet Board of Directors
Attachments: img-Z10123613-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Ramon.

Kind regards,

Butie Tsalane
Office of the Minister


KMW



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X16, Hatfield, 0028 Tel: 012 431 1110 Fax: 012 431 1039
Private Bag X9075, Cape Town, 8003 Tel: 021 461 0370 Fax: 021 465 2381/465 1741

Ms Nomganto Matyumza
P.O. Box 66
New Germany
3610

Fax: 031 710 5288

Dear Ms. Matyumza

Review of the Transnet Board of Directors

Your letter of appointment refers.

Article 95 of Transnet's Articles of Association provides for the review of appointment of Directors to the Board by the shareholding Minister. I have conducted this review in consideration of the challenges facing the Company and its renewed role in a developmental state. In light of the outcome of the review, your appointment as a Non-Executive Director to the Board of Transnet will terminate on 13 December 2010.

I would like to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director on the Board of Transnet.

I wish you all the best in your future endeavors.

Yours Sincerely

MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09

Message Confirmation Report

10-DEC-2010 08:04 FRI

Fax Number : 0124311039
Name :Name/Number : 00317105288
Page : 1
Start Time : 10-DEC-2010 08:03 FRI
Elapsed Time : 00'27"
Mode : STD ECM
Results :* [O.K.]

MINISTER



PUBLIC ENTERPRISES

REPUBLIC OF SOUTH AFRICA

Transnet Ltd. 100% owned by the State. Tel: 011 481 1000 Fax: 011 481 1001
Private Bag 4007, Sandton, 2008 Tel: 011 481 1000 Fax: 011 481 1001Ms Nongunda Malyunza
P.O. Box 86
New Germany
3810

Fax: 031 710 5288

Dear Ms. Malyunza

Review of the Transnet Board of Directors

Your letter of appointment refers.

Article 95 of Transnet's Articles of Association provides for the review of appointment of Directors to the Board by the shareholding Minister. I have conducted this review in consideration of the challenges facing the Company and its renewed role in a developmental state. In light of the outcome of the review, your appointment as a Non-Executive Director to the Board of Transnet will terminate on 13 December 2010.

I would like to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director on the Board of Transnet.

I wish you all the best in your future endeavors

Yours Sincerely

MR MALUSI JOGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 28/12/09

Butle Tsalane

From: Butle Tsalane
Sent: Friday, December 10, 2010 11:04 AM
To: 'gando@amechurch-umtazi.org'
Subject: Review of the Transnet Board of Directors
Attachments: img-Z10123608-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Matyumza.

Kind regards,

Butle Tsalane
Office of the Minister

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**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15 Halfeld, 0028 Tel: 012 431 1116 Fax: 012 431 1039
Private Bag X9070, Cape Town, 8000 Tel: 021 461 6370 Fax: 021 461 2361/461 1741

Mr Peter Joubert
P.O. Box 153
Auckland Park
Johannesburg
2006

Fax: 011 460 0604

Dear Mr Joubert

Review of the Transnet Board of Directors

Your letter of appointment refers.

Article 95 of Transnet's Articles of Association provides for the review of appointment of Directors to the Board by the shareholding Minister. I have conducted this review in consideration of the challenges facing the Company and its renewed role in a developmental state. In light of the outcome of the review, your appointment as a Non-Executive Director to the Board of Transnet will terminate on 13 December 2010.

I would like to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director on the Board of Transnet.

I wish you all the best in your future endeavors.

Yours Sincerely

MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09

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Kw

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:33 AM
To: 'pgjoubert@mweb.co.za'
Subject: Review of the Transnet Board of Directors
Attachments: img-Z10121645-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Joubert.

Kind regards,

Butie Tsalane
Office of the Minister


Kw

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:38 AM
To: 'pgjoubert@mweb.co.za'
Subject: Review of the Transnet Board of Directors
Attachments: img-Z10121845-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Joubert.

Kind regards,

Butie Tsalane
Office of the Minister



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MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X16, Halfway, 0628 Tel: 012 431 1116 Fax: 012 431 1039
Private Bag X0079, Cape Town, 8000 Tel: 021 461 6375/7 Fax: 021 465 2351/461 1741

Mr Michael John Hankinson
P.O. Box 1548
Kloof,
3640

Email: mhankinson@iafrica.com

Dear Mr Hankinson

Review of the Transnet Board of Directors

Your letter of appointment refers.

Article 95 of Transnet's Articles of Association provides for the review of appointment of Directors to the Board by the shareholding Minister. I have conducted this review in consideration of the challenges facing the Company and its renewed role in a developmental state. In light of the outcome of the review, your appointment as a Non-Executive Director to the Board of Transnet will terminate on 13 December 2010.

I would like to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director on the Board of Transnet.

I wish you all the best in your future endeavors.

Yours Sincerely

MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09

Butle Tsalane

From: Butle Tsalane
Sent: Friday, December 10, 2010 9:46 AM
To: 'mhankinson@lafica.com'
Subject: Review of the Transnet Board of Directors
Attachments: img-Z10113500-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Hankinson.

Kind regards,

Butle Tsalane
Office of the Minister


Kand



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X16, Hatfield, 0028 Tel: 012 431 1116 Fax: 012 431 1003
Private Bag X9076, Cape Town, 8000 Tel: 021 461 6176 Fax: 021 465 2361/461 1741

Prof. Geoffrey Everingham
Acting Chairman
Transnet Board
P O Box 72501
Parkview
2122

Tel: 011 308 2235
Fax: 011 308 2314

Dear Prof. Everingham

Review of the Transnet Board of Directors

Your letter of appointment refers.

Article 95 of Transnet's Articles of Association provides for the review of appointment of Directors to the Board by the shareholding Minister. I have conducted this review in consideration of the challenges facing the Company and its renewed role in a developmental state. In light of the outcome of the review, your appointment as a Non-Executive Director and Acting Chairman to the Board of Transnet will terminate on 13 December 2010.

I would like to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director and Acting Chairman on the Board of Transnet.

I wish you all the best in your future endeavors.

Yours Sincerely

**MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09**



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 431 1038
Private Bag X9070, Cape Town, 8000 Tel: 021 491 8316/7 Fax: 021 465 2381/461 1741

Dr. ND Haste
Grove Coach House
Wharf Street, Bawtry
South Yorkshire
DN108HZ
United Kingdom
00447799411205

normanhaste@btinternet.com

Dear Dr Haste

Review of the Transnet Board of Directors

Your letter of appointment refers

Article 95 of Transnet's Articles of Association provides for the review of appointment of Directors to the Board by the shareholding Minister. I have conducted this review in consideration of the challenges facing the Company and its renewed role in a developmental state. In light of the outcome of the review, your appointment as a Non-Executive Director to the Board of Transnet will terminate on 13 December 2010.

I would like to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director on the Board of Transnet.

I wish you all the best in your future endeavours.

Yours Sincerely

MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES

DATE: 2010/12/09

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 9:42 AM
To: 'normanhasle@bfinet.net.com'
Subject: Review of the Transnet Board of Directors
Attachments: img-Z10113605-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Dr Haste.

Kind regards,

Butie Tsalane
Office of the Minister

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Kw

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 10:01 AM
To: 'ellen@fortuneholdings.co.za'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10113429-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Ms Tshabalala,

Kind regards,

Butie Tsalane
Office of the Minister


Khal



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Ms E Tshabalala

Date

[Handwritten signature]
Kw



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Halfway, 0029 Tel: 012 431 1116 Fax: 012 431 1039
Private Bag X9079, Cape Town, 6000 Tel: 021 491 6378 Fax: 021 465 2381/4651 1741

Ms Ellen Tshabalala
19 Aloe Street
Bryanston Ext.3
2195

Tel: 011 2685600/-2
Email: Ellen@fortuneholdings.co.za

Dear Ms Tshabalala

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

Your fee structure will be based on the DPE-approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.


KAW

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kam

Butie Tsalane

From: Butie Tsalane
Sent: Friday, December 10, 2010 9:55 AM
To: 'hgazendam@lsb.toyota.co.za'
Cc: 'herrygaz@gmail.com'
Subject: Appointment as Non-Executive Director to the Board of Transnet
Attachments: img-Z10113456-0001.pdf

Dear Sir/Madam

Receive attached letter from Minister Malusi Gigaba, Minister of Public Enterprises for the attention of Mr Gazendam.

Kind regards,

Butie Tsalane
Office of the Minister



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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director on the Board of Transnet. I undertake to observe and comply with the principles and provisions of all legislation relevant to Transnet, the Protocol on Corporate Governance and the provisions of the Shareholder Compact between Transnet and Government, to devote sufficient time for the execution of my responsibilities, to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Transnet, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr H Gazendam

Date

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Kw



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Halfway, 0076 Tel: 012 431 1119 Fax: 012 431 1039
Private Bag X9079, Cape Town, 8000 Tel: 021 491 0070 Fax: 021 495 2381/481 1741

Mr Harry Gazendam
435 c Kings Highway
Lynnwood
Pretoria

Tel: 011 8092613

Email: hgazendam@tsh.loyota.co.za or harrygaz@gmail.com

Dear Mr Gazendam

Appointment as Non-Executive Director to the Board of Transnet

I am pleased to inform you of your appointment as a Non-Executive Director of Transnet's Board of Directors, effective from 13 December 2010, for a three (3) year term, subject to annual confirmation.

Your appointment is regulated by the provisions of the Companies Act No. 61 of 1973, as amended, Public Finance Management Act No. 1 of 1999, as amended, the Protocol on Corporate Governance in the Public Sector, Transnet's Articles of Association as well as the Shareholder Compact between Transnet and the Shareholder.

Your fee structure will be based on the DPE-approved Remuneration Guidelines for State-Owned Enterprises. The fee is on a retainer basis. Additional fees are payable for participation in any sub-committees of the Transnet Board.

I take this opportunity to congratulate you on your appointment and wish you all the best in the discharge of your responsibilities.

I am confident that you will make a real contribution to the future success of Transnet.

Please confirm your acceptance hereof by signing the statement below and returning a copy to myself.

[Handwritten signature]
KAW

I trust you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2010/12/09


Kaw

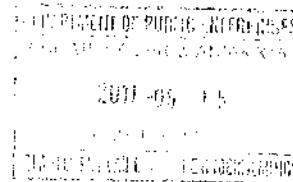
"MG31"



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM



TO : MR. MALUSI GIGABA
MINISTER

FROM : RAISIBE LEPULE
ACTING DEPUTY DIRECTOR-GENERAL: TRANSPORT

FILE REF : 16/1/3/1

IDMS REF : 131244

SUBJECT : RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-
EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

DATE : 26 MAY 2011

1. PURPOSE

- 1.1 To advise the Minister on the proposed appointment of new non-executive directors to the board of directors of Transnet ("Transnet Board") and to provide the Minister with the proposed appointees' names and profiles; and
- 1.2 To request the Minister to sign the Cabinet Memorandum attached hereto as Annexure "A", seeking Cabinet's approval on the appointment of Ms Yasmin Forbes, Mr Nishi Choubey, Mr Almir De Sousa, Ms Mapheto Mohuba as non-executive directors of the Transnet Board; and Mr Iqbal Sharma as chairperson and non-executive director of the Transnet Board, if the Minister is in agreement with the contents thereof.

2. SUMMARY

- 2.1 The Department recommends the appointment of Ms Yasmin Forbes, Mr Nishi Choubey, Mr

Lefapha la Dikgwabo la Puso • Lefapha la Dikgwabo la Mmuso • UMnyango wezinkampani zikaHulumeni • Mkhawulo wa Mabindu a Muvhuso • Departement van Openbare Ondernemings • Kgoro ya Dikgwabo la Sefshaba • Ndzawulo ya Mabilidzu ya Mleno • Litiko la Tematshizini aHulumende • Isobho lazaMashishini oMbuso

- Confidential -

03 JUN 2011

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Kw

RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

Almir De Sousa and Ms Maphefo Mohuba as non-executive directors of the Transnet Board and the appointment of Mr Iqbal Sharma as chairperson and non-executive director of the Transnet Board.

- 2.2 The Department also recommends the retirements of Mr Mafika Mkwana (the current chairperson and Mr Don Mkhwanazi from the Transnet Board with effect from 24 June 2011 (scheduled date for Transnet Annual General Meeting).
- 2.3 With these new appointments and retirements, the new Transnet Board will comprise sixteen (16) non-executive directors and two (2) executive directors (a total of eighteen (18) directors).
- 2.4 It is recommended that the Minister approves the appointment of the proposed candidates as well as the retirement of three of the current non-executive directors of the Transnet Board, and signs the attached Cabinet Memorandum seeking Cabinet's approval for the appointment of the new chairperson and non-executive directors of the Transnet Board.

3. DISCUSSION, ANALYSIS AND FINDINGS

- 3.1. As stated in the memorandum dated 08 March 2011 (attached hereto as **Annexure "B"**), there are two vacant non-executive director positions in the Transnet Board. The first position was left vacant and reserved for a rail specialist, while the second vacant position became vacant as a result of Professor Jurgen Schrempp's resignation from the Transnet Board in February 2011.
- 3.2. Subsequent to the resignation of Professor Schrempp from the Transnet Board, the DPE Transnet team ("team") conducted a skills gap analysis and identified a skills gap in the areas of rail, risk management and pipes or ports sectors. In this regard, please refer to **Annexure "B"** attached hereto for the Transnet Board skills matrix.
- 3.3. A further gap was identified by Transnet in the current risk and audit committees of the Transnet Board. In this regard, the strengthening of the risk and audit committee through a person with skills in sourcing and purchasing of Information and Communications Technology ("ICT") hardware and software is proposed by the Transnet company secretary. The Department is however, of the view that given the challenges that Transnet is facing, a

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RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

board member with skills in ports management would be more valuable to the business. Furthermore, ICT is not the core business of Transnet.

- 3.4. The effectiveness of a board of directors depends very much on the calibre of its directors and the Transnet Board should have an adequate mix of skills and experience and diversity in demographics (i.e. race and gender) to maximise the effectiveness of the Transnet Board in fulfilling the company's mandate.
- 3.5. It must also be noted that the Transnet Board is required to conduct an independent board evaluation annually. The board evaluation report contains the performance of the Transnet Board and is a useful tool in assessing which directors are performing and which ones are not performing. The evaluation report should then be used as a basis for deciding which board members should be retired and which ones should continue in the Board. At the time of preparing this memorandum, the Department had not received the board evaluation report.
- 3.6. Notwithstanding the Department's view that a candidate with port management experience would be a more suitable appointment, the appointment of a rail specialist provides the Department with some level of comfort that the board will be capacitated to deal with challenges in the key area of the business. Loss of market share, low levels of volume growth over long periods and planned capex investments in this area require greater oversight at board level. Admittedly, the challenges in the ports are being managed but are not that significant. On this basis, the Department will accept the appointment of an ICT expert although ICT has not been identified as a strategic and core area of the Transnet business. It is recommended that the two vacant non-executive director positions be filled by Mr Nishi Choubey and Ms Yasmin Forbes (as proposed by Transnet), who possess rail industry knowledge and ICT sales and marketing, respectively. Mr Nishi Choubey will bring a wealth of rail, warehousing and multi-modal logistics skills to the Transnet Board.
- 3.7. In addition to the proposed appointments, it is proposed that:
 - a. Mr Don Mkhwanazi, who is a non-executive director of Transnet, retire at the annual general meeting to be held on 24 June 2011 ("AGM") and not be re-appointed, and that he instead be replaced by Ms Maphefo Mohuba as a non-executive director of the Transnet Board;



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RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

- b. Mr Mafika Mkwanazi, the current chairperson of the Transnet Board, be replaced by Mr Iqbal Sharma (who is a current member of the Transnet Board) as a chairperson and non-executive director of the Transnet Board at the AGM; and
 - c. Mr Almir De Sousa be appointed as an additional non-executive director of the Transnet Board.
- 3.8. The reasons for the retirement of the two non-executive directors and the chairperson of the Transnet Board are as follows:
- 3.8.1 despite the fact that Mr Mkwanazi has demonstrated exemplary leadership capability in his role as chairperson of the Transnet Board, he should not be re-appointed to the Transnet Board as he was the executive chairperson of the Transnet Board for a limited period following his appointment but has not absolved himself from executive activities since the appointment of the new Group Chief Executive ("GCE") and continues to be intimately involved in the management of the company. The Department's view is that there should be a clear division of responsibilities between the GCE and Chairperson, ensuring a balance of power and authority as well as proper corporate governance. The Department is further of the view that Mr Mkwanazi's skills can be better utilised in another state-owned enterprise.
- 3.8.2 Mr Don Mkhwanazi serves as a director and/or trustee of various entities. Moreover, his skills are not scarce as most Transnet Board members are in possession thereof. Accordingly, notwithstanding the fact that he is an African male (for demographics purposes), it is recommended that he is not re-appointed due to the abundance of the skill that he possesses in the Transnet Board.
- 3.9 In terms of the new proposed appointments, Mr Almir De Sousa is a Project Lawyer at Aurecon Angola/Mozambique. His skills are legal, international trade, public private partnership and project finance. Ms Maphefo Mohuba is the owner and Managing Director of Moreteng Investments and brings strong business, operational and executive experience to the Transnet Board.
- 3.10 The new Transnet Board will comprise of sixteen (16) non-executive directors and two (2) executive directors (a total of 18 directors). In this regard, it must be noted that the Articles of Association of Transnet provide for a minimum of ten (10) and a maximum of eighteen (18) directors.


Kw

RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

3.11 The table below indicates the proposed full composition of the Transnet Board:

	NAME	POSITION	GENDER	RACE
1.	Mr Iqbal Meer Sharma	Non-executive director and chairperson	Male	Indian
2.	Mr Brian Molefe	Executive director: chief executive officer	Male	African
3.	Mr Peter Malungani	Non-executive director	Male	African
4.	Mr Israel Skosana	Non-executive director	Male	African
5.	Ms Nazmeera Moola	Non-executive director	Female	Indian
6.	Mr Michele "Mike" Fanucchi	Non-executive director	Male	White
7.	Ms Doris Tshepe	Non-executive director	Female	African
8.	Ms Thembakazi Mnyaka	Non-executive director	Female	African
9.	Ms Maphelo Mohuba	Non-executive director	Female	African
10.	Ms Ellen Tshabalala	Non-executive director	Female	African
11.	Mr Almir De Sousa	Non-executive director	Male	Indian
12.	Mr Harry Gazendam	Non-executive director	Male	White
13.	Mr Peter Moyo	Non-executive director	Male	African
14.	Ms Nolwazi Gcaba	Non-executive director	Female	African
15.	Ms Nunu Ntshingila	Non-executive director	Female	African

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Kaw

RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

16.	Mr Nishi Kant Choubey	Non-executive director	Male	International candidate: Indian
17.	Ms Yasmin Forbes	Non-executive director	Female	Coloured
18.	Mr Anoj Singh	Executive director: (acting) chief financial officer	Male	Indian

3.12 Paragraph B (Chapter 4) of *The Handbook for the appointment of persons to boards of state and state controlled institutions* which deals with Cabinet approval/consultation with regard to appointment of directors, requires that the Executive Authority (Minister) responsible for the state or state controlled institution recommends the appointments to Cabinet for approval.

3.13 Accordingly, a Cabinet memorandum has been prepared to request Cabinet's approval for the appointment of the proposed list of potential appointees to the Transnet Board. The Cabinet memorandum is attached hereto as Annexure "A".

3.14 It is recommended that the Minister approves the appointments of the five (5) nominees and supports the submission of the cabinet memorandum (attached hereto as Annexure "A") to Cabinet.

4. FINANCIAL IMPLICATIONS

There are no financial implications emanating from this memorandum. The directors' fees / emoluments shall be borne by Transnet.

5. CONSULTATION/PROJECT TEAM

Siyabonga Mahlangu (Special counsel to the Minister)

6. RECOMMENDATION

It is recommended that the Minister:

- 6.1 notes the contents of this memorandum and its annexures;






Kant

RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

- 6.2 approves the nomination for the appointment of Ms Yasmin Forbes, Mr Nishi Choubey, Mr Almir De Sousa and Ms Maphefo Mohuba as non-executive directors of the Transnet Board, and the appointment of Mr Iqbal Sharma as a chairperson and non-executive director of the Transnet Board; and
- 6.3 signs the attached Cabinet memorandum seeking Cabinet's approval for the proposed new appointment and approves the submission thereof to Cabinet.


Kw

RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

Memorandum prepared by:	
<div> VONGANI MASONDO DIRECTOR: LEGAL DATE: 2011/05/26</div>	
REVIEWED AND SUPPORTED:	
<div> RAISIBE LEPULE ACTING DDO: TRANSPORT DATE: 2011/05/26</div>	<div> ADV. MELANCHTON MAKOBE CD: LEGAL DATE: 2011/05/26</div>
<div> MR. TSHEDISO MATONA DIRECTOR GENERAL DATE: 14/6/2011</div>	RECOMMENDED / NOT RECOMMENDED / COMMENTS <div></div> <div></div> <div></div>
<div>MR. MALUSI GIGABA, MP MINISTER DATE:</div>	APPROVED / NOT APPROVED / COMMENTS <div></div> <div></div> <div></div>


KUN

SECRET



MINISTRY: PUBLIC ENTERPRISES

REPUBLIC OF SOUTH AFRICA

Private Bag X15, Mafikeng, 0028

CABINET MEMORANDUM NO : of 2011
DATE : 23 May 2011
FILE NUMBER : 2/2/1

1 SUBJECT

The appointment of four (4) Non-Executive Directors to the Transnet Limited ("Transnet") Board of Directors ("Transnet Board").

2 PURPOSE

- 2.1 To obtain Cabinet's approval for the appointment of four (4) new Non-Executive Directors to the Transnet Board.
- 2.2 Further, for Cabinet to concur with the appointment of Mr Iqbal Sharma as Chairperson and Non-Executive Director of the Transnet Board.

3 SUMMARY

- 3.1 Transnet's Articles of Association provide for a maximum of eighteen (18) Directors. There are currently sixteen (16) Directors on the Transnet Board, of which fourteen (14) are Non-Executive Directors and two (2) are Executive Directors, namely, Mr Brian Molefe (Chief Executive Officer) and Mr Anoj Singh (Acting Chief Financial Officer), who are *ex officio* members of the Transnet Board. Accordingly, there are two (2) vacant Non-Executive Directors positions on the Transnet Board. It is recommended that two (2)

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nominees be considered for appointment as Non-Executive Directors to fill these two (2) vacant positions on the Transnet Board.

- 3.2 In addition, it is recommended that two (2) Non-Executive Directors of the Transnet Board not be re-appointed at the Annual General Meeting of Transnet to be held on 24 June 2011 ("AGM"). In their place, two (2) nominees are recommended to be considered for appointment to the Transnet Board as Non-Executive Directors. Furthermore, it is recommended that Mr Iqbal Sharma, a current member of the Transnet Board, be appointed as the Chairperson and Non-Executive Director of the Transnet Board to replace Mr Mafika Mkwana, the current Chairperson of the Transnet Board.

4 STRATEGIC FOCUS OF THE MEMORANDUM

Transnet is a critical and strategic state-owned enterprise which requires a complement of board directors with the requisite competencies (skills, experience, expertise and knowledge) and qualifications to enable the company to effectively deliver on its mandate. In light of the extensive capital expansion programme currently underway at Transnet and operational challenges facing the business, it is crucial that the Transnet Board is at its full strength.

5 DISCUSSION

- 5.1 Transnet's Articles of Association provide for a maximum of eighteen (18) directors on the Transnet Board. The selection of the board of directors is the responsibility of the Shareholder at the AGM. Therefore, the vacancies on the Transnet Board provide the Shareholding Minister with an opportunity to appoint individuals with the skills and attributes that suit Transnet's requirements.
- 5.2 The current Transnet Board (attached hereto as **Annexure A**) consists of sixteen (16) board members including two (2) Executive Directors. Accordingly, there are vacancies for two Non-Executive Directors on the Transnet Board.

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- 5.3 In light of the current vacancies on the Transnet Board, the Department of Public Enterprises ("Department") conducted a skills gap analysis and identified some gaps on the Transnet Board. To address the skills gap, the Department recommends that the Transnet Board must be strengthened in the areas of Information and Communications Technology (ICT) and Rail.
- 5.4 Consequently, Mr Nishi Choubey and Ms. Yasmin Forbes, have been identified as having the appropriate skills and experience in the areas mentioned above and are proposed for appointment as new Non-Executive Directors to the Transnet Board. Mr Nishi Choubey is Managing Director – Projects, Hind Terminals Pvt. Ltd. This appointment will bring a wealth of rail, warehousing and multi-modal logistics skills to the Transnet Board. Ms Yasmin Forbes is a National Sales Manager - CMUT, Oracle SA and her skills are Information and Communications Technology (ICT) sales, business development and brand creation and sustainability.
- 5.5 The Department believes that the profiles of the two (2) candidates address the skills gap that currently exists on the Transnet Board, and their appointment will strengthen Transnet Board's capacity in fulfilling Transnet's mandate and implementing the company's business strategy. Their curriculum vitae are attached hereto as **Annexure B**.
- 5.6 The current Non-Executive Directors of Transnet were appointed for a three year term, subject to annual confirmation by the Minister of Public Enterprises. The Department has determined that Mr Mafika Mkwanaazi and Mr Don Mkhwanazi should retire at the AGM and recommends that these directors should not be re-appointed. The changes to the Transnet Board will reinforce the Transnet Board's capacity to deal with the challenges currently facing the business.
- 5.7 It is proposed that Mr Mafika Mkwanaazi and Mr Don Mkhwanazi be replaced by Mr Almir De Sousa and Ms Maphefo Mohuba (their curriculum vitae are attached as **Annexure B**).

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- 5.8 Mr Almir De Sousa is a Project Lawyer at Aurecon Angola/ Mozambique. His skills are legal, international trade, public private partnership and project finance. Ms Mohuba is the owner and Managing Director of Moreteng Investments with strong business, operational and executive experience.
- 5.9 It is also proposed that Mr Iqbal Sharma, a current Non-Executive Director of the Transnet Board, replaces Mr Mafika Mkwana as the Chairperson of the Transnet Board. Mr Iqbal Sharma worked as a Deputy Director-General for the Department of Trade and Industry and brings a wealth of leadership skills and exceptional executive experience in the trade and investment field to the Transnet Board.
- 5.10 With these appointments, the Transnet Board will consist of a full complement of eighteen (18) Directors comprising of sixteen (16) Non-Executive Directors and two (2) Executive Directors.
- 5.11 The demographics for the new Transnet Board will comprise of twelve (11) males (61%) and seven (7)-females (39%). Apart from the proposed rail specialist, Mr Nishi Choubey, who is an international candidate, eleven (11) Africans, one (1) White, five (4) Indians and one (1) Coloured. The proposed new Transnet Board is attached hereto as **Annexure C**.

6 IMPLEMENTATION PLAN

Following Cabinet's approval, the Minister of Public Enterprises will appoint the new Non-Executive Directors to the Transnet Board for a term of three (3) years, subject to annual review at Transnet's Annual General Meeting.

7 ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None

8 FINANCIAL IMPLICATIONS

There are no financial implications emanating from this memorandum for the Department. The financial obligation with respect to the new appointments will be borne by Transnet.

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9 **COMMUNICATION IMPLICATIONS**

Subsequent to obtaining Cabinet's approval for the appointment of the four (4) nominees, the Minister of Public Enterprises will communicate the appointment of the new Directors to the Transnet Board.

10 **CONSTITUTIONAL IMPLICATIONS**

None

11 **IMPLICATIONS FOR VULNERABLE GROUPS**

None

12 **SECURITY IMPLICATIONS**

None

13 **DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS**

- 13.1 Department of Public Enterprises.
- 13.2 The memorandum was not finalised in consultation with the Directors-General Cluster.

14 **RECOMMENDATIONS**

It is recommended that Cabinet:

- 14.1 approves the appointment of Ms Yasmin Forbes, Mr Nishi Choubey, Mr Amir De Sousa and Ms Maphefo Mohuba as Non-Executive Directors of the Transnet Board for a term of three (3) years, subject to annual review by the Minister of Public Enterprises.
- 14.2 concurs with the appointment of Mr Iqbal Shama as the Chairperson and Non-Executive Director of the Transnet Board for a term of three (3) years, subject to annual review by the Minister of Public Enterprises.

15 **OFFICIAL RESPONSIBLE FOR THE MEMORANDUM**

I declare that the memorandum adheres to the guidelines provided by the Cabinet for drafting of memoranda.

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Name: Ms Raisibe Lepule
Designation: Acting Deputy Director General
Telephone: 011 431 1099
Cellular: 082 885 7109

16 HEAD OF DEPARTMENT

Name: Mr Tshediso Matona
Designation: Director General
Telephone: 011 431 1173

17 AUTHORISATION FOR PROCESSING THE MEMORANDUM

**MALUSI GIGABA, MP
MINISTER**

_____ May 2011

Is there a need for an electronic presentation to be done in addition to the memorandum? No

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Annexure A

CURRENT TRANSNET BOARD

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
1. Mr Mafika Mkwana	Non-Executive Director and Chairperson	Male	African	B.Sc. in Mathematics and Applied Mathematics; B Sc. in Electrical Engineering	Engineering; corporate governance; strategy
2. Mr Brian Molefe	Executive Director: Chief Executive Officer	Male	African	Master of Business; Post Graduate Diploma in Economics; Bachelor of Commerce	Finance; management; leadership
3. Anoj Singh	Executive Director: Acting Chief Financial Officer	Male	Indian	BAcc and CA(SA)	Finance
4. Mr Peter Malungani	Non-Executive Director	Male	African	BCom degree; Advanced Management Programme; Leadership Development Programme	Entrepreneurship; business strategy; corporate governance; investment banking
5. Mr Israel Skosana	Non-Executive Director	Male	African	B.Comm; Hons B.Compt; CA(SA); Certificate in the Theory of Accountancy; Advanced Management Programme – Harvard	Leadership; Finance.


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Annexure A

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
6. Ms Nazmeera Moola	Non-Executive Director	Female	Indian	Bachelor of Business Science; CFA Charterholder	Economics; strategy
7. Mr Michele "Mike" Fanucchi	Non-Executive Director	Male	White	MSc Engineering Management; BSc Engineering (Mech) Industrial	Logistics; Supply Chain Management; business management
8. Ms Doris Tshepe	Non-Executive Director	Female	African	LLM; LLB; BProc	Legal
9. Mr Donald Mkhwanazi	Non-Executive Director	Male	African	Bachelor of Administration; Post-graduate diploma in marketing; Programme for Management Development; Graduate Diploma in Company Direction; Certificate in Managing Finance and Strategic Management; MBA	Business; finance
10. Ms Tembakazi Mnyaka	Non-Executive Director	Female	African	Bachelor of Social Science; Masters in Town and Regional Planning Diploma in Project Management ; Project	Business; consulting.

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Annexure A

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
				Management and Project Leadership certificate	
11. Ms Ellen Tshabalala	Non-Executive Director	Female	African	International Licentiate Diploma of Banking; Bachelor of Commerce Degree; Post Graduate Diploma in Labour Relations	Business; strategy
12. Mr Iqbal Meer Sharma	Non-Executive Director	Male	Indian	BSc - Bachelor of Science (Honours)	Strategy; business; international trade; management; global economics
13. Mr Harry Gazendam	Non-Executive Director	Male	White	BA; B Proc; Dip Labour Relations; AEDP; EDP; BA; B Proc & Dipl LR; EDP; AEDP	Labour Relations; HR Management; Remuneration; Corporate Governance
14. Mr Peter Moyo	Non-Executive Director	Male	African	BAcc; BAcc (Hons) (Unisa); CA(SA); CA Zimbabwe; Higher Diploma in Tax Law; Advanced	Finance; Business

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Annexure A

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
				Management Programme	
15. Ms Nolwazi Gcaba	Non-Executive Director	Female	African	B. Juris; LLB	Legal
16. Ms Nunu Ntshingila	Non-Executive Director	Female	African	BA; MBA; Diploma in Advertising	Marketing
17. Vacant	Non-Executive Director				
18. Vacant	Non-Executive Director				


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Yasmin Forbes

Contact 0832570887

Email: yasmin.forbes@gmail.com

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Executive Summary Yasmin Forbes - Biography



Yasmin works closely with various levels of the National Government across key Initiatives such as improving service delivery, skills development and broadening digital inclusion with a key focus on building and strengthening multi-stakeholder partnerships. This aligns strongly with her passion and the use of technology as an enabler of broad scale community development reinstating the symbiotic relationship between technology and human knowledge.

Yasmin brings a wealth of experience in Sales, Business Development and Brand Creation & Sustainability. Her achievements span Continents, with both strong fiscal success and trust relationships with Customers and Internal Staff alike.

- Her Achievements Include:
- 1997** Development of Parastatal Business for QData Networks
 - 1998 - 2003** She designed, built and drove the establishment of Govt and Telco Business for CCH/MGX, which AL Indigo bought over. She was the Strategic Account Director for MTN and building Africa Business Model
MTN Sales Yr 1 = R 20 mill, Yr 2 = R 30 mill and Year 3 = R 40 mill
Exceeded quota each year \$ 2m, \$ 3m and \$ 4 m
 - 2003 - 2006** Hewlett Packard – She doubled quota every year
Created strong relationships with Govt, Education and turned ailing Branches around
 - 2007 - 2008** Consulted to NGO's on Scientific Research
 - 2008 - 2009** Microsoft SA – National Technology Officer
Objective was to operate at the most Senior Level to enable Business Units and Sales, she created the research & development operation for Executive Leadership and Govt to work together on National Impact Projects
 - 2009 - 2010** Creation of SMME Innovation with Corporate and Govt to empower the R 1.3 billion potential in SMME market

Above all, Yasmin brings integrity, truth and results to any organization that will appoint her. Her skill is to bring Customer perspective and to drive positive operational and financial results within the business.

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Executive Overview

With a proven track record over 25 years in the information communications and technology Industry, an accomplished Strategist, and Sales Executive with a proven success record working with SA Fortune 500 companies and Public Sector Officials. Recognized for strengths in managing teams, building new businesses, public speaking, executive relations and cross-cultural & Indigenous insight.

Exceptionally successful at leading virtual teams across multiple divisions/geographies, closing complex deals, consultative sales and inculcating cross-team collaboration.

Highly Motivated Self-Starter.

Experience**Sales Manager, CMUT, Oracle SA 2010 - present**

Report to VP Communications, Media, Utilities and Transport Sector. Working in designated Named Accounts within the CMUT Industry in Southern Africa leading a team of Technology Sales Representatives. Work towards an allocated license sales revenue and a first year Support target within named accounts.

Responsibilities:

Maintaining an understanding of the designated market in order to identify and prioritise the key opportunities in that market

Defining and driving multi-channel engagements to win business.

Creating and maintaining compelling Value Propositions for Oracle Applications in the Public Sector

Developing and maintaining relationships with specialised Partners.

Develop a strong Pipeline in the PS Applications arena

Managing a team of focused individuals, providing direction, leadership and motivation.

Providing accurate and timely management information and revenue forecasts.

Ensuring high levels of customer and partner satisfaction within the territory.

CEO : 2009 - 2010**SMME Innovation**

Consultant for local NGO SMME Innovation initiative engaging with local SMME's (Small Micro Medium Enterprises). This covers the raising of funds and the building of a technology platform needed to spur innovation and entrepreneurship, increase productivity and efficiency of business operations, provide relevant business development services, facilitate linkages to local, regional and international markets and enable access to new technologies and sources of finance to local SMME's.



E-Skills Initiative- Multi Stakeholder Partnerships

Consultant for Government's E-Skills Initiative engaging with Academia, Civil Society, Corporate and Government- Scientific. This covers the building of a cohort of influential people in South Africa who are aware of the attributes of the coming Information Society, the major issues associated with various aspects of its arrival, and Implementation approaches within their job and sphere of influence.

National Technology Officer, Microsoft SA 2008- 2009

Articulating Microsoft's technology vision, strategy and capabilities and the positive impact these have on citizens, society and the business of government. Demonstrating the economic value of the commercial software and partner ecosystem, and the role of R&D Investments, Innovation and Intellectual property. Advocating for the needs of our public sector customers to the senior leadership team. Influencing Microsoft's strategy and platform decisions to ensure widest market adoption and avoidance of negative policy impacts

Responsibilities Include:

- External outreach and engagement with technology policy elites, leading academics and government decision makers
- Develop an engagement strategy addressing existing and emergent technology policy issues
- Promote procurement neutrality
- Create market opportunity and grow revenue
- Establish Microsoft though leadership in national economic development strategy

Achievements:

- Collaboration on E-Gov Framework with Dept of Public Services and Administration with GITOC Secretariat)
- XML Technical Workshop with DST
- IPR Portfolio Committee participation and contribution to IPR Bill
- Collaboration agreements signed with Dept of Science and Technology
- MOU signed with PALAMA (Public Administration, Leadership and Management Academy) regarding of the School of Government
- MOU signed with University of Fort Hare regarding Liberation Archive POC
- Dept of Science and Technology member of the Microsoft Interop Executive Council
- Member of the South African Bureau of Standards E-Govt working group
- Member of the South African Bureau of Standards SC71L working group
- Member of the South African Bureau of Standards ELearning working group

- Member of the South African Bureau of Standards E-Skills Working Group

Chief Executive Officer, YF & Associates 2007-2008

Consultant for Government- Scientific Research and with education focused NGO's. This covered developing strategies in areas such as frameworks encouraging multi-national companies to increase value and contribution to the country, and governance and partnerships in biomedical informatics research. (government, academia and agencies)

Branch Manager, Hewlett Packard 2003-2006

Exceeded quota YOY, Quota was doubled every year - \$4m, \$8m, \$16m

Branch Manager leading a team of 30, a combination of direct sales, partner sales, pre-sales and services. Developed the business framework, resourcing structure, and execution plan and partner eco-system. Covered strategic planning within government and education, and implementation of regional plans. This included troubleshooting for challenges facing the region addressing relationships with customer and partners, sales and services. Liaise between local and international teams within organizations in order to ensure strategy was supported and execution plan agreed. Developed strong partnerships with stakeholders within government, government agencies, education, academic research and blue chip companies. Developed extensive network and the rebuilding of a positive company reputation within the local market across all sectors.

Responsibilities:

- Branch Manager with an office of 30 (sales/services)
- Establish relationship at executive level with customers
- Establish relationships at executive and sales level with partners
- Account Manager with a focus Public Sector (region) and Education (national)
- Business Development for High Performance Computing - research and life sciences

Achievements:

- Created strong relationships with Local Municipalities & Provincial Government of Western Cape, Higher Education Institutions and partners in Public Sector, Education & Research/Life Sciences space
- Developed key accounts - City of Cape Town, Provincial Administration of the Western Cape, Parliament of South Africa and key universities.
- Achieved budgets
- Established successful relationships with partners focusing on key accounts
- Parliament of South Africa selected HP as a platform of choice (desktop, printers and enterprise)

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- University for Cape Town selected HP as the platform of choice (desktop, printers and enterprise)
- City of Cape Town selected HP as platform of choice (desktop, printers and enterprise)
- CSIR Meraka selected HP as platform of choice for High Performance Computing test bed – Project C4
- Collaborated with Intel and key driver for Biomedical Informatics donation to CHPC communities including skills transfer with international partner
- Exceeded quota YOY, Quota was doubled every year – \$4m, \$8m, \$16m
- Direct Sales generated \$30m excluding indirect sales via the distribution channels of non-enterprise products (Pc, printers)

Customers:

Managed high visibility executive engagements at CFO and CEO level. **(Direct):** City of Cape Town, Parliament, Provincial Government of Western Cape, Academia: All major HEI, Council for Scientific and Industrial Research **(Team):** Financial, Telecommunications, Manufacturing **(Government relations):** Department of Science & Technology, Dept of Communications, Dept of Education

Business Development Manager/Strategic Account Director, CCH/MGX 1998-2003
Exceeded quota YOY, - \$2m, \$3m, \$4m

Development of a new division within the telecommunications sector in the local market and SADC region. Lead a team in embracing due diligence and implementing of solutions in areas such as asset management, service management, hardware and services. This lead to expansion in to new unchartered regions for the group and the establishment of the African arm of the business. Liaise between IT Industry vendors represented in South Africa as well as European/USA counterparts in order to ensure strategy was supported and execution plan agreed.

Developed strong partnerships with stakeholders within government, government agencies, education, academic research and blue chip companies. Developed extensive network and the rebuilding of a positive company reputation within the local market across all sectors. Managed high visibility executive engagements at CFO and CEO level

Responsibilities include:

- Sales consultant with a focus on government and telecom sector
- Business development for new Telecom division – responsible as part of a small team to create awareness, build relationships with Network Element Providers (NEP) and established key accounts

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- Established relationships at executive level
- Strategic Account Director (MTN) sales target Year 1 R20m Year 2 R30m and Year 3 R40m
- Business Development – Africa Sales – developed MGX Africa business model

Achievements:

- Created strong relationships with NEP and partner in Telco space (Ericsson, Lucent, Nokia, Siemens, Logica, Cramer, Xacct, Lightbridge, GlenAyre, network Appliance)
- Developed key account (MTN – became the fulfillment partner)
- First Sun Telecom reseller of Sun Microsystems
- Achieved budgets
- Area of focus in GSM, Prepaid, Billing SMS, Voice Mail, Mobile Banking, IP Core Network management, Network Control Centre, TMOS, Revenue Assurance, Business architecture using Aris Tool set.
- Established successful projects within MTN SA with support teams (technical & project management)

Africa Business

- Developed business model and applied the following products entering into market: *Peregrine, Sun Microsystems, Sun Microsystems-Education, BMC, Content Management*
- Establish and developed reseller/partners in areas: *Nigeria, Rwanda, Uganda, Cameroon, Kenya, Ethiopia*
- Identify and appoint partners with a focus on skills, competence and relationship with local markets. (product dependant)
- Initiatives focused in Educational, Government, Telco's, Financial

Africa Achievements:

- Peregrine business model completed, two partners appointed in Nigeria securing initial sales of R8m with consistent projected increase
- Sun Microsystems Education, received preferred reseller status, awarded Nigerian Education Data Centre deal of \$1m

Customers:

MTN SA & Africa: Focus on both Network and Back-Office division. Worked closely with Ericsson and MTN service providers in both the local and African market. Major Sun Microsystems supplier to both MTN and Ericsson.

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Sales Director, Qdata Networks 1997

Assign to develop sales team and strategy with a focus on government services.

Responsibilities include:

- Lured to Gauteng to take the role of Sales Director within a BEE venture branded as Intoto technology Solutions
- Due to disagreement pertaining to Economic empowerment, entire Intoto team left the Group

Founder/Shareholder/Director, Innov-X, Keodirelang Group, YF & Associates 1994

Marketing and selling of training and development services within the high transactional retail space.

Focus on IT transformation and establishing of black economic empowered (BEE) organisations and BEE deals.

Responsibilities include:

- Focus on IT transformation
- Establishing BEE organizations
- Providing training (transformation) into larger corporate environments

Regional Manager, WordPerfect/Novell 1990-1994

Established and maintained a dealer channel and created new markets in government, retail, oil and petroleum and insurance sectors within region. Special interest and drive was focused on K12 and higher education. Responsible for software and services revenues, business strategy, joint innovation and customer satisfaction within the Western Cape, Eastern Cape and Namibia. Achieved YoY target quota.

Responsibilities include:

- Focus on establishing and managing a Dealer channel
- Penetrated major accounts at Executive level
- Successfully closed large software deals
- Promoted to Regional Manager (Western and Eastern Cape)
- Attended a skills transfer program in Provo, Utah



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- Assisted with marketing Communications
- HNR became WordPerfect SA and my focus was Strategic Account Management
- Became an evangelist for WordPerfect products

Business Development, Computer Networks 1994 - 1995

Sales and development of a training division serving an existing customer base, and the developing of new business across sectors.

Sales Executive, Canon 1987-1990

Sales executive with a focus on typewriters, dedicated word processors and the introduction of PC's targeting all sectors - Legal, Publishing, Retail, Government. Exceeded quota YoY.

Computer Operator, Gabriel Shock absorbers 1982-1984

Engaged in the computerization of manual sales and production systems within a manufacturing plant. Addressed monthly reports and running of the system.

Research Technician, University of Cape Town 1979- 1982

Worked with Master and PhD students in the computerization of research projects.



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Education

Bond University	2001-2002
Master In Business Administration	
Damelin College- Cape Town	1998
Diploma in Marketing Management – First Class	
Damelin College- Randburg	1996
Public Relations Practitioner	

Courses attended:

- Business Presentation Skills
- Strathorn Bryce Major Account Management
- SUN, HP product training
- Franklin Time Management
- Nokia GSM Fundamentals
- Health and Safety
- First Aid – Level One
- HP Standards of Business Conduct
- HP Information Security Policies & Standards
- HP Data Privacy Course
- HP Customer Experience Standards Course
- HP Standards of Excellence
- Introduction to Grid Computing

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Curriculum Vitae

Name: Ajmir Jose Ribeiro De Sousa
Date of Birth: 01 September 1965
ID Number: 6501092656082
SA Passport No: 458956199
Profession: Projects Lawyer/Consultant
Project Management
Business Development
Years experience: 17
Nationality: South African and Portuguese
Membership of Professional Societies Admitted Advocate

KEY QUALIFICATIONS

Ajmir De Sousa is a qualified lawyer who combines business development skills, international best practice, specialist legal services and years of experience in doing business in various African countries. His years of consulting to private sector clients and government agencies on the African continent, therefore, allows him to offer clients' uniquely tailored and creative business and legal solutions with a focus on meeting clients' business transaction objectives. His key areas of expertise are:

- business development, negotiation and facilitation;
- mining and mineral resources and general natural resources concessions;
- International trade, contracts and business transactions;
- regulatory compliance, permitting and due diligence reviews for M&A type work;
- banking institutions and finance;
- New business venture start-up in country
- privatization and restructuring, institutional reform and frameworks;
- utilities and infrastructure projects;
- public private partnerships;
- tender work preparation and administration, procurement documentation;
- project finance;
- land development and land concessions and real estate development;
- feasibility studies; and
- corporate/commercial legal services and preparation of contracts and legal documents.

Ajmir is completely fluent in English and Portuguese, and as such, is able to conduct business and prepare documentation in both these languages. Ajmir's methods of doing business in Africa are people driven and focus on understanding and taking into account the specific political, cultural, legal and business environments of each African market within which he operates. His primary markets in Sub-Saharan Africa are South Africa, Mozambique and Angola wherein Ajmir retains an extensive network of professional, public sector contacts and business contacts. With regard to Angola and Mozambique in particular he has an excellent

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working knowledge of the political, land, legal, regulatory and business investment frameworks prevailing in these respective countries.

SELECTION OF MAJOR PROJECTS

- Retained by Banco Espírito Santo Angola (BESA) to act as facilitator in securing a cooperation agreement between BESA and Standard Bank of South Africa vis-à-vis the markets of Angola and South Africa.
 - Position: Consultant
 - Client: Banco Espírito Santo Angola (President of Board of BESA – Dr. Alvaro Sobrinho)
 - Entities interfaced with: BESA, Standard Bank of South Africa (Sim Tshabalala – Deputy Chief Executive)
 - Level of Engagement: CEO and President of Board level
- Ongoing business development consultant and legal services in relation to identifying and securing international foreign investors for various projects in Angola and Mozambique. In this regard, inter alia, acting as facilitator and negotiator for a large South Africa property investment fund which is interested in investing in mixed use developments in Angola – 2009-2011
 - Position: Consultant
 - Clients: Solida Ocean Drive (Angolan), HBW Group (South African) – CEO Tony Vassilopoulos, Aurecon Lda (Angolan), Samsung (South Africa), Aurecon Lda (Mozambique), Vale (Brasil)
 - Entities Interfaced with: Ministry of Public Works, Ministry of Finance, Private Investment Agency in Angola, National Bank of Angola (BNA)
 - Level of Engagement: National Director level, Minister Engagement Level
- Consultant to Aurecon Group of Companies in Angola and Mozambique – providing legal and business development inputs to various infrastructure projects in Angola including roads projects, social housing projects, property developments – 2006-2011
 - Position: Consultant
 - Client/Projects: Aurecon (Mozambique and Angola) – Various infrastructure projects including water, roads and bridges projects
 - Entities Interfaced with: INEA (Institute of Roads of Angola), Ministry of Public Works, Ministry of Environment
 - Level of Engagement: Minister Level, National Director Level, Reporting to Regional Director, Reporting to CEO and Board of Aurecon South Africa and Angola
- Consultant to ANGOLA LNG – Chevron via project consultants Parsons - Houston/Africon - South Africa on implementation of gas refinery LNG/LPG in Soyo in Zaire Province, Angola. This project known as "ANGOLA LNG" is currently the largest project in Africa estimated at US\$4-7 billion. WORK DONE: Set-up permitting and Licensing matrix for Angola LNG Project, Legal risks review, Project Management - Special Projects Group (Soyo Road Network, Aviation Study and other projects. In 2009 appointed Project Coordinator for Residential Housing Project for Angola LNG Gas Refinery Project. Housing project estimated at US\$295 million. - 2006-2009 Ongoing
 - Position: Projector Coordinator
 - Client: Chevron – Angola LNG

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- o Entities Interfaced with: Various Ministries of the Angolan State including Ministry of Petroleum, Ministry of Environment, Ministry of Housing, Ministry of Interior, Sonagol
 - o Level of Engagement: National and Local Government Level, Ministers Office Level, Local Government Administrators Level, National Director Level
- Ongoing business development and legal services in relation to identifying and securing international foreign investors for various projects in Angola and Mozambique, including mining concessions, property development and land concessions, other resource concessions, fishing concessions, public sector projects, utility projects, large scale real estate/property development projects, including the development of a multimillion dollar commercial/industrial/hotel/conference centre park in Luanda – 2005-2009 - Ongoing.
 - o Position: Legal Advisor and Negotiator - Consultant
 - o Clients: Adastra Mineral Resources (Canada/UK), Endiama (Diamond Company of Angola), ceAfricon Angola (Engineering Company), Parsons Engineering (USA), Freshpack (France), Uniprev (Angola),
 - o Entities Interfaced with: Various Ministries within Angola and Mozambique
 - o Level of Engagement: Minister Office Level, and National Directors, from client side dealt with CEOs, CFOs, COOs, President of Board, Project Managers
- Transaction advisor to Greater Sekhukhune District Municipality ("Municipality") for large project finance PPP water utility project estimated at R 400 million. Prepare report and advise on all legal aspects pertaining to section 78 Process – 2004-2005.
 - o Position: Senior Legal Advisor/Transaction Advisor– Deloitte
 - o Client: Municipality
 - o Entities Interfaced with: Municipal Advisors and Counselors
 - o Level of Engagement: Senior Members of Project
- Transaction Advisor to Rustenburg Water Project ("Project") – R240 million water utility project financed by ABSA Bank South Africa. Lead legal transaction advisor for Rustenburg Municipal Council ("Council"). Functions included assessing the risk profile assumed by the Council in respect of the project finance model and legal documentation designed for the Project by ABSA in order to ensure the bankability of the Project as per the guidelines laid out by the PPP Unit for Public-Private Partnerships Project in South Africa; secure the legal interests and position of the Council in all meetings vis-à-vis the Project; generally protect the interest of the Council and risk profile of the Project - 2004.
 - o Position: Senior Legal Advisor/Transaction Advisor– Deloitte
 - o Client: Municipality
 - o Entities Interfaced with: Municipal Advisors and Counselors
 - o Level of Engagement: Senior Members of Project
- Project manager and privatization specialist to Department of Transport in South Africa on establishment of a Ports Regulator for South Africa – 2004-2005.
 - o Position: Senior Legal Advisor/Transaction Advisor– Deloitte
 - o Client: Department of Transport of South Africa
 - o Entities Interfaced with: Municipal Advisors and Counselors
 - o Level of Engagement: Senior Members of Project
- Consulting to Ministry of Public Works and Housing of Angola on housing project being developed in Luanda, Angola, "Projecto Nova Vida" estimated at USD 300 million – 2003-2004.
 - o Position: Transaction Advisor

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- Client: caAfricon Lda (Angolan Company – Engineering Sector)
 - Entities Interfaced with: Minister Office Level, and National Directors, from client side dealt with CEOs, CFOs, COOs, President of Board, Project Managers
 - Level of Engagement: Senior Members of Project
- Lead Consultant on behalf of KPMG Mozambique involved in the legal and management restructuring of the CFM (the Rail and Port Authority of Mozambique) as part of the privatisation of the railway and port network of Mozambique. This was a project financed by the World Bank - 2002-2003.
 - Position: Unit Manager for Foreign Investments – KPMG Mozambique
 - Client: CFM (Railway Company of Mozambique)
 - Entities Interfaced with: Minister Office, and National Directors, from client side dealt with CEO of CFM and Project Managers
 - Level of Engagement: Senior Level, Ministry Office Level
- Part of consultant team at KPMG Mozambique reviewing project finance documentation and legal opinions for Mozal I Project in Mozambique – Aluminium Smelter Plant - Project Finance – 2000-2001.
 - Position: Unit Manager for Foreign Investments – KPMG Mozambique
 - Clients included: CFM, World Bank, Sasol, Indigo Bay, Concor, BHP, Nedbank, Aguas de Portugal, BP, Angan Group
 - Entities Interfaced with: Minister Office, and National Directors, from client side dealt with CEO of CFM and Project Managers
 - Level of Engagement: Senior Level, Ministry Office Level
- Legal Consultant, negotiator and strategist on the Maputo Development Corridor - N4 Toll-Road Project, privatization specialist and project finance – 1999-2000.
 - Position: Senior Legal Advisor/Transaction Advisor– Africon Mozambique
 - Client: Department of Transport of Mozambique
 - Entities Interfaced with: Municipal Advisors and Counselors
 - Level of Engagement: Senior Members of Project
- Legal Consultant to Trans African Concessions (Pty) Ltd ("TRAC") the concessionaire of the Witbank-Maputo Toll Road – 2001-2003.
 - Position: Legal Advisor/Transaction Advisor– Deloitte
 - Client: TRAC
 - Level of Engagement: Reported directly to CEO –Trevor Jackson
- Part of consultant team involved with the restructuring of the National Directorate of Civil Aviation in Mozambique (DNAC) - A World Bank project – 1999.
 - Position: Legal Advisor/Transaction Advisor
 - Client: Africon South Africa
 - Level of Engagement: Reported directly to Regional Manager

EDUCATION

- 1990 Bachelor of Laws - LLB - Rhodes University, South Africa
Majors: Conflicts of Laws & Constitutional Law (both with distinction)
- 1988 Bachelor of Arts - BA - Rhodes University, South Africa
Majors: Political Science & Legal Theory
Advanced Studies:

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1991 Special Diploma in International Trade Law - University Institute of European Studies
Turin, Italy - Short dissertation on "Legal aspects of Contract Negotiations" (with
distinction)

EMPLOYMENT RECORD

16 years of progressive experience:

2004-2009	Projects Lawyer/Business Development/Project Management/Project Coordination
2003 -2004	Senior Manager ~ Deloitte & Touche Legal
2000-2002	Legal / Business Development Consultant
1998-2000	KPMG ~ Consultant / Manager of Legal & Investment Departments
1996 -1997	International Legal & Business Consultant
1995	Legal Adviser/Private Banker - Investec Merchant Bank Limited
1993 - 1994	Practising Advocate of the High Court of South Africa
1992 - 1993	Webber Wentzel Bowens Attorneys

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LANGUAGE PROFICIENCY

Language	Speaking	Reading	Writing
English	Excellent	Excellent	Excellent
Portuguese	Excellent	Excellent	Excellent
Spanish	Fair	Fair	Fair

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Date: 11/11/2024

BIO-DATA

Name	N.K. CHOUBEY, IRTS (Retd)
Date of Birth	10.06.1948
Contact details	Address: 817, Lavy Pinto Block, Asiad Village New Delhi-110049 Tel: 91-11-26493908 Mbl 9818336699 E-mail choubeyn@gmail.com
Educational Qualification	M.A in Economics, Diploma in Inter-Modal Management (Cardiff)
Area of Specialisation	Warehousing and Multi-Modal Logistics

Wide experience and clear insight of the functioning of Government, Public Sector and private sector. Joined **IRTS (Indian Railway Traffic Service)** in 1971 and worked in Government for about 23 years and in very senior positions in Public Sector and private sector for about 16 years. The area of expertise is logistics, warehousing, planning and project management.

Experience	Present working as Managing Director – Projects, Hind Terminals Pvt. Ltd (HTPL) from April 2010 . HTPL is one of the the largest private container train and terminal operator in India. Chairman & Managing Director, Central Warehousing Corporation (CWC) (1998-2008) Was longest ever CEO of this Schedule 'A' Mini-Ratna PSU. This PSU is one of the largest Public Sector Warehousing Company in the world. Chairman, National Multi Commodity Exchange of India Ltd. (2003 to 2008)
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This was the first online Commodity Futures Company in India. This was promoted as a joint venture by CWC along with private partners.

**Chairman, Central Rallside Warehouse Company Ltd.
(2007 to 2008)**

A specialized rail based logistic company which was formed as a subsidiary of CWC in 2007.

Director, Food Corporation of India (FCI) (1998 to 2008)

Was Government nominee on the Board of this Schedule 'A' PSU for 10 years.

Executive Director, Container Corporation of India (CONCOR) (1992 to 1998).

One of the blue chip Schedule 'A' Mini Ratna PSUs, which is the biggest multi-modal logistic company in India.

Director/Executive Director, Railway Board, Ministry of Railway (1984-1992)

Dealt with policy matters concerning terminals and user amenities.



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Profile of Maphefo Mohuba



I am self made business woman with a Bachelor of Arts degree from the University of the North - now University of Limpopo. While completing my Honours Degree in Philosophy, I became a student lecturer at the university and after completion of my Honours degree I became a full time lecturer of Philosophy and Logic, teaching students from first year level through to honours level. In 1996 I left my career in

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academies to pursue a career in business. My first venture was a clothing business in Polokwane, which was very successful and catered to the upper echelons of society. My 14 year business career since then includes experience in the Panel Beating, Hospitality and Construction industries. I am now solely focused on the construction industry and run a business I founded in 2003 called Moreteng Investments ("Moreteng"). Moreteng is a provider of specialized housing and construction solutions and has CIDB grading of 8 for General Building and 7 Civil Engineering. These grades put our business on par with the likes of Myelaphanda Construction and Sea Kay Engineering Services in terms of contract eligibility and capacity.

The current socio-economic landscape has created extraordinary opportunities for women in business. Being a black woman in construction affords me exciting prospects in a primarily male dominated industry, and its challenges continue to make me into a more astute business person. My Curriculum Vitae has been attached for your perusal and goes into greater detail, but I would like to focus your attention on my skills as listed below.

- I have succeeded as a black woman in business for over a decade having worked in various male dominated industries.
- I am able to come up with innovative business ideas and develop them into deliverable business products and services.
- I have a passion for people, having worked closely with people at all different levels from site labourers to government officials. My good communication and inter personal skills allow me to work well with all stakeholders.
- Having started all my own businesses from the ground I have become determined to succeed and work tirelessly to achieve the required end result.
- I have good analytical and problem solving skills and am able to work well in physically and mentally demanding environments.

I appreciate you considering me to work with your organization. I would be delighted to meet with you and I am happy to provide any additional information you may require about me and my career.

My Contact Information

CONTACT DETAILS :	083 690 7152
HOME ADDRESS :	No. 34 Manhattan, Unkomaas Street East, Paulshof
POSTAL ADDRESS :	P.O. Box 783637, Sandton, Johannesburg, 2146
EMAIL ADDRESS :	naphefo@molebogeng.co.za
DATE OF BIRTH :	20 February 1956
ID NUMBER :	5602200250080
NATIONALITY :	South African
DIVER'S LICENSE :	Code 8
LANGUAGES :	English, Afrikaans, Sepedi, Ndebele

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Education

INSTITUTE	:	UNIVERSITY OF THE NORTH
	:	Honours in Philosophy
DATE OBTAINED	:	Effective 1985
INSTITUTE	:	UNIVERSITY OF THE NORTH
	:	Bachelor of Arts
DATE OBTAINED	:	Effective 1984

Experience

02 March 2004 – Current | Owner and Managing Director
Moreteng Investments | Johannesburg

Key responsibilities:

- Provide the overall direction and management of the organisation
- Ensure the strategic plan and business plan are set in place and constantly monitored
- Ensure realistic goals are set for the organisation, and that these goals are met
- Ensure the organisation complies with company law, construction industry requirements and other relevant legislation
- Monitor financial performance and ensure the organisation remains profitable
- Manage risks to the organisation and ensure that risk and procedures are followed
- Consult with management staff on issues
- Provide leadership and motivation for employees or members
- Act as a bridge between the organisation and external stakeholders
- Identifying strategic partners with diverse expertise to pool resources for project execution
- Preparing and presenting proposals and joint venture agreements, giving presentations and facilitating the necessary due diligence processes.
- Represent the organisation at conferences and official occasions
- Negotiations with local authorities, developers and non-governmental organizations in terms of contracts
- Ensure overall delivery on all projects undertaken



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1996 - 2003 Owner and managing director of Capricorn Panel Beaters (Pty) Ltd. Polokwane

Key responsibilities:

- Achieve sales level as per the budget
- Continuous increase of new Business/Projects
- Year on year increase in Revenues
- Maintained Gross Profit objectives as set for each project
- Gained a thorough understanding of the Construction Industry's objectives including their Return On Investment (ROI) objectives.
- Travelled Extensively throughout South Africa, an opportunity which further enhanced my general knowledge of social and economic developments.

1996 - 2003 Owner and managing director
Capricorn Panel Beaters | Polokwane

Key responsibilities:

- To manage and coordinate all panel beating activities
- To make sure the quality of the work is kept at an optimal standard
- Develop and monitor strategic and business plan
- Consult with management on staff issues
- Liaise with various insurers

Key achievements:

- Listed on all insurance lists of approved panel beaters - only black owned and managed company to achieve this at the time (Afrikaans dominated)
- Had a scrap yard from which we were able to reconstruct written off vehicles
- Trained women to participate in professional spray painting

1996 - 2003 Owner and manager
Ruma Tropical Dealers | Polokwane

Key responsibilities:

- To plan, organize and develop the food and beverage services of organizations, academic institutions and businesses, whilst meeting customer expectations, food and hygiene standards and financial targets
- As this was a very small operation, I had a more 'hands on' role and was highly involved in the day-to-day running of the operation
- recruiting and training permanent and casual staff;
- organizing, leading and motivating the catering team,
- planning menus in consultation with chefs;
- ensuring health and safety regulations are strictly observed;
- budgeting and establishing financial targets and forecasts,
- monitoring the quality of the product and service provided;

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- keeping financial and administrative records;
- managing the payroll and monitoring spending levels;
- maintaining stock levels and ordering new supplies as required;
- interacting with customers if involved with 'front of house' work;
- liaising with suppliers and clients;
- negotiating contracts with customers (in contract catering);
- monitoring quality standards;
- overseeing the management of facilities

1996 – 2003 : Owner and manager
Phelly's Styles | Polokwane

Key responsibilities:

- determine what will appeal to their customers and the apparels salability, based on the competition, style and cost
- know what merchandise to order months ahead of time and remain within a certain budget
- receiving the merchandise for their store, pricing and displaying the clothing in a pleasant, appealing manner
- Hiring, managing, scheduling and supervising staff.
- Training staff as to customer service protocols and how to manage cash and credit card transaction, use the register or computer terminal, deal with returns and refunds and handle customer complaints.
- Purchasing the clothing or accessories that are to be sold in the clothing store.
- Planning a budget or financial statement for the clothing store and operating within this budget
- Planning advertising campaigns, seasonal sales, staffing for Christmas shopping and managing the maintenance and up-keep of the store.
- Contracting with various outside vendors and suppliers for cleaning, bookkeeping, tax preparation and repair services as needed.

Achievements:

- Developed in house designers who put together own ranges

1985 – 1996 : Lecturer
University of the North | Polokwane

Key responsibilities:



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BIO-DATA

Name	N.K. CHOUBEY, IRTS (Retd)
Date of Birth	10.06.1948
Contact details	Address: 817, Lavy Pinto Block, Asiad Village New Delhi-110049 Tel: 91-11-26493908 Mbl 9818336699 E-mail choubeyn@gmail.com
Educational Qualification	M.A in Economics, Diploma in Inter-Modal Management (Cardiff)
Area of Specialisation	Warehousing and Multi-Modal Logistics

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Director/Executive Director, Railway Board, Ministry of Railway (1984-1992)

Dealt with policy matters concerning terminals and user amenities.



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Iqbal Meer Sharma is a Businessman and one of the partners of Blackstone Resources, a mining company focused on commodities with a view toward beneficiation. He is the former Deputy Director-General/CEO of Trade and Investment South Africa (TISA), in South Africa's Department of Trade & Industry (DTI). He was responsible for leading the development and implementation of trade and Investment policies and strategies. He had previously headed up the Trade Policy division, overseeing SA's global economic strategies, managing South Africa's bilateral trade relations and negotiations. He has been with the dti since 2001.

Before joining the DTI, he worked for large multinationals such as PepsiCo and the Bank of America. But, an entrepreneur at heart, he left to set up and run his own companies, including South Africa's first computer education franchise and a software firm. He has been hailed as "one of South Africa's most remarkable entrepreneurs" (*SA Success Magazine* 4/98).

An activist committed to the upliftment of rural and poor communities, he has worked with NGO's and published many articles and papers on social, political and economic issues.

Growing up outside South Africa, he studied in many countries before he graduated from the University of Wisconsin with a degree in Economics.

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1. PERSONAL DETAILS

Surname	:	Sharma
First Name	:	Iqbal Meer
Physical Address	:	6 Sherwood Gate 110 Rivonia Road Sandton 2196
Telephone Number	:	(082) 410 3001 / (011) 784 4805
E-mail	:	iqbalsharma3@gmail.com
Identity Number	:	6703215788087
Date of Birth	:	21 March 1967
Languages	:	
[Read/Write/Speak]	:	English French Hindi Urdu
Sex	:	Male
Marital Status	:	Married
Nationality	:	South African
State of Health	:	Excellent
Interest and Hobbies	:	The Future, Philosophy, Sport, Music, Art, Travelling, Reading, Golf

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2. EDUCATION

Schooling

1971-1973	:	Goa House Primary England
1974-1976	:	Hampton Court, India
1977-1978	:	Fordsburg Primary, Johannesburg
1979-1981	:	Waterford/Kamhlaba, Swaziland
1981-1981	:	George Dixon School, England
1982-1983	:	Cerritos High School, USA
1984-1986	:	Aitchison College, Pakistan

Tertiary Education

1987-1988	:	Santa Monica College, USA
1988-1991	:	University of Wisconsin, Oshkosh USA

Degree Obtained	:	BSc - Bachelor of Science [Honours] University of Wisconsin, Oshkosh USA
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Majors	:	Economics and Business Administration
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3. HONOURS/ACTIVITIES

- * Graduated with Outstanding Senior Award Honours - Wisconsin
- * Deans List - Santa Monica College
- * Vice President: Economics Students Association
- * Member of Segregated Fees Committee: University of Wisconsin
- * Oshkosh Students Association Representative
- * Chairman of Residence Halls Social Committee
- * State/High School Colours for Soccer, Water Polo, Basketball, Athletics
- * Member of US National Award winning Model United Nations Team
- * University: Soccer
- * Active in "Big Brother Community Programme"
- * United Way Volunteer
- * City of Brea - Volunteer Youth Basketball League Coach
- * Chairperson of Campus Debating Society

4. SPECIALISED TRAINING

- * PepsiCo - Los Angeles {California} - Impact Management Training Course - 1992
- * Subway Management Training Course - Connecticut [USA] - 1997

Computer Skills

- * Language - Basic
- * Software - High level of literacy in a range of business enterprise and management software

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5. EMPLOYMENT HISTORY

5.1 Blackstone Resources Ltd [November 2010 – Current]
Pretoria, South Africa

Position : Director

Activities: Identify and develop mining assets with a view to developing a vertically integrated mining house focused on beneficiation, in line with the transformational agenda in South Africa.

Responsibilities Include:

- Develop global business strategy
- Source financial partners globally
- Develop strategic alliances with off take and development partners

5.2 Department of Trade & Industry [March 2007 – October 2010]
Sandton, South Africa

Position : Deputy Director-General/CEO
Trade & Investment South Africa

Activities: Direct the activities of the division to increase South Africa's capability and capacity to promote exports into targeted markets. Increase and retain the level of foreign and domestic direct investment flow. Additionally, manage the Department's network of foreign offices; Contribute towards the effectiveness of TISA through encouraging strategic alignment, oversight and leadership.

Responsibilities Include:

- Leading and managing the development of divisional business plans
- Leading and managing the development of SA investment and export strategies
- Lead small exporter development program
- Manage global network of foreign offices
- Act as lead client interface division for Business into the dti
- Lead and co-ordinate business participation in State Visits, trade missions including Joint Ministerial Commissions, Bi-National Commissions
- Manage SA National Pavilions around the world
- Provide support and advice to the President, Deputy President, Ministers and Dep. Ministers
- Participate in projects as assigned to by the DG or Minister
- Oversee the integration of the dti's trade and investment work with other government departments



- Build a world class organisation in TISA
- Lead recruitment process to strengthen divisional capacity
- Develop management and technology processes for operations
- Participate in the dti EXBO, clusters and boards / councils

**5.3 Department of Trade & Industry [May 2005 – March 2007]
Pretoria, South Africa**

Position : Deputy Director-General (Acting)
Int'l Trade & Economic Development

Activities: Direct the activities of the division, which oversees, designs and develops SA trade policy. This requires providing strategic oversight and guidance to the various business units covering bilateral trade relations globally, multilateral trade relations, African economic development / NEPAD and the Non-Proliferation and Space Affairs Unit. Provide leadership to trade negotiations and agreements on a bilateral and multilateral basis. Lead processes and substance in respect of trade policy formulation and implementation. Drive relations strategically with key countries toward increased and preferential market access for SA products and services. Develop and implement projects and programmes that compliment and contribute to South Africa's global economic strategy through enhanced consultation with all stakeholders. Participate in cluster meetings and other inter-departmental forums.

Responsibilities include:

- Leading and managing the development of divisional business plans
- Leading and managing the development of SA trade policy
- Lead participation in JMC's, BNC's and other bilateral co-operation mechanisms and multilateral areas like the WTO
- Manage team responsible for co-ordinating the trade negotiation agenda
- Provide support and advice to the Minister, Dep. Minister and DG
- Participate in projects as assigned to by the DG or Minister
- Oversee the integration of the dti's international work with other government departments
- Build a world class organisation in ITED
- Lead recruitment process to strengthen divisional capacity
- Develop management and technology processes for operations
- Participate in the dti EXBO, clusters and boards / councils

**5.4 Department of Trade & Industry [Feb 2003 – May 2005 / 2007]
Pretoria, South Africa**

Position : Chief Director
Int'l Trade & Economic Development

Activities: Direct the activities of the bilateral trade business unit with the world outside Africa in the International Trade & Economic Development division. Manage processes and substance in respect of



trade policy formulation and implementation. Drive bilateral relations with key countries toward increased and preferential market access for SA products and services. Develop and implement projects and programmes that complement and contribute to South Africa's global economic strategy through enhanced consultation with all stakeholders.

Responsibilities Included:

- Guiding and managing the development of country strategies, position papers, briefings, reports, and speeches
- Guiding and managing the development of projects to promote bi-lateral trade
- Manage JMC's, BNC's and other bilateral co-operation mechanisms
- Manage a team to co-ordinate regional and global work program
- Participate in projects as assigned to by the DDG, DG or Minister
- Oversee the integration of the dti's work with other government departments
- Build a world class organisation in ITED
- Act on behalf of the Deputy Director-General as needed
- Assist in multilateral engagement of WSSD, FID, SACU
- Assist in recruitment process to strengthen divisional capacity
- Develop management and technology processes for operations

5.5 Department of Trade & Industry [July 2001 – Feb 2003]
Pretoria, South Africa

Position : Director
Int'l Trade & Economic Development

Activities: Direct the activities of the Asia bilaterals in the International Trade & Economic Development division. Develop and implement projects and programmes that complement and contribute to South Africa's global economic strategy in consultation with stakeholders

Responsibilities included:

- Developing country strategies, briefings, reports, speeches
- Developing and implementing projects to promote bi-lateral trade
- Manage JMC's, BNC's and other bilateral co-operation mechanisms
- Manage a team to co-ordinate regional work program
- Participate in projects as assigned to by the DDG, DG or Minister
- Integrate the work of the dti with other government departments
- Assist in building a world class organisation in ITED

5.6 Institute for Black Research [May 1999 – June 2001]
Durban, South Africa

Position : Consultant / Researcher

Activities: Khanya Skills Training Project - Project Manager
Urban Housing Research Prog. - Analysis of Data and Report Formulation

Publishing Programme - Edit and prepare manuscripts for publication
Economic Growth Programme - Project Manager

5.5 Meer Sharma and Associates [December 1994 – July 2000]
Durban, South Africa

Position : Founder/Managing Director

Activities: Marketing and Management Strategists for public and private sector clients. Founded the **COMPUKIDS** Franchise. Performed HR, Financial and General Management functions. Trained and developed franchisees as Business Managers. Designed and implemented strategic intent of the company.

Detailed description of duties at Meer Sharma & Associates / Compukids

- Responsibilities included:
- Understanding and practicing consultative ROI-driven sale process.
 - Motivating and leading a team. Manage and support staff.
 - Establishing standards for the industry to follow.
 - Prospecting and new account development.
 - Design and implement company franchise strategy.
 - Opening new doors and nurture sales cycles at senior levels.
 - Leading the company's project management group once large complex client engagements have been secured.
 - Led recruiting, planning, and management of sales and support staff.
 - Conducted market research, and designed strategies accordingly.
 - Networked at the highest executive level in order to secure business opportunities for the company.
 - Oversee product development, marketing support, and day-to-day sales and customer service operations.
 - Establish and maintain operational standards with respect to response rate and conversion.
 - Responsible for timely and effective communications with internal groups, such as technical, marketing and sales.
 - Manage customer and employee issue escalations.
 - Establish individual performance goals, review performance against goals, Plan, approve, and implement programs for development and progress of individuals.

5.6 S & P Marketing International [August 1993 - November 1994]
Durban, South Africa

Position : Director Sales and Marketing

Activities: Co-Founder. Established new business and staff goals. Conceptualised and implemented market penetration strategy to build brand. Produced all marketing/advertising concepts. Co-ordinated public events and public relations activities.



Detailed description of duties at S&P Marketing Int'l

- Responsibilities included:
- Managing and developing territories.
 - Hire, train and motivate a national sales team.
 - Provide regular feedback on forecasts, competitive information and field intelligence.
 - Define and build a presence in vertical and horizontal market segments.
 - Define product strategy and establish marketing goals necessary to reach sales and profitability objectives.
 - Developed, budgets and managed a range of marketing communications functions including public relations, advertising, direct marketing, events and seminars, web site development and content management, collateral and field sales support.
 - Worked with Product Development on strategic planning of product lines.
 - Established company strategy and goals, and oversaw marketing and promotion budget.

5.7	PepsiCo Irvine CA, USA	[May 1992 - March 1993]
	Position	Associate General Manager

Activities: Supervised staff of 29 to achieve sales goals. Maintained high customer service standards through Management Training. Responsible for marketing restaurant units, achieving new sales in the commercial sector. Implemented the strategic intent of PepsiCo as directed. Trained managers on marketing and financial systems

Detailed description of duties at PepsiCo

- Responsibilities included:
- Define product strategy and establish marketing goals necessary to reach sales and profitability objectives.
 - Developed, budgets and managed a range of marketing communications functions including public relations, advertising, direct marketing, events management, sales support.
 - Worked with Product Development on strategy of product lines.
 - Implemented company strategy and goals.
 - Prospecting and new account development.
 - Leading the division's project management group.
 - Led the recruiting, planning, management of sales and support staff.
 - Conducted market research, and designed strategies accordingly.
 - Establish and maintain operational standards.
 - Manage customer and employee issue escalations.
 - Establish individual performance goals, review performance against goals. Plan, approve, and implement programs for development and progress of individuals.

Reason for Leaving: Returned to South Africa



5.8 Sygma Computing Solutions [Aug 91 – May 92]
Los Angeles CA / Chicago IL, USA

Position : Marketing Manager

Activities: Recruit new business for a customised document management system on an off shore basis. Designed and managed the US rollout for the software developed in India. For its time, it was cutting edge technology in the USA, and document management is now a big industry.

Detailed description of duties at Sygma Computing Solutions

Responsibilities included:

- Define product strategy and establish marketing goals necessary to reach sales and profitability objectives.
- Conducted market research, and designed strategies accordingly.
- Worked with Product Development on strategic planning of product lines.
- Implemented company strategy and goals.
- Prospecting and new account development.
- Developed, budgets and managed a range of marketing communications functions including public relations, advertising, direct marketing, events management, sales support.
- Provide regular feedback on forecasts, competitive information and field intelligence.

5.9 Valley Bank of Oshkosh [July 90 – June 91]
Oshkosh WI, USA

Position : Customer Service Manager

Activities: Managed Customer Service functions for the bank, while overseeing that the strategic intent of customer delivery and service standards is maintained. Resolved disputes between the bank and customers. Designed the flow through concept of customer mobility for ease of movement in the bank while minimising crowding and security risks.

Detailed description of duties at Valley Bank

- Prospecting and new account development.
- Manage customer and employee issue escalations.
- Maintain cross-sell ratios with respect to response rate and conversion.
- Oversaw marketing support, and day-to-day sales and customer service operations.
- Managed customer call centre.
- Conducted market research, and designed strategies.
- Ensured compliance with policies and procedures.

5.10 Univ. of Wisconsin Dept of Residence Life [Aug 89 – July 90]
Oshkosh WI, USA

Position : Payroll & Personnel Manager

Activities: Oversaw the payroll and personnel functions for 12 departments that fell under the Dept of Residence Life. Supervised a staff of 12 in managing the Human Resources function for over 500 employees. Ensured departmental compliance with policies and procedures. Recruited staff to ensure diversity of ideas and intellect.

Detailed description of duties at Univ. Wisconsin – Dept. of Residence Life

- Responsibilities included:
- Managing HR requirements in various departments.
 - Performed weekly audit of payroll from departments.
 - Ensured timely delivery of payroll.
 - Establish individual performance goals, review performance against goals. Plan, approve, and implement programs for development and progress of individuals.
 - Ensure compliance with State and Federal Statutes.
 - Ensure compliance with Affirmative Action policies.
 - Ensure compliance with Fair Labour Practices.
 - Recruit and fill vacancies in the departments.

5.11 Security Pacific Natl Bank (Now Bank of America) [Dec 86 – Aug 89]
Los Angeles CA, USA

Position : Accounts & Loans Officer

Activities: Open new accounts and loans, while promoting and cross-selling complementary products. Ensured high customer service standards while ensuring bank profitability. Gained experience in most retail branch operations including foreign exchange, commercial wires and transfers, tax work. Received commendations for outstanding and innovative work.

Detailed description of duties at Security Pacific National Bank

- Responsibilities included:
- Prospecting and new account development.
 - Opening new doors and nurture sales cycles at senior levels.
 - Leading the branch's project management group in retail sales
 - Conducted market research, and designed strategies.
 - Oversaw marketing support, and customer service operations.
 - Establish and maintain cross-sell ratios with respect to response rate and conversion.
 - Manage customer and employee issue escalations.
 - Define product strategy and establish marketing goals necessary to reach sales and profitability objectives.
 - Established branch performance goals, and designed a pioneering program for fee retrievals on inter-branch customers. The program was called Customer Profitability Management (CPM).

6. MEMBERSHIPS ON BOARDS / COUNCILS

Non-Proliferation Council	(2006-2009)
SA Space Affairs Council	(2004-2006)
Export Credit Insurance Corporation of SA	(2006-current)
Immigration Advisory Board	(2009 – current)
International Marketing Council	(2006-2009)
Proudly South African	(2007 – current)

7. PUBLICATIONS / PAPERS PRESENTED

- “Freedom - the Great Divide”, *Published in*, Towards Democracy, Journal of the Institute for Multi-Party Democracy, Volume 7, Number 1, 1998
- Poverty and Inequality 2000- An analysis on a way forward – Presented to Human Rights Commission – Durban
- 21st Century Education is the Key to a Healthy Democracy, *Published in*, Towards Democracy, Journal of the Institute for Multi-Party Democracy, Volume 8, Issue 1, June 2000
- Keynote Speaker: KZN Information System in Schools [ISIS 2000] Conference, “*The Advancement of Information Technology in the school curriculum and in schooling*”, July 2000
- Speech quoted in “*Creative Financing for Sustainable Development*”, a publication by the World Bank, IMF and United Nations, June 2002

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- * Contributor to "Value to Values", a publication on Sustainable Development by UNEP, Feb 2004
- * Keynote Speaker: American Bankers Association 86th AGM

8. REFERENCES

Available upon request


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Annexure C

NEW TRANSNET BOARD

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
1. Mr Iqbal Meer Sharma	Non-Executive Director and Chairperson	Male	Indian	BSc - Bachelor of Science (Honours)	Strategy; business; international trade; management; global economics
2. Mr Brian Molefe	Executive Director: Chief Executive Officer	Male	African	Master of Business; Post Graduate Diploma in Economics; Bachelor of Commerce	Finance; management; leadership
3. Anoj Singh	Executive Director: Acting Chief Financial Officer	Male	Indian	BAcc and CA(SA)	Finance
4. Mr Peter Malungani	Non-Executive Director	Male	African	B.Com; Advanced Management Programme; Leadership Development Programme	Entrepreneurship; business strategy; corporate governance; investment banking
5. Mr Israel Skosana	Non-Executive Director	Male	African	B.Com; Hons B.Compt; CA(SA); Certificate in the Theory of Accountancy; Advanced Management Programme – Harvard	Leadership; Finance.


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Annexure C

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
6. Ms Nazmeera Moola	Non-Executive Director	Female	Indian	Bachelor of Business Science; CFA Charterholder	Economics; strategy
7. Mr Michele "Mike" Fanucchi	Non-Executive Director	Male	White	MSc Engineering Management; BSc Engineering (Mech) Industrial	Logistics; Supply Chain Management; business management
8. Ms Doris Tshepe	Non-Executive Director	Female	African	LLM; LLB; B.Proc	Legal
9. Ms Tembakazi Mnyaka	Non-Executive Director	Female	African	Bachelor of Social Science; Masters in Town and Regional Planning Diploma in Project Management ; Project Management and Project Leadership certificate	Business; consulting.
10. Ms Ellen Tshabalala	Non-Executive Director	Female	African	International Libentiate Diploma of Banking; Bachelor of Commerce Degree; Post Graduate Diploma in Labour Relations	Business; strategy


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Annexure C

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
11. Mr Harry Gazendam	Non-Executive Director	Male	White	BA; B Proc; Dip Labour Relations; AEDP; EDP; BA; B Proc & Dipl LR; ; EDP; UCLA	Labour Relations; HR Management; Remuneration; Corporate Governance
12. Mr Peter Moyo	Non-Executive Director	Male	African	BAcc; BAcc (Hons); CA(SA); CA; Higher Diploma in Tax Law; Advanced Management Programme	Financial; Business
13. Ms Noliwazi Gcaba	Non-Executive Director	Female	African	B. Juris; LLB	Legal
14. Ms Nunu Ntshingila	Non-Executive Director	Female	African	BA; MBA; Diploma in Advertising (AAA School of Advertising).	Marketing
15. Mr Almir De Sousa	Non-Executive Director	Male	Indian	LLB; BA; Special Diploma in International Trade Law	Legal; International trade; public private partnership; and project finance
16. Ms Maphefo Mohuba	Non-Executive Director	Female	African	BA; Honours in Philosophy	Business


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Annexure C

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
17. Mr Nishi Kant Choubey	Non-Executive Director	Male	* 1. International candidate : Indian	M.A. in Economics; Diploma in Inter-Model Management	Rail; Warehousing; Multi-Modal Logistics
18. Ms Yasmin Forbes	Non-Executive Director	Female	Coloured	MBA; Diploma in marketing; Public Relations Practitioner	Information and Communications Technology sales; Business Development; Brand Creation and Sustainability

*1. International Candidate: Indian


KANN

Butie Tsalane

From: Jumarie Botha
Sent: Wednesday, June 15, 2011 11:06 AM
To: Butie Tsalane
Cc: Thamsanga Msonu
Subject: RE: Recommendation for the appointment of New Non-Executive Directors to the Board of Transnet Vongani Masendo

Dear Butie

I have discussed with Thami, please note that Minister's comments dated 25 May 2011 suffice. No need for a revised decision memo as Minister also signed the revised cabinet memorandum. Just add this memo to the previously signed memo.

Regards

Jumarie

-----Original Message-----

From: Butie Tsalane
Sent: 15 June 2011 09:56 AM
To: Jumarie Botha
Subject: Recommendation for the appointment of New Non-Executive Directors to the Board of Transnet Vongani Masendo

Hi Jums

Please see attached motive submitted to DG. Please advise whether this will suffice.

R
Butie

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"MG32"

SECRET



MINISTRY OF PUBLIC ENTERPRISES

CABINET MEMORANDUM NO : 2 of 2011
DATE : 14 February 2011
FILE NUMBER : 2/2/1

1 SUBJECT

The appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.

2 PURPOSE

For Cabinet to note the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet and as the *ex officio* member of the Transnet Board of Directors.

3 SUMMARY

The Transnet Board undertook a process to fill the current vacancy of Transnet Group Chief Executive. Consequently, Dr Mandla Gantsho, Mr Brian Molefe and Mr Mzinawe Silinga were identified as suitable candidates for the position. The Board recommended any of the three candidates for appointment. Cabinet is requested to note the appointment of Mr Brian Molefe as the most suitable candidate for the position of Group Chief Executive of Transnet. Mr Brian Molefe has extensive senior management experience and experience in asset management (Curriculum Vitae attached as **Annexure A**).

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4 STRATEGIC FOCUS OF THE MEMORANDUM

Transnet is a critical State Owned Enterprise and thus requires a Group Chief Executive with the requisite skills, experience and expertise.

5 DISCUSSION

- 5.1 In view of the position of the Group Chief Executive of Transnet being vacant, the Transnet Board commenced the process of appointment of a new Group Chief Executive. The Board ensured that the job specification included the commercial objectives of Transnet and the role that Transnet has to play in a developmental state.
- 5.2 The position was advertised and Transnet appointed an Executive Search Company to assist with the search for a suitable candidate. It was also decided that an internal and external search be conducted simultaneously. The Board members were also given an opportunity to nominate individuals that they considered to be suitable for the position. A total of 63 candidates were considered for the position, after which the Board shortlisted 9 candidates for interviews.
- 5.3 A comprehensive interview process was undertaken which resulted in the Board identifying three recommended candidates who could fill the position of Group Chief Executive of Transnet. The candidates are Dr Mandla Gantsho, Mr Brian Molefe and Mr Mninawe Silinga. The Board indicated that any of the three candidates are highly suitable for the appointment as Group Chief Executive of Transnet.
- 5.4 Cabinet is requested to note the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.

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NAME	GENDER	RACE	CURRENT POSITION	SKILLS
Brian Molefe	Male	Black	Managing Director: Karibu Holdings	Executive Management, Strategy and Asset Management

- 5.5 Mr Brian Molefe is the current Managing Director of Karibu Holdings and has been in the position since August 2010. He was the Chief Executive Officer of the Public Investment Corporation (PIC) for seven years and was previously a Deputy Director General of Asset and Liability Management unit in the National Treasury. Mr Molefe holds a Masters of Business Leadership from the University of South Africa (Curriculum Vitae attached as **Annexure A**).
- 5.6 In consideration of the strategic challenges confronting Transnet, Mr Molefe's expertise in asset management gained during his tenure at the PIC, and his understanding of capital markets is considered valuable in assisting Transnet to deal with the funding challenges.
- 5.7 With the appointment of Mr Brian Molefe as the *ex officio* member of the Transnet Board, the profile of the Board (excluding international candidates) will comprise of 67 % African, 13% White, 20% Indian and 0% coloured with 67 % male and 33 % female.

6 **IMPLEMENTATION PLAN**

Following notification to Cabinet, the Minister of Public Enterprises will proceed with the appointment of Mr Brian Molefe as Transnet's Group Chief Executive. The appointment shall be made subject to the conclusion of a five year formal contract of employment between Mr Brian Molefe and the Transnet Board of Directors.

7 **ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

None

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8 FINANCIAL IMPLICATIONS

None. The financial obligation with respect to the appointment will be to the cost of Transnet.

9 COMMUNICATION IMPLICATIONS

The Minister of Public Enterprises will communicate the appointment of the new Group Chief Executive to the Transnet Board and other relevant stakeholders.

10 CONSTITUTIONAL IMPLICATIONS

None

11 IMPLICATIONS FOR VULNERABLE GROUPS

None

12 SECURITY IMPLICATIONS

None

13 DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS

13.1 The Department of Public Enterprises.

13.2 The memorandum was not finalised in consultation with the Cluster as the CEO appointment process is the prerogative of the Minister of Public Enterprises and the Board of Directors of Transnet.

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14 RECOMMENDATIONS

It is recommended that Cabinet

- 14.1 note the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.

15 OFFICIAL RESPONSIBLE FOR THE MEMORANDUM

I declare that the memorandum adheres to the guidelines provided by the Cabinet for the drafting of memoranda.

Name: Ms Raisibe Lepule

Designation: Acting Deputy Director General

Telephone: 012 431 1009

Cellular: 0828857109

16 HEAD OF DEPARTMENT

Mr Tshediso Matona, Director General

Department of Public Enterprises

Telephone: 012 431 1000

17 AUTHORISATION FOR PROCESSING THE MEMORANDUM


MR MALUSI GIGABA, MP
MINISTER

14 February 2011.

Is there a need for an electronic presentation to be done in addition to the memorandum?: **NO**

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CURRICULUM VITAE

BRIAN MOLEFE

MM
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PERSONAL DETAILS

Name	Brian
Surname	Molefe
ID Number	661228 5778 08 6
Marital Status	Divorced (08 October 2010)
Home Address	759 Camelford Road Cornwall Hill Estate Irene, PRETORIA
Postal Address	P O Box 18 Cornwall Hill 0178 South Africa
e-mail	mbm1@mweb.co.za

QUALIFICATIONS

- Master of Business Leadership, University of South Africa.
- Post Graduate Diploma in Economics, London University, School of Oriental and African Studies.
- Bachelor of Commerce, University of South Africa. Majors: Accounting and Economics.

OTHER TRAINING

- Programme for Young Global Leaders, Kennedy School of Government, Harvard University, Cambridge, Mass., USA, 2009.
- Advanced management Program, Harvard Business School, Boston, Mass., USA, 2006
- Executive Program, Wharton Business School, Philadelphia, Pennsylvania, USA, 2003.
- Study Tour to Calpers, Sacramento, California, USA, 2003.

A handwritten signature in black ink, appearing to be 'M. Molefe', located in the bottom right corner of the page.

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- Sovereign Debt Management, UBS Warburg, London, 2000.
- Sovereign Cash Management, United States Treasury, Washington DC, 1999.
- Privatisation, Regulatory Reform and Corporate Governance, Kennedy School of Government, Harvard University, Cambridge Mass., U.S.A., 1999.
- International Experience in Privatisations, Warburg Dillon Read, London, 1999.
- Intergovernmental Fiscal Relations, Australia Department of Finance, Canberra, 1988.
- Marketing and Selling of Treasury Products, First National Bank of SA, Johannesburg, 1994
- Central Banking, Bank of England, Rustenburg, 1993.
- Macroeconomic Management, World Bank in Cape Town, 1992.
- Southern African Economic Development Issues, ANC, Windhoek, Namibia, 1991.

BOARD MEMBERSHIPS

- Public Investments Corporation (Executive Director, resigned 2010)
- Harith Fund Managers (Managers of the PAIDF, resigned 2009)
- Pan African Infrastructure Development Fund (Initial Trustee until October 2007)
- Telkom SA. (resigned 2010)
- Airports Company of South Africa (resigned 2008)
- ADRIASA (resigned 2008)
- National Empowerment Fund (resigned December 2004)
- Commission for Public Deposits (until June 2003).
- Export Credit Insurance Corporation (until June 2003).
- Pareto Properties (until June 2004).

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- South African Special Risks Insurance Association (SASRIA) (until July 2003).
- Trans Caledon Tunnel Authority (TCTA) (until July 2003).
- B & PPJ Trust (Trustee)
- Karibu Holdings (Pty) Ltd.
- Karibu Capital (Pty) Ltd
- Karibu Real Estate Investments (Pty) Ltd
- Lion of Africa Fund Managers.

WORK EXPERIENCE**AUGUST 2010 TO PRESENT MANAGING DIRECTOR
KARIBU HOLDINGS**

KARIBU Holdings is an investment company that is wholly owned by the Family Trust. It has subsidiaries which focus on asset management, property and private equity investments

**JUNE 2003 TO JULY 2010 CHIEF EXECUTIVE OFFICER
PUBLIC INVESTMENT CORPORATION****MAIN RESPONSIBILITIES**

- Responsible for the overall management of the Public Investment Corporation which manage assets in excess of R800 billion (mainly Government Employees Pension Fund.)

HIGHLIGHTS

- The introduction of the Public Investments Corporation Bill of 2004 to Parliament.
- Growth in assets under management from R308bn in 2003 to R800bn in 2010 (est.)
- Establishment of the Pan African Infrastructure Development Fund with a first closing of US\$625m



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- Publication of the PIC Corporate Governance and proxy voting principles, policies and practical application.

**JANUARY 2001 TO MAY 2003 DEPUTY DIRECTOR GENERAL
ASSET & LIABILITY MANAGEMENT
NATIONAL TREASURY OF THE RSA**

MAIN RESPONSIBILITIES

- To finance the budget deficit at the lowest possible cost of finance and acceptable levels of risk in both the domestic and foreign capital markets.
- To manage the debt portfolio as well as contingent liabilities of Government.
- To manage the cash and liquidity requirements of Government.
- To facilitate the restructuring of state owned enterprises.
- To ensure that state owned enterprises comply with the requirements of the Public Finance Management Act.
- To manage the risks associated with the debt and liquidity requirements of Government.
- To ensure that all transactions related to liability management, cash management and the restructuring of state owned assets are recorded and accounted for accurately.

HIGHLIGHTS

- Samurai Bond Deal of the Year (IFR) 2001.
- Restructuring of the sovereign domestic bond portfolio
- Sale of 20% shareholding in Transnet to Swiss Air, 2002.
- Sale of 309 million ordinary shares in MCell to Ice BV.
- Restructuring of SASRIA Limited and the declaration of a special dividend of R10,5 billion to the Government of the Republic of South Africa.
- Telkom Initial Public Offering, 2002.
- Issued USD 1 billion 7,375% 10 year Global Bond, 2002.
- Issue of Euro 500 million 7% 10 year notes.



- Issue of 10 year Euro 1,25 billion Global Bond, 2003.

**1998 -2001 CHIEF DIRECTOR
ASSET MANAGEMENT
NATIONAL TREASURY OF THE RSA**

MAIN RESPONSIBILITIES

- Cash management, i.e., the management of Government's cash balances on a day to day basis as well as the investment of surplus funds in tax and loans accounts in conjunction with the SA Reserve Bank.
- Restructuring of state owned enterprises and management of state guarantees pertaining to public enterprises.

HIGHLIGHTS

- Instrumental in negotiating the successful passage of the Conversion of SASRIA Act.
- Participated in the negotiation teams for the privatization of SAA, SAFCOL, Aventura, Connex, Transwerk and other corporations (including the resolution of the Transnet Pension Fund problem)
- Member of the bid evaluation committee for the appointment of the global coordinator for the Telkom IPO.
- Member of the restructuring committees for Portnet, Spoornet, Denel, Electricity Supply Industry and other major state owned entities.
- Advised the North West Provincial Government on the placing of the North West Development Corporation under judicial management.
- Leading a project to make Government's cash management systems electronic as well as the improvement of intergovernmental coordination through the use of the Commission for Public Deposits.
- Member of the Government's Oversight Committee, which reports to the Cabinet Sub Committee on the Restructuring of State Assets.
- Appointed by the President of the RSA to the Board of the National Empowerment Fund as well as the National Empowerment Ventures Trust.

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- Member of the Government delegation to the Annual World Bank and IMF meetings in Prague, Czech Republic, 2000.

**1997-1998 *DIRECTOR: INTERGOVERNMENTAL RELATIONS*
NATIONAL TREASURY OF THE RSA**

MAIN RESPONSIBILITIES

- Responsible for the analysis of the nine Provincial Governments' budgets.
- Responsible for the monitoring of the expenditure of the nine Provinces.

HIGHLIGHTS

- Participated in the negotiation and drafting of conditions for intervention by the national government in the Eastern Cape and KwaZulu-Natal Provinces in terms of Section 100 of the Constitution.
- Part of the Budget Office team that introduced the medium term expenditure framework in the Government.
- Part of a team that introduced cost containment measures during 1997/98 to contain provincial over-expenditure.
- Led the team that drafted Chapter 5 of the Public Finances Management Act (Act No 1 of 1999), which represents significant reform in the public financial management in South Africa.
- Member of the Intergovernmental Technical Committee on Finance as well as part of the delegation of officials to the Budget Council.
- Provided secretarial services to the Ministers' Committee on the Budget (Mincombud)

**1995-1997 CHIEF DIRECTOR: STRATEGIC PLANNING
OFFICE OF THE PREMIER OF LIMPOPO**

MAIN RESPONSIBILITIES

- Coordination of development planning for the Limpopo.
- The Reconstruction and Development Programme projects of the Province.
- Responsible for the Premier's Development Fund (R25 million).



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- Advisor to the Premier on matters of economic development pertaining to Southern Africa as a whole.
- Oversight of the work of the gender and youth commissions in the Premier's Office.

HIGHLIGHTS

- Led a team that drafted the Provincial Growth and Development Strategy.
- Accompanied the Premier to Botswana, Zimbabwe and Mozambique on official visits to discuss economic development strategies and initiate the trans-frontier parks.
- Chaired the Mpumalanga/Limpopo Committee on the Maputo Development Corridor.
- Part of the official delegation to the meetings of the President's Intergovernmental Forum.
- Contributed to the writing of the Premier's political speeches.

**1994-1995 INSTITUTIONAL SPECIALIST
DEVELOPMENT BANK OF SA****MAIN RESPONSIBILITIES**

- The institutional appraisal of Development Bank projects in the Mpumalanga and Limpopo Provinces.

HIGHLIGHTS

- Specialist in Bank's technical assistance programme for the capacity building of rural local governments.
- Seconded to the RDP office of the Limpopo Province for two days a week.

**1994 TRAINEE FOREX DEALER
FIRST NATIONAL BANK OF SA****1992-1993 DIRECTOR NORTHERN TRANSVAAL REGIONAL
DEVELOPMENT FORUM****1991-1992 ADMINISTRATOR AFRICAN NATIONAL CONGRESS,
NORTHERN TRANSVAAL**

AWARDS

2003 *Association of Black Securities and Investment Professionals (ABSIP)*, Financial services achiever of the year

2004 *Black Business Quarterly (BBQ)*, Investment specialist of the year.

2005 *Business Map Foundation, Business Report*, Anglo American Award for BEE leader of the year.

World Economic Forum, Invited to join the Forum of Young Global Leaders

2006 *ABSIP*, Newsmaker of the year.

2007 *Wits Business School/Barloworld Empowerment Awards*, Empowerment Leadership Award.

2008 *Africa Investor Investments Awards*, Institutional Investor of the Year.

COMMUNITY INVOLVEMENT

- Chairman of the Bitou Municipality's Audit Committee
- Member of the SANDF's Reserve Force
 - Force No: **96661376BV**
 - Rank: Colonel
 - Unit: Army Headquarters, Inspector General.

OTHER INTERESTS

- Student Pilot Licence, South African Civil Aviation Authority.
 - Licence No: **0272356890**
 - Restricted Radiotelephony Licence
- Skipper's Licence, South African Deep Sea Angling Association
 - Certificate of Competence No: **5778**



K.M.N.

REFEREES

Lt Gen Solly SHOKE
Chief of the SA Army
South African National Defence Force
Tel 012 355 1000

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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT BRAAMFONTEIN,
JOHANNESBURG (“the Commission”)**

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

**APPLICATION IN TERMS OF RULE 3.3.6 (INCORPORATING A
STATEMENT OF RESPONSE)**

KINDLY TAKE NOTICE that the Applicant hereby files his statement of response to (a) the statement of Mr. Siyabonga Mahlangu (“Mr. Mahlangu”) dated Tuesday, 25 August 2020 (“Mr. Mahlangu’s main affidavit”) (b) Mr. Mahlangu’s statement dated Friday, 28 August 2020 (“Mr. Mahlangu’s supplementary affidavit”) and (c) the evidence of Mr. Mafika Mkhwanazi (“Mr. Mkhwanazi”), to the extent that such evidence implicates the Applicant and simultaneously applies to the Commission on date and at the time to be determined by the Chairperson of the Commission, for Directions in the following terms:

1. That the statement of response annexed hereto marked “**G1**” be admitted to the Commission as a response to:-
 - 1.1 Mr. Mahlangu’s main affidavit and Mr. Mahlangu’s

supplementary affidavit; and

- 1.2 the evidence of Mr. Mkhwanazi given thus far at the Commission relating to the matter between Transnet and Mr. Siyabonga Gama, in so far as such evidence seeks to implicate the Applicant.
2. That the Applicant be granted such further and alternative relief as the Chairperson of the Commission may deem fit.

DATED at Sandton, Johannesburg on Tuesday, 3 November 2020.

Reginald Tshabalala

**TSHABALALA ATTORNEYS, NOTARIES
AND CONVEYANCERS**

Attorneys for Mr. Gigaba (Applicant)

1st Floor, 3 Gwen Lane

Sandton, Johannesburg

TEL: 011 783 5677

E-MAIL: reginald@tshabalala.com
[/kim@tshabalala.com](mailto:kim@tshabalala.com)

REF: Mr TR Tshabalala/Miss K
Slaffa/jp/G01420

TO:

THE SECRETARY OF THE COMMISSION

2nd Floor, Hillside House

17 Empire Road

Parktown, Johannesburg

TEL: 010 214 0651

E-MAIL: secretary@commissionsc.org.za /

Filed with the Secretary of the Commission by e-mail
secretary@commissionsc.org.za
on Tuesday, 3 November 2020

"G1"

IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT BRAAMFONTEIN, JOHANNESBURG
("the Commission")

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

APPLICATION IN TERMS OF RULE 3.3.6 (INCORPORATING A
STATEMENT OF RESPONSE BY MR MALUSI KNOWLEDGE NKANYEZI
GIGABA)

I, the undersigned,

MALUSI KNOWLEDGE NKANYEZI GIGABA

do hereby make oath and say:

THE DEPONENT

1. I am:
- 1.1 an adult male; and
 - 1.2 the Former Minister of *inter alia*, the Department of Public Enterprises
("the Department").

Kmw A

2. The contents of this statement are within my personal knowledge and belief, save where the context indicates otherwise and are both true and correct.

PURPOSE OF THIS STATEMENT

3. On Monday, 19 October 2020, my attorneys received an e-mail annexed hereto as "**MG1**" from the Commission with an affidavit of Mr. Siyabonga Mahlangu ("Mr. Mahlangu") dated Tuesday, 25 August 2020 ("Mr. Mahlangu's main affidavit"). In **MG1**, the Commission had indicated to my attorneys that it intended to call Mr. Mahlangu as a witness immediately after the evidence of Mr. Mafika Mkhwanazi ("Mr. Mkhwanazi") had been completed and enquired whether I had any objection to the evidence of Mr. Mahlangu continuing on the understanding that the requisite Rule 3.3 notice would be given to me at a later stage.
4. On Tuesday, 20 October 2020 and in an e-mail annexed hereto as "**MG2**", my attorneys indicated to the Commission that I had no objection to the evidence of Mr. Mahlangu being heard as proposed by the Commission, subject to the arrangement that the Rule 3.3 notice relating thereto would be sent to me or my attorneys at a later stage and that I would be afforded a period of 14 (fourteen) days from the date of receipt of the Rule 3.3 notice to react thereto.
5. On Tuesday, 20 October 2020, my attorneys received a notice in terms of Rule 3.3 from the Commission. The said notice contained a supplementary affidavit of Mr. Mahlangu dated Friday, 28 August 2020, together with annexures **SMA1**

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and **SMA2** submitted by him to the Commission ("Mr. Mahlangu's supplementary statement").

6. Although there was no formal notice from the Commission to me in terms of Rule 3.3 in respect of Mr. Mahlangu's main affidavit, for convenience, I will in this affidavit also respond to Mr. Mahlangu's main affidavit.
7. Part of my response in this affidavit deals with the background in relation to the matter between Transnet and Mr. Siyabonga Gama ("Mr. Gama") and my response to the evidence of Mr. Mkhwanazi in so far as his evidence seeks to implicate me.
8. Thus, the purpose of this statement is four-fold, namely to serve as:-
 - 7.1 a response to the allegations made by Mr. Mahlangu in Mr. Mahlangu's main affidavit in so far as his evidence seeks to implicate me therein;
 - 7.2 a response to the allegations made by Mr. Mahlangu in Mr. Mahlangu's supplementary statement in so far as his evidence seeks to implicate me therein;
 - 7.3 a basis for an application in terms of Rule 3.3.6 for the Chairperson to admit this statement in response and rebuttal of Mr. Mahlangu's main

affidavit and his supplementary statement in so far as his evidence seeks to implicate me therein; and

7.4 a basis for an application in terms of Rule 3.3.6 for the Chairperson to admit this statement in response to and rebuttal of the evidence of Mr. Mkhwanazi, to the extent that his evidence seeks to implicate me.

9. As indicated above, I have in this affidavit also (a) dealt with certain aspects of the evidence of Mr. Mkhwanazi to the extent that his evidence seeks to implicate me and (b) set out my version in response to a specific allegation being responded to. To the extent that the Chairperson may require that I submit parts of this affidavit in relation to the evidence of Mr. Mkhwanazi in a separate form or document, I will do so. In addition thereto, I am happy to attend at the Commission to give evidence on matters that are within my knowledge, as previously tendered.

INTRODUCTION

10. I was appointed as the Minister of Public Enterprises from 1 November 2010 and remained in such position until May 2014.

11. During or about December 2010, Mr. Mahlangu was appointed in terms of Section 12A of Public Service Act 103 of 1994 as my special advisor. As my special advisor, Mr. Mahlangu's responsibility was to advise me on matters relating to my duties as a Minister of Public Enterprises, in particular from a law

perspective as he had a legal background. Mr. Mahlangu ceased to be my special advisor in May 2014 when I was appointed as the Minister of Home Affairs.

**RESPONSE TO MR. MAHLANGU'S MAIN AFFIDAVIT AND THE
SUPPLEMENTARY STATEMENT**

12. I will respond firstly to Mr. Mahlangu's main affidavit and secondly to his supplementary affidavit *seriatim* to the paragraphs in which he seeks to implicate me.

13. **AD MR MAHLANGU'S MAIN AFFIDAVIT**

13.1 **AD PARAGRAPHS 7 AND 8**

13.1.1 Although Mr. Mahlangu briefed me on a number of matters relating to the various State-Owned Companies including Transnet, as far as I can recall, the first update I received from Mr. Mahlangu about Transnet's intention to settle with Mr. Gama was on receipt of **SMA1**. No details of the settlement were furnished to me and I did not call for these details.

13.1.2 Transnet board has never briefed me officially or otherwise on its intention or decision to reinstate Mr. Gama. The only time I learned of a possible settlement was on receipt of **SMA1**, although I did not know the terms of the settlement.

13.2 **AD PARAGRAPH 9**

I was not aware of the terms of the settlement between Transnet and Mr. Gama, until my attorneys furnished me with a letter received from the Secretary of the Commission dated Thursday, 13 August 2020.

13.3 **AD PARAGRAPH 23**

Although Mr. Mahlangu alleges that I had requested a meeting with Mr. Gama, I do not recall requesting such a meeting or having met with Mr. Gama as alleged. I do not recall ever having had a one on one meeting with Mr. Gama.

14. **AD MR MAHLANGU'S SUPPLEMENTARY AFFIDAVIT**

13.1 **AD PARAGRAPHS 5 TO 10**

13.1.1 I have had regard to **SMA1** and **SMA2** and will deal with these annexures separately below.

13.1.2 **SMA1** is an e-mail dated 18 January 2011 from Mr. Mahlangu to me briefing briefed me about a number of matters, including the matter between Transnet and Mr. Gama in bullet point 2, which is the part relevant for this matter.

13.1.3 It is important to provide the Commission with the background into how Mr. Mahlangu ended up briefing me on the matter between Transnet and Mr. Gama. In my affidavit dated Wednesday, 26 August 2020 submitted to the Commission, I stated therein (still repeat it), *inter alia*, that:-

13.1.3.1 I was not involved in the process of settlement or the reinstatement of Mr. Gama and played no role in that process and that such matter was decided by the Transnet board without reference to me;

13.1.3.2 I was not aware that Mr. Mahlangu had made contact with Mr. Mapoma with a view to put pressure on him to finalise the agreement of settlement between Transnet and Mr. Gama.

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MY APPOINTMENT AS THE MINISTER OF PUBLIC ENTERPRISES

13.1.4 I had landed back from Durban on the mid-morning of 31 October 2010 when I was contacted telephonically by the then Head of the President's private office, Ms. Lakela Kaunda to inform me that the President wanted to immediately see me in Pretoria.

13.1.5 I met with the President during the day at the President's official residence in Pretoria. It was at this meeting that the President informed me that he was appointing me as the Minister of Public Enterprises and that I would be sworn in the following day on 1 November 2010. At the time, I was the Deputy Minister of Home Affairs.

13.1.6 I was sworn in as the Minister of Public Enterprises on 1 November 2010. Before the meeting with the President on 31 October 2020, I was not aware that I would be appointed as the Minister of Public Enterprises.

13.1.7 After being appointed the Minister of Public Enterprises, I was briefed by the Department on its overall mission and also by each unit of the Department. After these briefings, I then received extensive briefings from each State-Owned Company

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in my portfolio. If my memory serves me correctly, these briefings took over a period of two weeks to complete. The briefings included the topic on the 5 (five) year Capital Expenditure Plan of Transnet.

13.1.8 On the day of my appointment, Mr. Chris Wells who was the Chief Financial Officer of Transnet and also its acting Chief Executive Officer at the time, resigned from Transnet. I heard this on the news as I was travelling to the office and I immediately contacted Prof. Everingham who was the acting chairperson of the Transnet board at the time who confirmed Mr. Wells's aforesaid resignation.

13.1.9 At the time, the board of Transnet had many vacancies, its term of office had lapsed and it was emasculated. If my memory serves me correctly, there was also only one black female board member at the time. Thus, the Transnet board needed to be reconstituted so that it could operate within a new term and at the same time reflect the demographics of the country, including having female members appointed to it.

13.1.10 Another important factor which drove the process of the Transnet board reconstitution was the 5 (five) year Capital

Expenditure Plan of Transnet mentioned above which needed a stable board that could inspire confidence in the market.

13.1.11 After the briefings from the Department and the State-Owned Companies as aforesaid, the process of identifying possible candidates for the new board of Transnet was commenced with between the Department and my office.

13.1.12 In identifying possible candidates to the Transnet board, amongst the important considerations was that the board needed to hit the ground running in implementing the aforementioned 5 (five) year Capital Expenditure Plan of Transnet and in stabilizing governance. One of the candidates who was identified and recommended to Cabinet for appointment on the Transnet board as its chairperson was Mr. Mkhwanazi who had been the Chief Executive Officer of Transnet between 2000 and 2004. The other candidates who were recommended by the Department to Cabinet for appointment to the Transnet board were:-

- 13.1.12.1 Mr. Peter Malungani;
- 13.1.12.2 Mr. Israel Skosana;
- 13.1.12.3 Ms. Nazmeera Moola;
- 13.1.12.4 Mr. Michele Fannuchi;

13.1.12.5	Ms. Doris Tshepe;
13.1.12.6	Mr. Donald Mkhwanazi;
13.1.12.7	Ms. Thembekazi Mnyaka;
13.1.12.8	Ms. Ellen Tshabalala;
13.1.12.9	Mr. Harry Gazendam;
13.1.12.10	Mr. Iqbal Sharman;
13.1.12.11	Prof. Juergen Schrempp;
13.1.12.12	Mr. Peter Moyo;
13.1.12.13	Ms. Nolwazi Gcaba; and
13.1.12.14	Ms. Nunu Ntshingila.

13.1.13 The abovementioned candidates were approved by Cabinet for appointment to the Transnet board on 8 December 2010. Their appointments would have occurred shortly thereafter. I do not have copies of their letters of appointments, these should be with the Department should the Commission wish to have regard thereto.

13.1.14 In October 2010, I did not have a meeting with Mr Mkhwanazi. It made no sense because in October 2010, I was not yet the Minister of Public Enterprises and I did not even know that I would be appointed as the Minister of Public Enterprises. Mr.

Mkhwanazi was also at the time, not part of either the executive or board of Transnet.

13.1.15 As already stated earlier in this affidavit, I have had regard to the evidence of Mr. Mkhwanazi in so far as he alleges that he had a meeting with me during October 2010. Mr. Mkhwanazi must be conflating issues.

13.1.16 I first had a meeting with Mr. Mkhwanazi during November 2010 before recommending him to Cabinet for approval as chairperson of the board of Transnet. The purpose of the meeting was to inform Mr. Mkhwanazi that he had been recommended for appointment as a chairperson of the board of Transnet and to find out if he was available to take such appointment should Cabinet approve. Mr. Mkhwanazi indicated to me that he was available to serve as the chairperson of the Transnet board and the recommendation to Cabinet was submitted thereafter.

13.1.17 Mr. Mkhwanazi has alleged that during my first meeting with him in October 2010, I raised a number of issues relating to Transnet, being (a) the issue of procurement (b) the pattern of briefing black law firms (c) the Gama matter and (d) the issue of

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non-appointment of African women to the executive of Transnet.

13.1.18 Although I do not recall in precise detail, the discussion I had with Mr. Mkhwanazi, I must have raised broad topics some of which were informed by the briefings from the Department and its units. I deal with each topic below.

13.1.18.1 Corporate Governance

I must have indicated to Mr. Mkhwanazi that as a board, it would be important to strengthen corporate governance. This was informed by a number of reasons such as (a) the previous board having served beyond its term and at the time of its replacement, it was emasculated (b) the said board had an acting chairperson (c) Transnet had an acting Chief Executive Officer and some of the subsidiaries had acting Chief Executive Officers (d) the resignation of Mr. Chris Wells meant that he left a vacancy as an acting Chief Executive Officer when he was also serving as the Chief Financial Officer. This meant that Transnet had a Chairperson of the board, Chief Executive and Chief Financial Officer

who were all acting at the time. These would have had an adverse impact on investor confidence on Transnet at a time when it was in the midst of the 5 (five) year Capital Expenditure Program;

13.1.18.2 Importance of implementing transformation both at executive recruitment level and investment program

I must have informed Mr. Mkhwanazi on the importance of implementing transformation both at executive recruitment level and investment program. This must have been informed by the briefings and engagements that I had with the Department about various matters, including the Transnet's Capital Expenditure Program's potential program to drive economic transformation and the development of upstream industries. At the time, the Department was busy with a competitive supplier development program which sought to support local industries by encouraging State-Owned Companies to implement local procurement and it was important for the various State-Owned Companies, including

Transnet to be part of the drivers of the agenda of the said competitive supplier development program.

13.1.18.3 The matter between Transnet and Mr. Gama

At the time of my appointment, there was a public outcry from a number of black professional organizations and political parties about the manner in which Mr. Gama was being treated by Transnet. It was all in the media and the public domain and one could not escape it. The Department did not brief me on this matter. Because of the public outcry, I indicated to Mr. Mkhwanazi that in order for Transnet to respond to the public outcry about the matter of Mr. Gama, it would be important for the new Transnet board to look into whether the outcry had merit. In other words, to look at whether the dismissal of Mr. Gama was fair or not. I did not instruct Mr. Mkhwanazi to undertake a process to review the dismissal of Mr. Gama. I did not express any view to Mr. Mkhwanazi about the fairness or unfairness of Mr. Gama's dismissal as I had no information before me to be able to make any view. The decision to

review the dismissal of Mr. Gama and to reinstate him was taken by the board without reference to me. In addition thereto, as a Minister of Public Enterprises, I had no authority to instruct the Transnet board on what to do with the matter of Mr. Gama. That decision fell within the exclusive remit of the Transnet board which had authority over its subsidiaries such as Transnet Freight Rail (TFR) from which Mr. Gama was dismissed.

13.1.19 From the aforesaid meeting with Mr. Mkhwanazi, no mandate or instruction was given to him. This was simply an exploratory meeting to firstly, establish if he was available to accept the nomination to act as the chairperson of Transnet should Cabinet approve and secondly, to have broad discussions about Transnet and its direction.

13.1.20 The issues relating to the patterns of lack of briefs to black law firms and auditors and the non-appointment of African women to the executive of Transnet were only raised by me with the Transnet board in 2011. These issues arose in the context of the preparations of the annual general meetings of the various State-Owned Companies falling within my portfolio. When I

joined the Department, one of the things that I introduced was to personally attend annual general meetings of State-Owned Companies falling within my portfolio so that I could obtain first hand briefings and hear for myself on the annual reporting and performance of these companies. This also gave me the opportunity to address the various boards on a number of issues relating to these companies on an annual basis.

13.1.21 During these preparations for the annual general meetings of the various State-Owned Companies, the Department and my office were discussing the issue of lack of transformation at a level of executive appointments and supplier development and procurement of professional services. It became apparent to my office and the Department, that *inter alia*:-

13.1.22 The largest portion of the budgets and procurement spend of the State-Owned Companies falling with my portfolio were being spent on white owned entities, law firms, auditors, public relations and marketing entities. I was not happy with this state of affairs especially when transformation ought to be at the forefront of both public and private entities' agenda. I then issued a directive to the State-Owned Companies falling

within my portfolio to account to me about the steps they were taking to meet the transformation agenda by significantly increasing the expenditure of the State-Owned Companies on black owned entities, law firms, auditors, public relations and marketing entities. This was but one of the matters that remained at the forefront of my office and the Department. My office and I repeatedly raised it with the various State-Owned Companies.

13.1.23 There was evident lack of transformation relating to executive appointments, supplier development and procurement of professional services in most of the State-Owned Companies falling within my portfolio.

13.1.24 As a result of the said evident lack of transformation, in 2004, the Department adopted a new vision, to drive investment, efficiency and transformation in its portfolio of State-Owned Companies, their suppliers and customers in order to grow the economy, industrialize the economy, create jobs and develop skills. This new vision underpinned the country's overarching vision of

inclusive growth through transformation and using State-Owned Companies' investments and operations to industrialize the South African economy.

- 13.1.25 In this regard, transformation was viewed as vital to growth and thus State-Owned Companies were required to pursue it vigorously through their capital and operational programmes. The Competitive Supplier Development Programme (CSDP) had been adopted and was being pursued by State-Owned Companies, overseen by the Department, to develop upstream supplier industries to support the infrastructure roll-out programme through providing content and inputs developed locally. State-Owned Companies were expected to forge strategic partnerships with the global original-equipment manufacturers and local private sector in providing infrastructure and inputs for rolling stock.

- 13.1.26 In pursuit of transformation:-

13.1.26.1 From 2011, the Department decided to start implementing Mandatory Audit Firm Rotation, bringing on board many black audit firms which had for decades been neglected in terms of audit work in the State-Owned Companies. The audit environment was dominated by four big white audit firms, which together comprised about 96% of the audit market share. This decision resulted in the emergence of three black audit giants, namely, Sizwe-Ntsaluba Gobodo, Sekela-Xabisa and Nkonki. Sizwe-Ntsaluba Gobodo won the external audit business of Transnet, becoming the first black company to win such a large contract for a big company, and was followed by Sekela-Xabisa that won the internal audit business of Transnet. However, these three still did not

occupy a significant share of the audit market;

13.1.26.2 The Department conducted an audit of professional services procurement by the State-Owned Companies, which pointed to serious discrepancies in terms of compliance with the principles of redress and equity. For example, white legal, engineering and consulting as well as media (public relations, advertising and marketing) companies had a lion's share of the most lucrative contracts of the State-Owned Companies. Whereas white firms would enjoy contracts of between tens and up to hundreds of millions of rand, black firms would enjoy a paltry proportion of that.

13.1.26.3 My office met with the black lawyers associations and media companies that complained about the above-mentioned situation and requested the Department to establish a framework to change this. I raised these issues during the meetings with the Boards, at the annual general meetings of the State-Owned Companies and at the Chairpersons' Forum meetings with the Chairpersons and Chief Executive Officers of the State-Owned Companies. Many changes happened as a result.

13.1.26.4 In 2013, Transnet launched an Enterprise Development Hub, which was a one-stop shop for small and medium businesses that sought to do business with Transnet. This Hub was a partnership involving Transnet, the

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South African Revenue Service, Gauteng Enterprise Propeller, the National Youth Development Agency, the Company's Intellectual Property Commission, Small Enterprise Development Agency and BEE Verification Agency.

13.1.26.5 Again, in 2013, Transnet took a bold step to announce that it had awarded a R15.5 billion contract for the supply of fuel for the next five years to nine black-owned companies. Eight (8) out of these nine (9) companies were 100% black owned, whilst five (5) of them were more than 80% woman owned.

13.1.26.6 These were but some among the transformation initiatives undertaken at Transnet during the four (4) years that I was the

Minister of Public Enterprises.
More is still required to address the
issue of lack of transformation.

13.1.27 The above initiatives were still not sufficient to
address the issue of transformation, more was and
is still required.

13.1.28 **AD SMA1**

13.1.28.1 In the second bullet point of **SMA1**, Mr.
Mahlangu was briefing me about the settlement
between Mr. Gama and Transnet. He also
suggested that I socialize the President "and his
key aides (formal & informal)" on the proposed
settlement. I understood Mr. Mahlangu's e-mail
in this regard to be that because of the
importance of Transnet and the issues relating
to it which were in the public domain, he
suggested that I update the President. I did not
accept Mr. Mahlangu's suggestion and did not
brief the President as I considered the matter to
be falling within the remit of the Transnet board.

- 13.1.28.2 The reason Mr. Mahlangu was giving me an update on the matter between Mr. Gama and Transnet was because at the time, the matter had dominated the public discourse as already stated. I have already stated that one of the issues I had mentioned to Mr. Mkhwanazi at our first meeting in November 2010 was to suggest that as a new board of Transnet, they should look into whether the dismissal of Mr. Gama was fair or not in order to be able to respond to the aforementioned public outcry.
- 13.1.28.3 Subsequent thereto, I received **SMA1** from Mr. Mahlangu. Although he indicates therein that Transnet may be nearing a settlement with Mr. Gama, he did not furnish me any information on the terms of the settlement. I also did not ask him about the details of the settlement as I considered that such fell within Transnet board authority and did not fall within my authority or remit. I presume that Mr. Mahlangu was updating me because of the public attention the

matter had gained so that I am not embarrassed when asked about the matter, in particular by the media. In any event, I would have referred any questions on the matter to the Transnet board as I had no information on the matter. I also note that Mr. Mahlangu further suggested that I should socialize the President about the settlement. For the reasons already stated, I did not do so and have never discussed the matter between Transnet and Mr. Gama with President Zuma. Furthermore, President Zuma has never mentioned the matter between Transnet and Mr. Gama to me.

13.1.29 **SMA2**

- 13.1.29.1 It was only through **SMA2** that I learned from Mr. Mahlangu that Transnet had offered to reinstate Mr. Gama. I did not know the reasons therefor. Once again, that was the decision of the Transnet board which was made without reference to me as it fell solely within its remit.

13.1.29.2 In **SMA2**, Mr. Mahlangu had advised me that,
inter alia:-

13.1.29.2.1 The impasse at the time between Transnet and Mr. Gama relating to his dismissal/settlement was not to delay the appointment of the new the Chief Executive Officer of Transnet;

13.1.29.2.2 Mr. Gama had no right to be appointed as the Chief Executive Officer of Transnet and as such the prospects of him obtaining the urgent relief to interdict the appointment of a Chief Executive Officer would be very minimal;

13.1.29.2.3 Mr. Gama should not be interviewed or shortlisted and the matter surrounding his dismissal may be dealt with

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by the new Chief Executive Officer and the board going forward.

13.1.29.3 I had regard to the advice of Mr. Mahlangu at the time as contained in **SMA2** and my view was and remains that as a Department, we were not to get involved and that the matter remained within the remit of the Transnet board.

CONCLUSION

15. In the premises, I submit that there was no wrongdoing on my part as the Minister, representing the shareholder in executing my duties on behalf of the State.

16. I therefore humbly apply for leave that this statement be admitted in rebuttal of:-

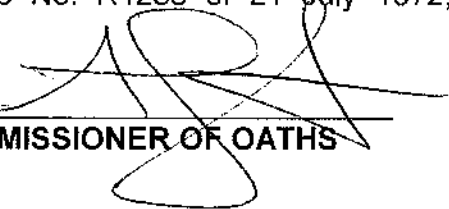
15.1 Mr. Mahlangu's main affidavit and supplementary affidavit; and

15.2 Mr. Mkhwanazi's evidence

in so far as the evidence of Mr. Mahlangu and Mr. Mkhwanazi seeks to implicate me.


DEPONENT

THUS SIGNED AND SWORN TO before me at Sandton on this the 3rd day of November 2020 by the deponent who acknowledges that the deponent knows and understands the contents of this affidavit; that it is the truth to the best of the deponent's knowledge and belief and that the deponent has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


COMMISSIONER OF OATHS

EX OFFICIO:
FULL NAMES:
PHYSICAL ADDRESS:
DESIGNATION:

ASHLEY JOY ADAMS
COMMISSIONER OF OATHS
EX OFFICIO
PRACTISING ATTORNEY - RSA
1ST FLOOR, 3 GWEN LANE
SANDTON


KND

"MG1"

Reginald Tshabalala

From: Clarence Benjamin <ClarenceB@commissionsc.org.za> on behalf of Clarence Benjamin
Sent: Monday, 19 October 2020 10:20
To: reginald@tshabalala.com
Cc: jazmin@tshabalala.com
Subject: FW: Mr Mhalangu
Attachments: Mhalangu's Affidavits and Annexures.pdf
Importance: High

My apologies
I used incorrect email address

Kind Regards

Clarence Benjamin

COMMISSION OF INQUIRY INTO STATE CAPTURE |

Hillside House, 3rd Floor, 17 Empire Road, Parktown, Johannesburg, 2193 | Gauteng | South Africa |

Email: clarenceb@commissionsc.org.za | Mobile: 060 768 7746 | www.sastatecapture.org.za



From: Clarence Benjamin
Sent: Monday, 19 October 2020 10:15
To: 'reginald@tshabalala.com' <reginald@tshabalala.com>
Cc: 'atm@law.co.za' <atm@law.co.za>
Subject: Mr Mhalangu
Importance: High

TSHABALALA ATTORNEYS

Dear Mr Tshabalala

Our earlier discussion refers.

You may be aware that : (i) we intend to call Mr Mhalangu as a witness after the completion of Mr Mkwana's evidence; and (ii) there are limited aspects of Mr Mhalangu's evidence that implicate (or potentially implicate) Mr Gigaba (paras 4, 7, 8, 10 and 22 of Mr Mhalangu's first affidavit and annexures SMA 1 and 2 to his second affidavit).

In terms of rule 3.3, Mr Gigaba is entitled to be issued with a formal notice advising him of this and of his ensuing rights (i.e. to bring an application within 14 days for leave to, inter alia, cross-examine Mr Mhalangu). As of the present time, such a notice has yet to be issued.

KW

With a view to the proceedings not being interrupted today (and time potentially be lost), we write to enquire whether Mr Gigaba would be prepared to waive his right to a formal 3.3 notice being issued in advance of Mr Mahlangu's evidence. If he is prepared to do so, a formal (adapted) notice will be issued immediately after Mr Mahlangu's evidence confirming Mr Gigaba's rights to bring an application within 14 days for leave to, inter alia, cross-examine Mr Mahlangu.

Your urgent response would be appreciated.

Kind Regards

Clarence Benjamin

COMMISSION OF INQUIRY INTO STATE CAPTURE |

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Email: clarenceb@commissionsc.org.za | Mobile: 060 768 7746 | www.sastatecapture.org.za



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'MG2'

Reginald Tshabalala

From: Reginald Tshabalala
Sent: Tuesday, 20 October 2020 08:12
To: 'Clarence Benjamin'
Cc: Jazmin Pandey; 'Kim Slaffa'
Subject: RE: Mr Mhalangu

Dear Mr. Benjamin,

Your e-mail below bears reference.

In the interest of ensuring that the proceedings of the commission are not delayed, my client has no objection to the hearing of the evidence of Mr. Mhalangu after the hearing of the evidence of Mr. Mkhwanazi, provided that my client is afforded the 14 day period to react to the rule 3.3 notice in respect of the evidence of Mr. Mhalangu, from the date that such rule 3.3 notice is received.

Yours Faithfully,



Reginald Tshabalala
Attorney, Conveyancer
and Notary Public
 T: +27117835677
 E: reginald@tshabalala.com
 www.tshabalala.com

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From: Clarence Benjamin <ClarenceB@commissionsc.org.za>
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Cc: jazmin@tshabalala.com
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Importance: High

Handwritten signature/initials

My apologies
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Kind Regards
Clarence Benjamin

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Kind Regards
Clarence Benjamin

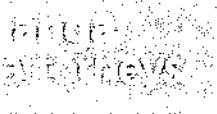
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★
KMN



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KMW



Handwritten note: "B" inside a circle, with "ET" written above it.

181 Jan Smuts Avenue
Rosebank Office Park
Block B, Ground Floor
Parktown North
PO Box 2138, Parklands, 2121

Tel: 011 447 3424
Fax: 011 447 2351
info@langaattorneys.co.za
www.langaattorneys.co.za

DATE: 25 June 2014
OUR REF: Mr T. Langa
YOUR REF: Mr David Andile Horner

Ningiza Horner Inc.
Block B, Ground Floor
85 Protea Road
Chislehurst
Sandton

Email: david@nhlaw.co.za

Dear Sirs

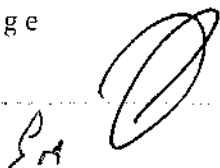
RE: OUTSTANDING PAYMENT ON LEGAL FEES TO MR S GAMA

- 1. The above matter and the meeting held on 6 June 2014 refers.
- 2. We confirm that when this matter was settled it was agreed, in writing, with the then Minister of Public Enterprise that the costs incurred by Mr Gama ("our client") would be borne by Transnet. It was further agreed that Transnet would contribute 75% towards the bill incurred by Mr Gama.
- 3. The Eversheds and Bowman taxed bills were comprised of the following amounts:

3.1 Eversheds	R201 066.33
3.2 Eversheds	R727 689.16
3.3 Bowmans	R426 664.37
Total	<u>R1 355 419.86</u>

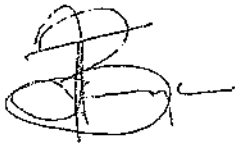
Handwritten signature.

4. Transnet effected payment in the amount of R1 016 564.90 (one million sixteen thousand five hundred and sixty four rand and ninety cents) on the 30th of March 2011 which amounted to 75% of the costs in respect of Eversheds and Bowmans only, the shortfall of 25% amounting to R338 854.96 (three hundred and thirty eight thousand eight hundred and fifty four rand and ninety six cents) was not paid.
5. With respect to Langa Attorneys' fees, agreement was reached in a meeting on 5 April 2011 with Mr Mapoma (Transnet) and Mr Gule (Norton Rose) that, in order to save time, Langa Attorneys' bill would not be taxed *per se*, and that the only requirement for it was to be drawn by a tax consultant, which was done.
6. The decision not to tax the bill was taken after several considerations were taken into account; namely that the focus was to remedy the 'breakdown' of a working relationship between Mr Gama and Transnet and thus it was deemed to be undesirable to have a long protracted dispute on fees when the overriding focus was to settle the matter.
7. In this regard, Langa Attorneys' account, drafted by the required tax consultant, amounted to R4 244 541.34, (four million two hundred and forty four thousands five hundred and forty one rand and thirty four cents) which amount included the following:
- | | |
|-----------------------------------|----------------------|
| 7.1. Fees | R2 410 683.95 |
| 7.2. Drawing fee (tax consultant) | R 255 532.49 |
| 7.3. Advocates | R1 205 054.60 |
| 7.4. Vat | R 373 270.30 |
| | <hr/> |
| Total | <u>R4 244 541.34</u> |
8. We confirm that 75% of the account, as per the settlement agreement, amounts to R3 183 406.01 (three million one hundred and eighty three four hundred and six rand and one cent) which is the amount that should have been paid to Langa Attorneys, instead an amount of R1 720 220.76 (one million seven hundred and twenty two hundred and twenty rand and seventy six cents) was paid.
9. We therefore confirm that the amount due and payable to Langa Attorneys amounts to **R1 463 185.26** (one million four hundred and sixty three thousand one hundred and eighty five rand and twenty six cents only).

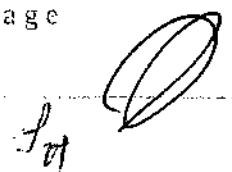


10. Furthermore we confirm that at the date of commencement of the matter namely 10 July 2009, our client was informed that a senior attorney will be handling this matter at the hourly rate of R2 500.00 (two thousand five hundred rand) and client accepted the terms thereof.
11. Further we confirm that the litigation matter protracted on for a period exceeding 18 months and at the time of the commencement of the matter we undertook to pay Advocates fees on behalf of the client.
12. Kindly effect payment of the aforementioned amount within 7 (Seven) days of receipt of this letter.

Yours faithfully,



THEMBA LANGA
LANGA ATTORNEYS



- b. Conducting background research on each of the potential external candidates and sourcing brief public relations profiles on each of them.
- c. Requirement for full disclosure of all business interests for each candidate, including all Board appointments and all shareholder equity interests.
- d. Based on the approved specification, the following sectors were researched:
 - o The JSE listed entities in the Industrial and Construction sectors – Group level;
 - o Non listed large entities in the Industrial and Construction sectors with revenue greater than R2 billion;
 - o All state owned enterprises and large Divisions within these state owned entities, with a revenue of more than R2 billion;
 - o All other large manufacturing and telecommunication organisations, and large Divisions within large manufacturing and telecommunication organisations, in South Africa, with a revenue of greater than R2 billion.
- e. The Committee considered all the reports submitted by the Executive Search Company and agreed on a list of candidates to be interviewed for the position.
- f. Interviews of all proposed candidates (internal and external) took place on 29 January 2011, and further on 8 February 2011.

2.2 Selection Criteria

The Committee met on 07 January 2011 to develop and approve a job specification for the position. The job specification is transmitted herewith **Annexure "A"**.

The Committee has ensured that the job specification encapsulates the commercial objectives of the Company as well as the role that the Company has to play in a developmental state. To this end, we have introduced elements of the New Growth Plan as key strategic challenges for the position.

2.3 Process Documentation

A questionnaire for the interview process has been developed and the Committee is satisfied that the questionnaire is adequately structured to ensure that the Board is in a position to identify and recommend the best candidate for the position. For ease of reference, we transmit the questionnaire herewith marked **Annexure "B"**.

2.4 RESEARCH PROCESS

The research process through which potential candidates were identified consisted of the following components:

- Nominations from Board Members;
- Targeted search by Leaders Unlimited (head-hunting); and
- External advertising for applications.

2.4.1 Nominations From Board Members

After the Leaders Unlimited was appointed, and upon further deliberation, it was deemed appropriate that all Board Members should be given an opportunity to submit nominations of individuals whom they considered to be potentially suitable candidates for the position. To this end, an invitation of nominations was sent to Board Members on 13 January 2011, requesting them to submit nominations of potential candidates directly to Leaders Unlimited.

2.4.2 Leaders Unlimited's Search Process

Leaders Unlimited's search consisted of a rigorous research process, using the following channels:

- Database interrogation;
- Tapping into market networks;
- Consultation with industry sources; and
- Targeting of relevant organisations and institutions.

A diverse group of companies and organisations were identified with senior executives who would bring the preferred set of skills and behaviour to the role of GCE. The search process focused on identifying candidates with the appropriate qualifications, skills and traits as stipulated in the attached position profile.

The Committee met on 20 January 2011 to review all candidates that had been nominated by Board Members as well as those that had been identified by Leaders Unlimited's search process. At this meeting, the Committee considered and reviewed profiles of a total of 33 search and nominated potential candidates.

Each Committee member was requested to identify their choice of up to 10 individuals from the list of 33 profiles. The selected names were then submitted to Leaders Unlimited by the Committee members. On 23 January 2011, the Committee met with Leaders Unlimited to review the names submitted as outlined above, and to agree on the common potential candidates from the submitted lists, with the view to prioritise the targeting / pursuing of these individuals.

The analysis of the Committee members' submissions had produced a total of 18 selected names. Out of these selected names, the Committee then identified an initial list of 6 top names to be prioritised for targeting. In addition, the Committee also identified a further list of 6 individuals who would be on the next batch of priority for pursuing.

2.4.3 External Advertising for Applications

At the same meeting of 23 January 2011, the Committee explored the need to open the process up by giving the public an opportunity to express interest in the position through an external advertisement. After much deliberation, the Committee concluded that it was prudent to advertise the position immediately, with the view to close for responses on the following Friday. Leaders Unlimited was then instructed to prepare and post advertisements in the Business Day, The New Age and The Star. However, it subsequently became evident that the earliest date on which these advertisements could be published necessitated that a sensible closing date be on Tuesday of the following week. Consequently, the advertisements appeared in the Business Day, The Business Report section of The Star and The New Age on Wednesday 26 January 2011 with a closing date for responses being Tuesday 1 February 2011 (see attached Annexure "C").

3 DATA ANALYSIS

3.1 Summary of Results

Nominations from Board Members

A total of 13 candidates were nominated by Board members. A matrix of names and profiles (where available) of nominated candidates is attached in Annexure "D".

Leaders Unlimited's Search Process

Leaders Unlimited identified 20 potential candidates drawn from a wide range of organisations and backgrounds. A matrix of names and profiles (where available) of search candidates is attached in Annexure "E".

External Advertising for Applications

A total of 30 candidates responded to the advertisements. A list of all names of applicants is attached in Annexure "F".

4 CANDIDATES SHORTLISTED

Out of the 2 interview processes that were conducted in January and February 2011 respectively, the following candidates were shortlisted for the position of the Group Chief Executive of Transnet:

NAME	EMPLOYER	RANK/POSITION
Gamede C	K2S Consulting	Managing Director
Gantsho M	Africa Rising Capital (Pty) Ltd t/a Nova Capital Africa	Chief Executive Officer
Khena N	South African Transport Services	Independent Consultant
Molefe B	Karibu Holdings	Managing Director
Morwe T	Transnet Freight Rail	Acting Chief Executive Officer
Silinga P	Coega Industrial Development Corporation	Chief Executive Officer
Kalawe M	Compass Group SA	Country Managing Director
Gama S	Not stated	
Nxedlana I	Richards Bay Industrial Development Corporation	Chief Executive Officer

4.1 SUMMARY OF RATINGS BY INTERVIEWING PANEL FOR GCE OF TRANSNET – FIRST SHORTLIST INTERVIEW SESSION HELD ON SATURDAY 29 JANUARY 2011
NB: All ratings are on a scale of 1 – 10 where 1=poor, 5=average and 10=excellent

Candidate	Panel Member 1	Panel Member 2	Panel Member 3	Panel Member 4	Average Rating
Gamede C	6.0	6.2	6.2	3.5	5.5
Gantsho M	8.1	8.3	7.9	5.2	7.4
Khena N	6.5	5.6	4.5	3.9	5.1
Molefe B	8.5	8.4	6.8	7.3	7.8
Morwe T	6.6	6.8	6.2	4.8	6.1

4.2 SUMMARY OF RATINGS BY INTERVIEWING PANEL FOR GCE OF TRANSNET – SECOND SHORTLIST INTERVIEW SESSION HELD ON TUESDAY 8 FEBRUARY 2011
NB: All ratings are on a scale of 1 – 10 where 1=poor, 5=average and 10=excellent

Candidate	Panel Member 1	Panel Member 2	Panel Member 3	Panel Member 4	Average Rating
Silinga P	7.2	7.0	5.9	6.0	6.5
Kalawe M	5.5	5.6	5.5	5.2	5.5
Gama S	7.0	6.8	6.2	3.9	5.8
Nxedlana I	5.8	5.6	5.2	5.6	5.6

4.3 CONSOLIDATED SUMMARY OF RATINGS AND RANKING OF ALL CANDIDATES INTERVIEWED FOR GCE OF TRANSNET

Candidate	Panel Member 1	Panel Member 2	Panel Member 3	Panel Member 4	Average Rating	Overall Ranking
Gamede C	6.0	6.2	6.2	3.5	5.5	7
Gantsho M	8.1	8.3	7.9	5.2	7.4	2
Khena N	6.5	5.6	4.5	3.9	5.1	8
Molefe B	8.5	8.4	6.8	7.3	7.8	1
Morwe T	6.6	6.8	6.2	4.8	6.1	4
Silinga P	7.2	7.0	5.9	6.0	6.5	3
Kalawe M	5.5	5.6	5.5	5.2	5.5	7
Gama S	7.0	6.8	6.2	3.9	5.8	5

- 4.4

Nxedlana I	5.8	5.6	5.2	5.6	5.6	6
------------	-----	-----	-----	-----	-----	---

At the Board meeting of 11 February 2011, the Board was of the view that there may have been an issue of "potential conflict" emanating from the fact that some of the Committee members, who were responsible for short listing and interviewing the candidates, had also nominated candidates for consideration for the GCE selection process. To this effect, the scores of 1 panel member were withdrawn from consideration.

4.5 CONSOLIDATED SUMMARY OF RATINGS AND RANKING OF ALL CANDIDATES INTERVIEWED FOR GCE OF TRANSNET, AFTER WITHDRAWAL OF SCORES OF 1 PANELIST

Candidate	Panel Member 1	Panel Member 2	Panel Member 3	Average Rating	Overall Ranking
Gamede C	6.0	6.2	6.2	6.13	6
Gantsho M	8.1	8.3	7.9	8.10	1
Khena N	6.5	5.6	4.5	5.53	7
Molefe B	8.5	8.4	6.8	7.90	2
Morwe T	6.6	6.8	6.2	6.53	5
Silinga P	7.2	7.0	5.9	6.70	3
Kalaawe M	5.5	5.6	5.5	5.53	7
Gama S	7.0	6.8	6.2	6.67	4
Nxedlana I	5.8	5.6	5.2	5.53	7

5. RECOMMENDATION

The Committee conducted interviews of the shortlisted candidates and have identified 3 recommended candidates who could fill the position, Dr Mandla Gantsho (external candidate), Mr Brian Molefe (external candidate) and Mr Mzinawe "Pepi" Silinga (external candidate).

While the overall ratings by the panel members indicate the highest score for Dr. Mandla Gantsho followed by Mr. Brian Molefe and then Mr. Mzinawe "Pepi" Silinga, the Committee believes that all 3 of these candidates are highly suitable for appointment as GCE of Transnet, and recommends the appointment of any of the 3 individuals.

5.1 Recommended candidates' resume

We attached, marked as Annexure "G1", "G2" and "G3", curriculum vitae of the 3 recommended candidates for information purposes.

6. IMPLEMENTATION PLAN

- 6.1

A five year contract is to be concluded with any of the 3 recommended candidates.

10

7 ORGANISATIONAL AND PERSONNEL IMPLICATIONS

- 7.1 The relevant post exists. The appointee will fill the position vacated by Ms Ramos.
- 7.2 Quality, holistic feedback will be provided to all internal applicants with opportunities for their personal development and recommendations regarding their future career development in the organisation will be discussed.

8 FINANCIAL IMPLICATIONS

A total cost to company remuneration package that is in line with current Executive remuneration levels at Transnet will be offered.

9 COMMUNICATION IMPLICATIONS

- 9.1 The Chairman of the Board will inform the candidate of his appointment, once the Shareholder approval is obtained.
- 9.2 The Chairman of the Board will also inform the internal candidates of the outcome of the recruitment process once the Shareholder process has been finalised.
- 9.3 The other external candidates will be informed by the Executive Search Company, Leaders Unlimited.
- 9.4 All the candidates will be given quality feedback.
- 9.5 Once all the requisite internal announcements have been made, a press release will be issued by Transnet.

10 CONSTITUTIONAL IMPLICATIONS

There are no constitutional implications.

11 IMPLICATIONS FOR VULNERABLE GROUPS

There are no implications for vulnerable groups.

12 SECURITY IMPLICATIONS

All of the recommended candidates will require security clearances.

12.1 REFERENCE CHECKS

10

At this stage, verification of academic qualifications has been conducted on all top 3 candidates. In addition, it is presumed that for the appointment of the GCE of a key State-Owned-Enterprise like Transnet, a State Security Clearance will be conducted.

13 **RECOMMENDATIONS**

It is recommended that the Shareholder Representative approves the appointment of any of the 3 recommended candidates to the position of Group Chief Executive of Transnet with effect from a date to be agreed with the successful candidate.

Further, due to the critical nature of the position, it is recommended that the matter be concluded on urgent basis.

The matter has been recommended by the Transnet Board of Directors.

Kind regards

Mafika Mkwanazi
Chairman
Date:



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Norfield, 0028 Tel: 012 431 1119 Fax: 012 431 1035
Private Bag X3179, Cape Town, 8000 Tel: 021 461 6376/7 Fax: 021 465 2361/461 1741

Mr Mafika Mkwanazi
Chairperson: Transnet
P. O Box 72501
Parkview
2122

Tel: (011) 308 2309
Fax: (011) 308 2315

Dear Mr Mkwanazi

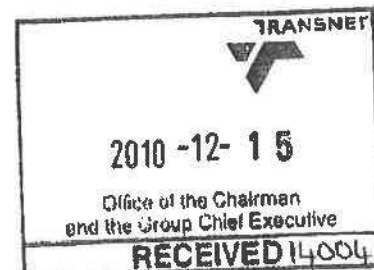
Guidelines for the Appointment of a Chief Executive Officer for a State Owned Enterprise ("SOE")

The above matter has reference.

As you may be aware, the South African company law authorizes the shareholders of a company to appoint the Board of Directors ("Board") to represent the shareholders and act in the best interests of the company. In addition, the shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assisting the SOE Boards with providing a framework for succession planning and the appointment of CEOs.

The guideline is further intended to enhance effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the South African economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder.



Jonathan J. Heuvel

From: Iqbal <iqbalsharma3@gmail.com>
Sent: Thursday, 13 January 2011 15:52
To: bkhumalo@leadersunlimited.co.za
Cc: ayanda.ceba@transnet.net
Subject: Candidate GCE Transnet

Dear Mr. Khumalo,

I would like to nominate Mr. Brian Molefe to be considered as a candidate for the Group Chief Executive position at Transnet.

Kind regards,

Iqbal Sharma
Member of the Transnet Board

sent from my iPad

To this end, SOE within the Public Enterprises Portfolio are now expected with immediate effect; to have due regard to the Guidelines for the Appointment of CEOs. In this way there will be consistency in approach across all SOE. SOE should also amend their Articles of Associations to incorporate with the Guidelines.

I trust that you will find this in order.

Yours sincerely



Malusi Gigaba, MP
Minister of Public Enterprises

Date: 2010/12/14



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

GUIDELINES FOR THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICER FOR A STATE OWNED ENTERPRISE ("SOE")

INTRODUCTION

South African company law authorizes the shareholders of a company to appoint the Board of Directors to represent the shareholders and act in the best interests of the company. The shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises ("the Minister") has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure.

The guideline is further intended to ensure effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the SA economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder. The Governance and Nominations Committee of the Board (composed only of non-executive directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates, in order of priority, to the shareholder.

1. SUCCESSION PLAN

- 1.1 The Board, through its Governance and Nominations Committee, must develop an ongoing process to identify, develop and/or seek a CEO candidate with the relevant skills required to meet the challenges likely to be faced by the SOE in the foreseeable future and to implement Government's strategic objectives relative to such SOE. Accordingly, the Board shall prepare and submit an annual report to the shareholder Minister on its succession planning which must include, but not be limited to, the status of the CEO's contract, the CEO's performance and exit plans.
- 1.2 The Board must, at the earliest possible stage, seek the shareholder Minister's view on whether re-appointment of an incumbent is likely to be considered. If the Board recommends that the incumbent continue, the Board must submit the

CEO's performance report for the last 3 years and the reasons for continuing with such incumbent.

- 1.3 In the event re-appointment of an incumbent is not being considered, the Board, through the Governance and Nominations Committee, shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates.

2. DUE PROCESS

- 2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.
- 2.2 The Board must disclose to the shareholder Minister the recruitment process to be used by the Board in identifying the candidates.
- 2.3 Prior to commencing with the recruitment process, the Board must submit a description of the key specifications of the position as well as its selection criteria that will be used to select and assess candidates to the shareholder Minister for his/her consideration. The Board shall ensure that the said key specifications are informed by the SOE specific challenges, requirements and Governments' strategic objectives. Therefore, the candidates' profiles should match those of the SOE's challenges and Government's strategic objectives.
- 2.4 During the assessment of the candidates, the Board should verify and confirm that all shortlisted candidates have no conflicts of interest and will be able to fully execute and carry out executive duties required of a CEO. Should the recommended candidate hold any non-executive directorships in other Boards, such Board directorships should be a maximum of two directorships and should not interfere with his/her executive duties at the SOE. The Board must also advise the candidate that his/her acceptance of nominations onto other Boards post his/her appointment as CEO shall be subject to the Board's approval.
- 2.5 The Board shall, through its Governance and Nominations Committee, submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder Minister for further assessment and interview by the Minister if he/she deems it necessary especially if this is an external candidate.
- 2.6 The shareholder Minister may approve, disapprove and/or express an opinion on the shortlist. If the Minister approves the shortlist, s/he will submit his/ her recommendation to Cabinet for noting, prior to the Board appointing a candidate as CEO.

3. APPOINTMENT

- 3.1 The successful applicant should not commence with his/her duties until the contract of employment has been signed. The contract should include a performance agreement with the Board, which shall include the activities, performance measures and targets specified in the SOE's Shareholder Compact, Corporate Plan, as well as government's strategic intent communicated to the SOE from time-to-time.
- 3.2 The CEO of a SOE is an employee of that SOE and is accountable to its Board in terms of employment legislation. As an *ex officio* Board director, the CEO's position in this respect is governed by Company law and the Public Finance Management Act, 1 of 1999. Accordingly, to align the two offices and recognize that one arises by virtue of the other, the CEO's employment contract must ensure that the CEO's termination of employment results in the simultaneous removal as *ex officio* Board member.
- 3.3 The contract should specify the steps that the Board may take in the event of any alleged misconduct and specify the proposed measures to address the misconduct, including ensuring that the CEO will not be immune from prosecution in terms of applicable law.
- 3.4 Considering the critical and strategic role of the CEO must play in the operational success of a SOE's business, some of the key performance deliverables by the CEO, which must also form part of his/her Performance Agreement, are:
 - 3.4.1 Developing and recommending to the Board a long-term strategy and vision for the SOE to implement Government's strategic objectives, the shareholder compact and SOE corporate plan that will generate satisfactory levels of economic value;
 - 3.4.2 Developing annual business plans and budgets that support the SOE's long term strategy and prudently manages the SOE's resources within those budget guidelines according to the SOE's applicable regulatory framework and governing laws;
 - 3.4.3 Striving consistently to achieve the SOE's financial and operational goals and objectives, and ensuring that the SOE's day to day business affairs are appropriately monitored and managed;
 - 3.4.4 Ensuring continuous improvement in the quality and value of the products and services provided by the SOE, and that the SOE achieves and maintains a satisfactory competitive advantage within its industry;
 - 3.4.5 Ensuring that the SOE has an effective management team and to actively participate in the development of management and succession planning;
 - 3.4.6 Formulating and overseeing the implementation of major corporate policies, procedures and standards;
 - 3.4.7 Serving as the chief spokesperson of the SOE with a full appreciation of the necessity to protect the SOE against a loss of reputation and assuring the SOE and its mission, programmes, products and services are consistently presented in a strong and positive image to relevant stakeholders; and
 - 3.4.8 Ensuring alignment with the Minister's delivery agreement concluded with the President of the Republic of South Africa from time to time.

- 3.5 The Board should pay special attention to the right to terminate the employment contract as well as to any material changes to any declared material interests and conflicts of interest by the new CEO. There should be adequate mechanisms to address such changes and to allow the Board to terminate the contract, should the changes limit the CEO's ability to undertake and execute his or her duties in the interests of the SOE.
- 3.6 The remuneration package in the contract of employment must also be in accordance with the department's current Remuneration Guidelines for SOE. The key performance indicators in the shareholder compact should also be used to determine the CEO's remuneration and the discretionary pay.
- 3.7 The contract should also address any performance by the CEO that significantly and materially deviates from the SOE's strategic objectives and should provide for measures to address such material performance failures and deviations.
- 3.8 The notice period for termination of employment by the CEO should not be less than 6 months and should not contain an evergreen notice period.

DECEMBER 2010

From: Ravi Nair Transnet Freight Rail JHB <Ravi.Nair@transnet.net>
Sent: Wednesday, 14 December 2016 14:32
To: Nomsa Mbenekazi Transnet Freight Rail JHB
Subject: Fwd: Gugulethu Gigaba

Begin forwarded message:

From: Gugu Gigaba <gugut7@gmail.com<mailto:gugut7@gmail.com>>
Date: 14 December 2016 at 2:26:57 PM SAST
To: ravi.nair@transnet.net<mailto:ravi.nair@transnet.net>,
Tumelo.mokwena@transnet.net<mailto:Tumelo.mokwena@transnet.net>
Subject: Gugulethu Gigaba

Good day,

Kindly find my CV with my Contact details as requested. Please excuse my delay.

From: Ravi Nair Transnet Freight Rail JHB <Ravi.Nair@transnet.net>
Sent: Monday, 27 June 2016 13:25
To: Mlamuli Buthelezi Transnet Corporate JHB
Subject: Re: Gugu's CV

Thanks Chief

On 27 Jun 2016, at 12:59 PM, Mlamuli Buthelezi Transnet Corporate JHB
<Mlamuli.Buthelezi@transnet.netmailto:Mlamuli.Buthelezi@transnet.net>> wrote:

Sent from my Samsung device

----- Original message -----

From: Malusi Gigaba <nkanyezi.gigaba@gmail.commailto:nkanyezi.gigaba@gmail.com>>
Date: 25/06/2016 5:58 PM (GMT+02:00)
To: Mlamuli Buthelezi Transnet Corporate JHB
<Mlamuli.Buthelezi@transnet.netmailto:Mlamuli.Buthelezi@transnet.net>>
Subject: Fwd: Gugu's CV

Herewith the issue engikulume ngayo indlebe.

Shenge!

Sent from my iPad

Begin forwarded message:

From: Gugu Gigaba <gugut7@gmail.commailto:gugut7@gmail.com>>
Date: 15 April 2016 at 07:16:39 SAST
To: Ice Lu <nkanyezi.gigaba@gmail.commailto:nkanyezi.gigaba@gmail.com>>
Subject: Gugu's CV

hi Mbonela,
please find attached the CV as requested.

<Gugulethu P. Gigaba Latest CV doc 2015 2.docx>

Thank you



Tel: +27 11 395 4790
Fax: +27 86 239 7235
Email: info@dmme.co.za
Web: www.dmme.co.za
Address: 229 Hull Road
Rynfield, Benoni
1501
Johannesburg, 1459
South Africa
Tax No: 9438892169
VAT No: 4760268401
Reg No: 2008/179151/23

04 May 2021

To whom it may concern,

RE: IsiZulu into English translation

We confirm the below English translation is a true and accurate translation of the IsiZulu text provided:

IsiZulu: engikulume ngayo indlebe
English: the matter I told you about

Do not hesitate to contact me should you have any queries.

Kind regards,

Nathaniel

A handwritten signature in black ink, appearing to be 'Nathaniel', is written over a horizontal line.

Nathaniel Dawson
Managing Director
Tel: 011 395 4790
Cell: 078 379 2274
Fax: 086 239 7235
Email: nathaniel@dmme.co.za

Transnet SOC Ltd
Registration
Number
1990/000900/30

Argenta House 2
15 Giron Road
Parktown
2193

Private Bag 917
Johannesburg
Gauteng 2009
T: +27 11 584 0509
F: +27 11 774 9978



MEMORANDUM

www.transnet.net

To: Mr. Mlamuli Buthelezi: Group Chief Operating Officer, Transnet

From: Mr. Ravi Nair: Chief Executive, Transnet Freight Rail

Date: 23 January 2017

Re: REQUEST FOR APPROVAL TO APPOINT MS. GUGULETHU GIGABA TO THE POSITION OF
MANAGER: CONTINUOUS IMPROVEMENT IN THE ORGANISATIONAL DEVELOPMENT AND
PERFORMANCE DEPARTMENT (TFR) VIA EXECUTIVE APPOINTMENT

PURPOSE

1. The purpose of this submission is to request approval from the Chief Operating Officer – Transnet to appoint Ms. Gugulethu Gigaba to the position of Manager: Continuous Improvement in the Organizational Development and Performance Department in TFR, effective from 1 February 2017 via the executive appointment process.

BACKGROUND

2. The position of Manager: Continuous Improvement has been vacant since 2013.
3. The outputs of the position have since been allocated to different employees within the department.
4. The increasing workload as a result of the large number of projects being managed by the ODP department has resulted in the outputs of this position being neglected.
5. Given the critical nature of the Order to Execution process it is imperative that the position be filled on a permanent basis.

DISCUSSION

6. Ms. Gugulethu Gigaba has been identified as a suitable candidate for the position of Manager – Continuous Improvement due to her vast working experience in total quality management and internal auditing of ISO systems and related disciplines in the chemical and timber industry. She has worked for Sappi (Pty) Ltd from 1994 to 2014 where for 10 years she managed a team of 40 employees within a shift environment.
7. Ms. Gigaba brings with her a wealth of formal qualifications listed below:
 - National Diploma in Analytical Chemistry: Mangosuthu Technikon – 1994
 - Diploma in Total Quality Management: University of South Africa – 2010
 - NQF3 National Certificate in Management for Supervisors and Team Leaders: Kukhula Institution – 2008
 - Business courses from UNISA: University of South Africa – 1995 – 1996
 - i. Accounting 1 and 2
 - ii. Economics 1 and 2
 - iii. Management Accounting

- National Certificate: Digital Strategy in Building Brands (DSBB) from The Independent Institute of Education (E11) via The Vega School of Brand Leadership.

8. It is believed that Ms. Gigaba's training and experience within the chemical environment, will lend itself to the very process driven culture in the ODP Department, specifically with regard to continuous improvement initiatives and that she will thus be the ideal candidate to assess the quality of the Order to Execution process.
9. The Agriculture and Bulk business unit can also benefit from her experience in the chemical and timber industries.

FINANCIAL IMPLICATIONS

10. The budget for the position of Manager: Continuous Improvement in the Organisational Development and Performance department has been approved for the 2016/2017 financial year.

BUDGET IMPLICATIONS

11. The position has been budgeted for. The remuneration for this position will be in line with the Level E salary guidelines as approved in the 2016/2017 financial year.

RECOMMENDATION:

12. It is recommended that the Chief Operating Officer - Transnet approve the appointment of Ms. Gugulethu Gigaba to the position of Manager: Continuous Improvement in the Organisational Development and Performance Department via the Executive Appointment process subject to the outcome of the necessary Transnet Human Capital processes.

COMPILED BY:

Mr. Ravi Nair
Chief Executive
Transnet Freight Rail

Date

RECOMMENDED/NOT RECOMMENDED BY:

Ms. Nonkululeko Sishi
Group Executive: HR
Transnet

Date

APPROVED/NOT APPROVED BY:

Mr. Mlamuli Buthefezi
Group Chief Operating Officer
Transnet

Date

Transnet SOC Ltd
Registration Number
1990/006900/21

Wynberg House 21
35 Glen Road
Parktown
2153

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MEMORANDUM

www.transnet.net

To: Mr Ravi Nair, Chief Executive, Transnet Freight Rail

From: Ms Thembi Lekganyane, General Manager, Organisational Development and Performance, Transnet Freight Rail

Date: 23 January 2017

Re: **REQUEST FOR APPROVAL TO APPOINT MS. GUGULETHU GIGABA TO THE POSITION OF MANAGER: CONTINUOUS IMPROVEMENT IN ORGANISATIONAL DEVELOPMENT AND PERFORMANCE VIA EXECUTIVE APPOINTMENT**

PURPOSE

1. To request approval from the Chief Executive to appoint Ms Gugulethu Gigaba, ID number: 700502 0561 082 to the position of Manager: Continuous Improvement in Organisational Development and Performance, based in Parktown with effect from 1 February 2017 via Executive Appointment.

BACKGROUND

2. Ms Gugulethu Gigaba has experience working in total quality management, internal auditing of ISO systems and related disciplines in the chemical and timer industry. She has worked for Sappi (Pty) Ltd from 1994 to 2014 where for 10 years she managed a team of 40 employees in a shift environment.
3. Ms Gigaba has the following Academic training:
 - National Diploma in Analytical Chemistry: Mangosuthu Technikon – 1994
 - Diploma in Total Quality Management: University of South Africa – 2010
 - NQF3 National Certificate in Management for Supervisors and Team Leaders: Kukhula Institution – 2008
 - Business courses from UNISA: University of South Africa - 1995-1998
 - i. Accounting 1 and 2;
 - ii. Economics 1; and
 - iii. Management Accounting
 - National Certificate: Digital Strategy in Building Brands (DSBB) from The Independent Institute of Education (E14) via The Vega School of Brand Leadership.

TL

4. Ms Gigaba's skills can be applied in continuous improvement to assess the quality of the Order to Execution process. The Agriculture and Bulk business unit can also benefit from her experience in the chemical and timber industries.

FINANCIAL IMPLICATIONS

5. The budget for the position of Manager: Continuous Improvement in Organisational Development and Performance based in Parktown has been approved for the financial year 2016/17.

BUDGET IMPLICATIONS

6. The budget has been approved for this financial year as confirmed with the Human Capital department. The remuneration for this position will be in line with Level E salary guidelines as approved in the 2016/17 financial year.

RECOMMENDATION:

7. It is recommended that the Chief Executive of Transnet Freight Rail approves the appointment of Ms. Gugulethu Gigaba to the position of Manager: Continuous Improvement reporting to the Senior Manager: Continuous Improvement in Organisational Development and Performance based in Parktown with effect from 1 February 2017, via Executive Appointment subject to successfully completing all the necessary Transnet Freight Rail Human Capital processes.

Compiled by:




Ms Thembi Lekganyane

General Manager: ODP

Transnet Freight Rail

Date: 23/01/2017

Approved/Not Approved:



Mr Ravi Nair

Chief Executive

Transnet Freight Rail

Date: 24/1/2017

Recommended/Not Recommended by:



Mr Tumelo Mkwana

General Manager: Human Capital

Transnet Freight Rail

Date: 23/01/2017

Gugulethu Perfect Gigaba

Address: 26 Whigate Glen, 710 Rubenstein Drive, Moreleta, Pretoria, 0181. email: gugat7@gmail.com

Cell: (+27) 082 573 7934

Summary:

I am an analytical minded & driven professional Chemist with 20 years experience in the chemical laboratory field. In my career, I have maintained a continuous enthusiasm for learning and managed to acquire various qualifications outside the field of Chemistry. I supervised two laboratories at Sappi (Pty) LTD in Umkomazi for 10 years. One of the laboratories was the shift laboratory and the other, the day laboratory. I managed a team of over 40 staff members, about 34 of which were shift laboratory analysts. I acquired a certificate in Management for Supervisors and Team Leaders from Kukhula Institution, which greatly enhanced my skills in managing the laboratories & mentoring the staff. In 2010 I acquired a diploma in Total Quality Management obtained from UNISA that sharpened my understanding of ISO systems used at Sappi. I became an internal auditor, auditing the ISO systems applications and maintenance within the Sappi-Saicor Mill in Umkomazi. In September 2015, I acquired a National Certificate namely Digital Strategy in Building Brands (DSBB) from The Independent Institute of Education (E11) via The Vega School of Brand Leadership. I recently just finished a short course on Starting and managing a small business, from the University of Cape Town.

Quality Management Skills:

I have knowledge in and experience with ISO 9001, 14001, 17025 and 18001.

My Skills include: (summary)

- Quality Control Through Control Charts
- Quality Auditing and Corrective actions for non-conformances.
- Problem solving process and root-cause analysis.
- Instruments Calibrations and their preventive maintenance.
- Method Validation & new method development. That included improving methods that called for it.
- Operating of Instruments such as Atomic Absorption Spectrophotometer, Ultra Violet Spectrophotometer, Flame Photometer, pH meters, Conductivity meters, etc.
- Budgeting and Supervision of inventory control of chemicals and glassware.

PROFESSIONAL EXPERIENCE:

Mill Chemist at Sappi Chemical Cellulose Industry in Umkomazi, November 2008 - December 2014:

- Supervised the laboratories in the analytical services section, both shift laboratory and day laboratory.
- Assisted the analysts and technicians in their work, research, investigations and handling their attendances daily.
- Liaised with other plant managers &/or supervisors regarding our department's need from each other.
- Monitored cases of absenteeism and other conflict management issues of all our staff.
- Chairwoman of our weekly and monthly SHEQ (Safety, Health, Environment and Quality) meetings and delegating other staff members to chair other SHEQ meetings.
- Prepared and wrote monthly reports.
- Served in our section's recruitment committee
- I was one of the ISO Mill wide Auditor

Senior Chemical Technician at Sappi Chemical Cellulose Industry in Umkomazi, March 2004 - October 2008:

- Responsible in our analysis work bench at various analytical work responsibilities of our Lab Technician. Additionally as a senior chemical technician:

Responsible for the maintenance of the analytical equipment and the calibration of the instruments.

- Assisted the personnel of the mini laboratory that belonged to the plant I was servicing (the bench and analysis I was handling). I would assist them with any problem analysis, problems that required a retest or investigation and finally report back to their manager/s and the Laboratories.
- Responsible for discussing all this issues at the SHEQ meetings as information sharing and discussion for solutions or projects that arose from those problems.
- Responsible for calibrating our instruments, like the ph meters, conductivity meters, flame photometers, Atomic Absorption Spectrophotometer and Ultraviolet Vis Spectrophotometer and also arrange for their annual calibrations by the suppliers.
- Responsible for monthly calibrations of balances and docimats in all the pilot/mini laboratories.
- Wrote monthly reports.
- Chaired SHEQ meetings of our department.
- Managed a project or two as needed.
- Conducted weekly meetings with the analysts and technicians and organized the housekeeping and job observations.
- Audited tests or procedures for quality purposes as required by our certification of ISO and Sappi Guide 25, instituted by Sappi R&D.
- Developed methods for analysis as needed.
- Conducted internal mill audits.
- Responsible for overseeing the training of new technicians and inservice trainees.

Chemical Laboratory Technician Sappi Chemical Cellulose Industry in Umkomazi, April 1994 - February 2004.

- Analysis of effluent waste water, boiler water and river water,
- Analysis raw materials as they were coming into the factory (chemicals and wood logs)
- Preparing chemical solutions for us in the whole plant testing and analysis. Visiting a department's mini/pilot laboratory that I was doing the analysis for, to learn their duties and assist them with all the analysis in their laboratories done by their staff members.
- Every day I reported the results to the relevant plants/departments and their management.
- At the end of the month I was required to write reports.
- Recognized in the mill for implementing a solution for the noise that was created in the laboratory by the industrial vacuums pumps used.
- Successfully trained, supervised & mentored Analytical Chemistry in-service trainees most of which obtained jobs within the mill and one outside the mill.
- Developed the procedure or method for analyzing the resins (glues and tanning responsible for the brown color in wood), remaining in the final product using a different solvent solution (dissolves glues), which was safer for health reasons.
- Played a leading role in the laboratory in managing the job observation system (called sharp process) that helped us maintain and observe the people when applying the quality and safety procedures and principles in the laboratory and working areas outside the laboratory.

Formal Qualifications

- National Diploma in Analytical Chemistry: Mangosuthu Technikon - 1994
- Diploma in Total Quality Management: University of South Africa - 2010
- NQF3 National Certificate in Management for Supervisors and Team Leaders: Kukhula Institution - 2008
- Business courses from UNISA: University of South Africa - 1995-1998
 - Accounting 1 and 2 (with distinction in Cost accounting)
 - Economics 1 and
 - Management Accounting
- National Certificate: Digital Strategy in Building Brands (DSBB) from The Independent
- Institute of Education (IIE) via The Vega School of Brand Leadership.

Professional training

- Conflict Management skills course
- Performance Management skills
- NQF3 Management Certificate
- Training, Coaching & Feedback skills
- Communication & Presentation skills
- Team leadership skills

Other details

Languages:Fluent in English, Zulu

IT proficiency:Word, Excel, PowerPoint

Driving License:Code 8

Interests/Hobbies: Swimming, Cycling, Reading, Quizzes.

References:

1. Name: Mr. Brighton Chiwanza
Designation: Process Support Manager
Company: Sappi Specialised Cellulose, Umkomazi, 4170, RSA.
Telephone#: +2739 973 8431 / +2772 582 1445
E-mail: Brighton.Chiwanza@sappi.com
2. Name: Mr. Thabo Gumede
Designation: Process Sector Leader
Company: Sappi Specialised Cellulose, Umkomazi, 4170, RSA.
Telephone#: +2739 973 8010 / +2783 666 6621
E-mail: Thabo.Gumede@sappi.com
3. Name: Mr. Samuel Mokoena
Designation: Environmentalist
Company: Sappi Specialised Cellulose, Umkomazi, 4170, RSA.
Telephone#: +2739 973 8916 / +2772 582 2014
E-mail: Samuel.Mokoena@sappi.com



SECURITY CONFIDENTIAL

Ms GP Gigaba
ID No: 7005020561082
26 Wingate Glen
710 Rubenstein Drive
Moreleta Park
Pretoria
0181

26 January 2017

Reference no: Executive Appointment

Dear Ms Gigaba

OFFER OF EMPLOYMENT: MANAGER, CONTINUOUS IMPROVEMENT (GRADE LEVEL E)

On behalf of Transnet SOC Ltd, it gives me great pleasure to inform you that you have been selected for appointment to the position of Manager, Continuous Improvement, Organisational Development and Performance (Position Number: 10122608) at Transnet Freight Rail.

1. Position

The position forms part of the Management Category, and is based in Parktown. The commencement date is 01 February 2017. You will report directly to Ms AP Siyengo, Executive Manager, Organisational Development and Performance, Parktown.

2. Contract of Appointment

Upon acceptance of this offer, you will be required to sign a contract of employment, which will govern the terms and conditions of your employment with Transnet SOC Ltd.

Attached, also please find a summary of the terms and conditions of employment.

This offer of employment is dependent upon your being medically fit for the position offered to you and the successful completion of the Company's security/vetting process.

3. Individual Performance Management

Employees in the management category are subject to performance management. Key performance areas and performance targets will be agreed with you on an annual basis and performance will be reviewed on an ongoing basis with at least two (2) formal review sessions each year.

Transnet SOC Ltd
Registration Number
1990/000900/30

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Table 3/43
Parktown
2001

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SD Shene BG Stagman PG Williams GJ Pita* (Group Chief Financial Officer)
*Executive

www.transnet.net

Group Company Secretary: NE Khumalo

Ms GP Gigaba
ID No: 7005020561082

4. Remuneration

The offer is extended to you at a guaranteed all inclusive total cost to company package of R736 679,00 (Seven Hundred and Thirty Six Thousand Six Hundred and Seventy Nine Rands) per annum. You will be able to structure the total cost to company package to select a pensionable ratio between 60% and 80% of your total cost to company package and will have the option to structure to a 13th cheque, annually payable in December.

Transnet has an established short-term incentive scheme, payable annually in accordance with the Short Term Incentive Group Rules.

Further details of the scheme will be provided to you upon your commencement of duty. Please note that the incentive payment is not guaranteed, it is subject to various individual and company performance criteria and the rules are subject to change in line with company requirements.

5. Probation

You shall serve an initial probationary period of three (3) months from the date of commencement of your employment with Transnet.

During this probationary period your suitability for continued employment will be assessed and at the completion of the probationary period, your employment will either be confirmed or not confirmed, provided that nothing in this agreement of employment is construed as preventing Transnet from renewing or extending the probationary period.

6. Copyright

You will also be required to assign in Transnet's favour your copyright in all future works, which you may undertake, provided that such works are undertaken by you in the course and scope of your employment with Transnet. No consideration shall be payable to you for such assignment.

7. Notice of Termination

The notice period required by either party to terminate your contract of employment is subject to the duration of employment and is regulated as per the Transnet termination policy as amended from time to time.

8. Statutory Deductions

Statutory deductions, in accordance with the Basic Conditions of Employment Act, or any other relevant legislation or any other applicable law, as amended from time to time will be made from your monthly salary.

9. Medical Surveillance

You will be required to comply with all the requirements of the medical surveillance programme as specified by the Transnet Freight Rail's Code of Practice on medical surveillance.

10. Company Policies

Upon commencement of duties with Transnet, you will be required to familiarize yourself with the all company policies and procedure relevant to your role, as well as official amendments. All policies are available on the Transnet Intranet.

We look forward to your contribution and team work. Please feel free to contact Mr MB Mojalefa, Recruitment and Selection for any queries you may have.

Yours sincerely,



THEMBI LEKGANYANE
GENERAL MANAGER
(ORGANISATIONAL DEVELOPMENT AND PERFORMANCE)

Date: 31/01/2017

From: nkanyezi gigaba <nkanyezi.gigaba@gmail.com> on behalf of nkanyezi gigaba
Sent: Saturday, 25 February 2012 10:19
To: Siyabonga Mahlangu; Siyabonga Mahlangu
Subject: Fwd: ITC DEBT
Attachments: My Debts.docx

Siya,

Herewith find attached the issues we spoke about regarding my sister.

Regards

----- Forwarded message -----

From: Nozipho Gigaba <nozipho.gigaba@gmail.com>
Date: Wed, 15 Feb 2012 13:29:24 +0200
Subject: ITC DEBT
To: nkanyezi gigaba <nkanyezi.gigaba@gmail.com>

Hi bhuti

Pls find attached infor on ITC. I am not expecting a miracle but if anything can be done with any of the amounts, i will b grateful.

I am talking to people i can partner with regarding business opportunities, so i can earn money to pay off.

Obviously i will be careful coz i work where i work. Kodwa i see no option other than to do work on the side.

Ideally would be an opportunity that can employ me and pay me enough to pay these things off.

Thanks again

Nozipho

My Debts – as of 14 February 2012

It is a lot of money, made worse by interest. The biggest by far is the Standard Bank Home loan leftover.

1. Standard Bank (Home loan excess after auction)	R 468 561.57
2. Nedbank (Business Overdraft)	R 86 000.00
3. Imperial Bank (car finance after auction)	R 44 796.00
4. Imperial Bank (Equipment)	R 65 187.00
5. Telkom(work phone)	R 16 000.00
6. Frame Companies	R 51 000.00
7. Lens Companies	R 55 000.00
8. Auditor Fees	R 80 000.00

The total here is: R866 544.57.

Unfortunately it excludes SARS for the practice. I will worry later about that if bengakangibophi.

It is a lot of money. I hoped to do business on the side so i can pay it off. Abantu abadala abafuni ngoba bathi i will be too busy to listen to them. Anyway sicelile nobaba again ukuthi bavume ngizikhiphe kulomgodi ngoba nabo bafuna imali kodwa abavumi ngiyenze. Bavele bavale imali bese belwa nami emaphusheni. I have been trying various opportunities kodwa things don't work. Even i tried to do business with Logan again despite knowing him ukuthi unjani, and he again disappears. Sasikhuluma ngenye icoal project eRichards Bay but now usekhuluma into engezwakali. Then waphinde wakhuluma ngento yamaNdebele. I know i should not entertain him but i am in a tough position. Anyway i have no expectations except maybe a miracle in form of a money-making business but whatever you can help with will be great. I have gotten used to a difficult life, no matter how many ideas are in my head. I thought Mpume would help me, but anyway i keep trying.

Ngifonelwe ilehumusha eliwuMalose Kekana. I am yet to speak to him when he comes to DBN for some board meeting. Naye uzifanela noLogan with many promises.

I will do whatever i need to do to sort this out. I am considering some options. Besides lapha kaCOGTA there is tension since Scelo was let go. The Technical Support Unit that i belong to yaziwa ngokuthi ekaSicelo and ayifunwa esp kwiProvince. New Minister usanda kusibizela kuurgent meeting ngoba bayamlwisa ngathi. So i need another option.

http://www.thenewage.co.za/5036-1007-53-Molefe_tipped_to_be_Transnet_CEO

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★★★★★

Molefe tipped to be Transnet CEO

Molefe tipped to be Transnet CEO

Brian Molefe is likely to be announced as the new CEO of state-owned Transnet. Picture: AFP

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Xolani Mbanjwa and Thokozani Mtshali

Former Public Investment Corporation (PIC) chief executive officer Brian Molefe is set to take over as Transnet boss.

Molefe resigned as CEO of the PIC in March this year after a seven-year stint at the state-owned investment arm, the largest financial management company in the country, responsible for the management of about R850bn.

The Department of Public Enterprises is expected to announce the Transnet board tomorrow. Those expected to be appointed to the board include Mafika Mkhwanazi, a member of the state-owned enterprises review committee and Don Mkhwanazi, a staunch ally of President Jacob Zuma.

Others are Ellen Tshabalala, Zuma's advisor on black economic empowerment and Mike Fannuchi, an economic consultant.

The New Age has it on good authority that Molefe will be appointed CEO by the board. Molefe was among the first of former Finance Minister Trevor Manuel's recruits to Treasury in 1996 as deputy director-general of liability management. At the time, he was working for First National Bank.

Molefe was not a favourite to some within the tripartite alliance as he was perceived to be too close to former president Thabo Mbeki.

Molefe's departure from the PIC was welcomed by some in the South African Communist Party, Cosatu and the ANC. His detractors had accused him of funding BEE deals which involved people in Mbeki's inner circle, a charge he denied.

One of the deals which were questioned by his opponents was the Elephant consortium and Telkom empowerment deal which involved former ruling party member Smuts Ngonyama, now a Cope leader.

While some had written Molefe off after President Jacob Zuma was inaugurated last year, others said Molefe, with his experience, still had a lot to offer.

Public Enterprises spokesperson Ayanda Shezi said it was too early to speculate on the Transnet boss. "We are in the process of appointing a board and chairperson for Transnet. This will be finalised soon and the necessary announcements will be made," said Shezi.

"The Board would then undertake the recruitment process for a CEO, and make the necessary recommendations to the minister. It's therefore premature at this stage to be speculating on the candidate for CEO," said Shezi.

Contacted for comment, Molefe said: "I haven't been informed. I don't know anything about it".

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7/13/2020

Business Day

Kevin Allan and Karen Heese Lack of money not the cause of ailing municipalities. Page 9

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AllShare	31	521.33	0.33				R154	5.42	▲	0.37	R/\$	6.727	▲	0.34	Gold PMF	1 537.75	▲	0.47	Dow Jones	12 044.28	▲	0.22
Top 40	28	196.66	0.10		R157	7.39	▲	0.27	R/E	11.005	▲	0.30	Gold NY	1 535.31	▲	0.67	S&P 500	1 283.44	▲	0.27		
Mid 30	30	885.02	0.14		3-mth NCD spot	5.55	▲	1.24	R/E	9.801	▲	0.48	Brent Future	1 278.3	▲	0.90	FTSE 100	5 808.89	▲	0.95		
Reserves 20	52	725.71	1.68		R/\$ (5-mth)	6.99	▲	0.38	\$/C	1.458	▲	0.72	Platinum PMF	1 826.00	▲	0.33	Nikkei 225	9 449.46	▲	0.07		
Golobex	2	385.65	3.19		R/\$ (12-mth)	7.04	▲	0.94	Y/\$	79.857	▲	0.41	Palladium Spot	803.00	▲	0.69	Xetra Dax	7 060.23	▲	0.61		

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Flooding halts output at Goliath's Sub Nigel mine

NEWLY formed Goliath Gold will suspend operations at its Sub Nigel mine because of flooding resulting from the cessation of pumping at the nearby Grovlei mine. The Grovlei mine, once owned by Pamodzi Gold, is up for sale after liquidators terminated a management contract for the mine awarded to preferential bidder Aurora Engagement Systems. Page 11

Metorex to sell Zambian plant

METOREX yesterday said it had agreed to sell its Sube operations in Zambia to Glencore for R950m as one of the key conditions of the purchase of Metorex by Brazilian miner Vale. Page 11

Sanlam explores India, Africa

SANLAM is pursuing new deals that will be financed from its cash pile of R38n, its CEO said yesterday. He said they would announce "positive developments in the next month or two". Page 12

Tanzania plans 'super-profit' tax

TANZANIA, which vies with Mali to be Africa's third-biggest gold producer, may introduce a "super-profit" tax on minerals similar to one implemented in Australia. Page 12

SA commerce revolution 'close'

ONLINE retailer Kalahari.net said this week SA was on the brink of a mobile commerce revolution, given the growing numbers of people using cellphones to access the internet. Page 13

Essar's deal 'almost wrapped up'

INDIAN conglomerate Essar said yesterday it expected to wrap up a \$760m investment in Zimbabwe's Zisco "within two to three weeks", with first production in 12 to 15 months. Page 14

Fast fuel prices hurt McDonald's

HIGH-FUEL franchise McDonald's reported a lower than expected sales increase at established stores in the US last month as high petrol prices and unemployment cramped its business. Page 15

Business confidence dips again

BUSINESS confidence dipped for the second month in a row, signalling a possible downturn in sentiment, the South African Chamber of Commerce said yesterday. Page 2

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Chabane accused of poor results

MINISTER in the Presidency for performance, evaluation and monitoring Collins Chabane was yesterday criticised by opposition MPs, who said his department had achieved nothing. Page 3

Youth leader could be kingmaker

THE African National Congress's influential Eastern Cape youth league chairman Ayanda Mabin could be positioning himself as kingmaker in the battle for control of the league. Page 3

Attacks on sheep cost farmers

EASTERN Cape sheep farmers are charged over packs of marauding dogs which they say are attacking and eating their sheep stock, costing them millions of rands. Page 4

Divided Opce's talks break down

OPEC talks broke down yesterday without an agreement to raise output after Saudi Arabia failed to convince the cartel to lift production, causing crude prices to shoot higher. Page 5

Plan to criminalise sports graft

AUSTRALIA's best-known sports codes are backing a government push to make sports corruption a crime with penalties of up to 10 years in prison. Page 9

'Equal pressure' at Super derby

BULLS captain Victor Matfield believes the pressure will be split evenly between his side and the Stormers in Saturday's decisive Super Rugby clash at Newlands. Back Page

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Trust in SA banks slides on poor service, high costs

SURE KAMHUNGA
Financial Services Editor

NEARLY half of South Africans no longer trust their banks and poor service tops the list of their complaints, according to a global survey conducted by Ernst & Young and released yesterday.

The survey's results will probably please the government, which wants to penalise banks that mistreat customers with bad service or high fees.

The government believes regulatory oversight of the market conduct of the financial sector should be tightened in the aftermath of the global financial crisis.

Presenting the findings, the associate director for advisory services at Ernst & Young, Colin Daley, said service quality had become the biggest cause of customer defection to rival banks in SA.

This contrasted with developed markets, where customer trust plummeted mainly due to the

economic upheaval experienced because of the financial sector's reckless trading.

Among customers surveyed in SA, 98% cited service quality as the main reason they would change banks. Almost half of customers polled said they were not satisfied with their bank's service, and 47% said they had lost trust in their banks in the past year.

"Poor service quality and price are the main factors," Mr Daley said. (At least) 50% of customers who

decided to change their main bank cited general levels of service quality, while 57% cited price.

Ernst & Young did not name the banks which customers said provided poor service.

The Treasury wants the financial sector to improve standards under its new policy, called Treasurers' Fairness.

Mr Daley said banks that differentiated themselves by providing good service and relevant products would gain market share. He said

banks had to reinforce brand loyalty, provide appropriate and profitable services, and rebuild trust.

The report found that the effect of the financial crisis on banks was still being felt globally, and trust had been affected. "Given that it is much easier to damage a brand than to repair one, it is essential for banks to execute brand enhancement programmes," the report read.

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No easy walk into Africa: page 11

Chairmen of Transnet, Eskom and Denel to go

Minister persuades Cabinet in bid to gain greater oversight

PETER BRUCE

THE chairmen of three of SA's most powerful state-owned companies — Transnet, Eskom and Denel — are to be removed soon in a dramatic show of force by Public Enterprises Minister Makhosi Gibaga, as the government tries to tighten its grip on the "commanding heights" of the economy.

The changes were discussed and approved at a Cabinet meeting in Cape Town yesterday.

Business Day reliably understands that Transnet chairman Makhosi Gibaga — who was appointed only last year and who also briefly acted as the country's CEO — will be invited to move to the board of Eskom as an ordinary member.

Eskom chairman Mpho Makwata, it is understood, will not be offered another position.

He has served on the Eskom board since 2002 and became chairman last year after a row in which both then-chairman Bobby Godell and CEO Jacob Magera left the company.

It is further understood that Mr Gibaga intends to replace virtually the entire Eskom board, with the exception of Dr Bernie Fanoroff and one other member.

The proposed new Eskom chairman is little known in SA. He is Zola Tsoeli, chairman of the Lesotho Electricity Authority.

At Denel, Mr Gibaga intends to install Zola Kuteane as chairman, replacing Sibesiso Sibisi, who is also president of the Council for Scientific and Industrial Research. All about nine of the 14 Denel directors are expected to be replaced.

Neither Mr Gibaga, nor his spokesman, Makhosi Nkomo, were commenting on the changes yesterday.

While Mr Gibaga, still relatively new in his position, is not seeking actively to curtail the state-owned enterprises, he wants much tighter shareholder oversight as the government tries to develop

an economic model that fulfils its political promises to create millions of new jobs.

The boardroom changes follow long on the heels of an effort by Mr Gibaga to put more of the bones of a new approach to the way in which the state-owned enterprises in his charge behave.

He wants to use them to build long-range partnerships with private capital in the construction of new ports, roads, rail and other infrastructure.

But, in a speech at Wits University this week, he also spelled out how he, as the shareholder, was uncomfortable keeping his distance from them.

Outlining his approach to getting state-owned enterprises and their customers closer, to the point where customers would be able to co-locate infrastructure projects, he also said that "the point I wish to emphasise is that this process will require joint projects between the shareholder (the government) and the SOEs (state-owned enterprises) as the SOE's are to be taken on as partners in the Department of Public Enterprises with what it perceives as the independence of the Eskom management and board."

Public enterprises feel it was brought up to speed on the Koeberg contracts only as they were about to be announced. Normally, state-owned enterprises are required to consult ministers for any order worth more than R300m.

It is understood, nevertheless, that Mr Gibaga did not have it all his own way in the Cabinet meeting yesterday. His proposal to

Continued on page 2



Defected soldiers sit on a Ratel armoured personnel carrier on a street in Sana'a, Yemen, chewing qat, a mild stimulant, earlier this week. The DA wants to know how the South African vehicles reached the strife-torn country. Picture: REUTERS

SA Ratels turn up in Yemen conflict

Call for arms control committee inquiry

WYNDHAM HARTLEY
Parliamentary Editor

CAPE TOWN — South African-made Ratel armoured infantry carriers have been photographed in strife-torn Yemen, leading the Democratic Alliance (DA) to call for an investigation by the National Conventional Arms Control Committee (NCACC).

The Ratels were reportedly being operated in the Yemeni capital, Sana'a, by soldiers who had defected to protesters demanding the end of President Ali Abdullah Saleh's rule.

The presence of the vehicles either means SA authorised their export or that another country sold Ratels to Yemen, which would constitute a violation of the end-user certificate.

South African law forbids the export of arms to violators of human rights, including countries involved in regional conflicts and those subject to a United Nations embargo. Details of arms exports are a closely guarded secret, overseen by the committee, which reports to Parliament.

DA defence spokesman David Maynier said in a statement yesterday that NCACC chairman Jeff Radebe should launch an investigation into how the converted Ratels, previously operated by the South African National Defence Force, had found their way to Yemen.

"Over 100 pictures of demonstrators in Yemen were recently published by Reuters and the Associated Press. The series includes a number of pictures of a converted Ratel infantry vehicle in Yemen," Mr Maynier said.

"The NCACC's latest annual report records that R373.6m worth of conventional arms were sold to Yemen in 2010. Conventional arms exports to Yemen last year included R239.4m worth of Category A conventional weapons, which are described as major conventional implements of war that could cause heavy personnel casualties."

Mr Maynier was ejected from the National Assembly in March.

Continued on page 2

SA severely burnt: page 6

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IN BRIEF

'Secrecy bill' a sticky issue with Pratley

LEGISLATION | Opposition to the 'secrecy bill' gained momentum yesterday when another prominent businessman heeded the call by Pick n Pay chairman Gareth Akerman to speak up against it. Pratley Group CEO Kim Pratley yesterday echoed Mr Akerman's sentiments and encouraged other businesspeople to speak out. "There is the perception that government is engaging with business, and they are not. The other misconception is that business is engaging correctly with labour, and we are not," Mr Pratley said. The Pratley Group is a diversified manufacturing, mining and research company. The Protection of Information Bill has been vehemently criticised by civil society and opposition parties. *Ameliah Velle*

Sub-Saharan growth 'to pick up'

REPORT | Growth in sub-Saharan Africa is set to pick up to 5.1% this year from 4.1% last year and then accelerate to about 5.7% in both next year and 2013, the World Bank says in a new report. Growth in the region was likely to remain strong in the medium term, supported by the global recovery, a growing domestic middle-income class and rapidly rising business confidence. *Natani Is*

Miners ready to strike at Exxaro

LABOUR | Miners at Exxaro Resources, a large supplier of coal to Eskom, will start a strike on Monday about a plan to cut jobs, the National Union of Mineworkers said yesterday. "More than 7 000 workers at Exxaro will down tools," the union said. "The dispute is about the possible repatriation of 300 workers across Exxaro operations." *Bongani*

Africa credit dynamics improving

GROWTH | Credit dynamics are improving in countries in sub-Saharan Africa, thanks to a strong expected growth rate of 5.5% this year, Moody's Investor's Service said yesterday. The pick-up in growth is sustained by improved governance, liberalised domestic industries, better public finances and a boom in the region's commodities, the global ratings agency said. *Mariam Isa*

Transnet raises iron-ore target

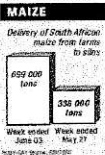
RAILWAYS | Transnet SA's ports and rail unit, has raised its target for iron-ore transport on its Sishen-Saldanha line to 1.2 million tons a week, CEO Brian Molelele said yesterday. The target compared with 1.1 million tons a week this year, he said at a conference in Cape Town. Transnet plans to expand the line's capacity to 32 million tons a year by 2015. *Bongani*

Minerals chief to call it a day

MINING | The director general of the Department of Mineral Resources, Stedman Nkomo, will step down at the end of this month to take early retirement, Mineral Resources Minister Susan Shabangu said yesterday. Mr Nkomo has run the department for 14 years. The director general occupies a powerful position, overseeing the day-to-day operations of a department. *Reuter*

HOW ARE WE DOING?

GRAIN | Maize deliveries to slow rose to 693 000 tons in the week to June 3, from a revised 338 000 tons the week before, dam showed yesterday. White maize deliveries rose to 249 000 tons from a revised 109 000 tons, while yellow maize submissions increased to 450 000 tons from a revised 227 000 tons, the Southern African Grain Information Service said. Maize farmers ended higher yesterday, although the volume of contracts traded on the day remained low. The July white maize contract was up R17 to R1754 a ton, while the September contract gained R15.20 to R1790.20. The December white maize contract picked up R17.20 to R1842.20 a ton. *Reuter and i-Che Blog*



Transport adds investment to job sheet

LINDA ENSOR
Political Correspondent

CAPE TOWN — The Department of Transport is transforming its role from one of mere policy formulation to also managing and driving all investment in the transport sector, the department said yesterday.

This would cover national and provincial government, along with municipalities and agencies such as Airports Company SA.

An investment panel consisting of the department's director-general and the CEOs of transport entities has been formed. Its role would be to consolidate all proposed projects in the sector to avoid duplication, provide a single interface with investors and the Treasury and ensure a consistent approach to how the private sector can participate in transport projects. This structure would also include Transnet and South African Airways through the Department of Public Enterprises.

A co-ordinated approach — already available through the inter-departmental cluster system — would also cut the time it took for projects to get all the necessary approval, departmental spokesman Thami Ngidi said yesterday.

All the different entities "are pulling in different directions when it comes to investment. We need to pull all these initiatives together," the department's head of special projects, Lwazi Mbohi told Parliament's transport committee.

The move towards centralisation and co-ordinated government is a growing trend. It is already apparent in the Department of Public Service and Administration's national approach to the employment conditions of public servants, in the procurement of goods and services by the state, and oversight over local government. This approach is consistent with the African National Congress' conception of a developmental state.

As part of a first step in its new role, the Department of Transport is holding an international transport investors' conference at the Cape Town International Convention Centre on Monday and Tuesday. It aims to attract private-sector commitments for the estimated R500m of Cabinet-approved projects.

SA's transport system, both road and rail, is in need of huge investment to clear backlogs and equip it to serve the needs of a growing and modernising economy, but this cannot be achieved by the focus alone.

The A-grade 'ready to go' projects to be showcased at the conference include five rail, five road, one aviation, two provincial (Eastern Cape and Gauteng) and six Transnet projects. But the menu will also include B-grade projects which still require feasibility or technical studies and the Cabinet's approval.

The high-speed train links and the creation of a rail and road corridor between Johannesburg and Durban are the high-ticker projects on offer. The 100 participants will include potential domestic and foreign investors, asset managers, merchant banks and service providers. They will be asked to share their views on the various funding models that would allow the private sector to invest in infrastructure upgrade and maintenance.

"The national focus is over-stretched and it is unable to comprehensively fund transport infrastructure projects," Mr Mbohi said.

The conference follows a similar engagement in April by the Passenger Rail Agency of SA with investors. They were presented with the agency's new rolling stock programme and the business opportunities that arose from it. The agency plans to spend R97m on new rolling stock over the next 16 years.

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SA's oil use increases in line with economic growth

ALISTAIR ANDERSON
Economics Staff

SA's oil usage increased in line with its gross domestic product growth last year, data from energy company BP showed yesterday.

Last year global energy consumption grew at its quickest rate since the aftermath of the 1973 oil price shocks, and China's energy consumption overtook the US's for the first time.

"The story told by the data in this year's review is that of a strong rebound of global energy consumption in 2010, following the global recession," BP CEO Bob Dudley said on the release of the energy giant's Statistical Review of World Energy annual report for last year.

Last year also marked the end of SA's first recession since 2002. The number of oil barrels SA

used rose 2.7% last year compared with the year before, from 517 000 to 531 000 barrels a day.

Economist Tony Twine said BP's findings were not surprising. "The growth in oil consumption is directly in line with gross domestic product growth. Real growth last year was 2.9%."

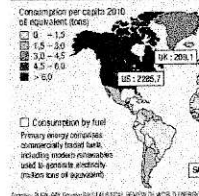
In the last four months of the year we saw price increases in refined products. So the findings by BP are exactly as one would have expected," he said.

Oil is the world's leading fuel, at 33% of global energy consumption, but it did lose market share to gas for the fifth consecutive year.

World Wide Fund for Nature SA climate change programme manager Richard Worthington said he was concerned by SA's dependency on oil and other energy sources.

"We need to wean off oil glob-

CONSUMPTION OF ENERGY



Source: BP Statistical Review of World Energy 2011

can, be here in SA and abroad."

He stressed that SA's dependency on coal was especially worrying. "Our coal usage is one thing that leads us to be vulnerable to climate

change and to the world's responses to climate change," he said.

Said BP: "China became the world's largest energy consumer in 2010, overtaking the US during a year which saw the rebound in the global economy drive consumption higher and at a rate not seen since the aftermath of the 1973 oil price shocks." Chinese energy consumption grew 11.2% last year.

BP said demand for all forms of energy grew strongly last year, and increases in fossil fuel consumption suggested that global carbon dioxide emissions from energy use rose at their fastest rate since 1969.

The growth in energy consumption was broad-based, with both

the science and technology minister and the finance minister.

The additional 50% would only be approved if the R&D was of a scientific and innovative nature, provided skills development and employment creation in SA.

"We would have thought that the purpose of a tax regime was to remove barriers to doing business. However, we keep finding provisions that put up obstacles in places for companies and other taxpayers," Prof Mollath said.

Izak Swart, an associate director for tax at Deloitte, said the additional 50% was not enough to incentivise more R&D in SA.

Mr Swart said that in 2006 the R&D provision was the third most lucrative incentive worldwide. The benefits of the current section 11D are no longer ranked as one of the best in the world. Countries such as the UK and Australia provide significantly better benefits than SA.

Charles de Wet, a director for tax at PwC, said the application process was also not clear. "There are also too many rules and application forms for companies to consider," Mr de Wet said.

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Goal of halving poverty 'will take until 2030'

EDWARD WEST
KwaZulu-Natal Editor

IT WOULD take until 2030 for SA to reduce poverty by half — a target the government has set for 2014 — if household income distribution was kept at constant levels, and with average gross domestic product growth of about 3%-4% a year, an analysis said yesterday.

Michael Förster, Social Policy Division senior analyst at the Organisation for Economic Co-operation and Development (OECD), said poverty alleviation measures alone were not enough to cut high income distribution inequality, and income redistribution was also essential.

Mr Förster told a seminar on income distribution equality at the University of KwaZulu-Natal's School of Development Studies that household income disparity was higher in emerging-market countries than wealthier OECD countries, and SA had among the highest levels of income inequality in the world. "Poverty alleviation succeeds better in countries with lower income distribution inequality,"

Mr Förster said the OECD's research showed that income inequality had increased in three quarters of the 34 OECD countries since the 1990s, with inequality in high-income countries increasing more compared with the middle and lower income countries. In these countries, the average income of the richest 10% of the population was about nine times that of the poorest 10%.

Among the bigger emerging markets, income inequality had declined in Brazil since 1990, had fallen a little in China since 2004, had increased in India, while it had remained at a high level in SA since 1994.

Government transfers, both in cash and in kind, were important to prevent low-income households from falling further back in income distribution, he said. But financial redistribution alone was not financially sustainable and a key challenge for policy makers was to facilitate income redistribution to employment and encourage access to employment for under-represented groups. Globalisation, on balance, had little effect on wage disparities in OECD countries, he said.

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Proposed tax law 'burdensome'

SANCHIA TEMBIN
Professional Services Editor

PROPOSED tax amendments to the research and development (R&D) tax deduction contained in the Income Tax Act are onerous and expensive for companies and likely to discourage more R&D in SA, tax analysts warned yesterday.

Prof Osman Mollath, a director for tax at PricewaterhouseCoopers (PwC), said yesterday that the proposed legislation entailed more red tape and regulation for companies.

"This is extremely burdensome and an administrative nightmare for companies. A lot of projects may be delayed or shelved in the process," said Prof Mollath.

Last week, the Treasury released the Draft Taxation Laws Amendment Bill, which gives effect to many of the tax proposals that were contained in Finance Minister Pravin Gordhan's February budget.

Significant changes were being proposed to the R&D additional income tax deduction of section 11D of the Income Tax Act.

It was proposed that a new section 11D would become operational for any expenditure incurred on or after January 1 2012.



Pravin Gordhan

It is a stated objective of the Department of Science and Technology that SA should spend 1.5% of gross domestic product (GDP) on R&D by 2014.

However, since 2007 R&D as a percentage of GDP had decreased from 0.55% to 0.42% in 2009. Figures for last year were not yet available.

Under proposed draft legislation, taxpayers carrying out R&D would automatically qualify for a 100% deduction of R&D expenditure.

To claim an additional 50%, they would have to obtain approval from

a committee, appointed by the science and technology minister and the finance minister.

The additional 50% would only be approved if the R&D was of a scientific and innovative nature, provided skills development and employment creation in SA.

"We would have thought that the purpose of a tax regime was to remove barriers to doing business. However, we keep finding provisions that put up obstacles in places for companies and other taxpayers," Prof Mollath said.

Izak Swart, an associate director for tax at Deloitte, said the additional 50% was not enough to incentivise more R&D in SA.

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Change at Transnet, Eskom, Denel

Continued from page 3

replace Mr Mhlanza at Transnet with Iqbal 'Bafiq' Sharma was short down and a new candidate will have to be found. Mr Sharma, a former senior official in the Department of Trade and Industry, was appointed to the Transnet board last December, shortly after Mr Gigaba took up his new job.

But Cabinet colleagues are thought to have been uncomfortable with appointing someone relatively inexperienced and unknown in the capital markets.

There were also fears that he might be too closely identified with the wealthy Gupta family, friends of President Jacob Zuma.

when he questioned whether SA had supplied sniper rifles to Libya and asked Mr Radebe how it fit to have "blood on his hands".

Mr Mhlanza yesterday there was no evidence suggesting Radebe were exported directly to Yemen, but some were reportedly sold to Jordan.

He said the Procurement Group, in cooperation with the King Abdullah Design and Development Bureau (KADDB), produced a converted version of the Ratel infantry vehicle in Jordan and the "industry" vehicle deployed to Yemen was the converted version of the Ratel infantry vehicle produced by the Paramount Group and KADDB in Jordan.

Senior African National Congress leaders have become sceptical as they inside the party towards the Gupta. That is mainly born out of jealousy over the family's apparently easy access to the president, but it has become a problem for party managers.

The problem at Transnet has been predictable — Mr Mhlanza is a former CEO there and there will have been clashes of will between him and Brian Molelele, who became the CEO earlier this year.

Briefing journalists soon after his appointment last year, he already had detailed ideas about operations and projects. The new CEO, meanwhile, would have developed his own.

It is also understood that there will

be one other departure from the Transnet board — that of Mr Don Mkhwanazi.

The head of the Friends of Jacob Zuma Trust, Mr Mkhwanazi was also brought on to the board last year but is thought to have been unable to bring sufficient expertise to its deliberations.

Mr Gigaba said in his speech at Wits University this week that while state-owned enterprises had the potential to lead SA's development, their balance sheets were too weak to make a difference. He proposed building long-term "developmental partnerships" between these entities and their private-sector customers.

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SA Ratels turn up in Yemen conflict

Continued from page 3

"We cannot sit back and allow conventional weapons manufactured in our country to end up in the hands of repressive regimes such as Yemen."

Mr Radebe is to appear before the joint standing committee on defence and arms control on Tuesday to field questions about the Ratel. Attempts to get comment on the vehicles yesterday were unsuccessful.

Defence specialist and local car producer for James Defoe Woelke, Helmut Heitman, said he knew of no direct exports of Ratels to Yemen. He stressed that the vehicles photographed were relatively benign and they did not have a turret with a large gun. However, the troops inside might not be benign.

or had been bought from Jordan, this did not necessarily mean the end-user certificate had been infringed — "it depends what the certificate said and whether it allowed re-export."

The NCAC annual report in April showed significant military hardware sales to North Africa and the Middle East. Last year R63.9m worth of conventional arms were exported to Libya, R7.7m to Syria and R37.8m to Yemen. This included Category A weapons such as explosives, large-calibre arms and automatic weapons, guns, missiles, bombs, grenades and tanks.

The report also showed weapons transfers to repressive or unstable countries such as Algeria, Colombia, Egypt and Equatorial Guinea.

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Lagarde seeks China support for IMF job

Continued from page 3

time before deciding. Coincidentally, tomorrow is also the deadline for candidates to apply for the IMF top job. The international lender wants to appoint a new chief by the end of this month.

Ms Lagarde, a former high-flying lawyer and one of France's most influential ministers, has denied any misconduct in her approval of a 2009 arbitration payment to Bernard Tapie, a friend of President Nicolas Sarkozy, to settle a long-running dispute between him and a state-owned bank.

She has said the investigation — brought by opposition Socialist Party deputies who accuse her of abuse of authority — would have no bearing on her IMF bid.

On Tuesday, Ms Lagarde told the CNBC TV the case was unfounded and any delay in the investigation would not pose a problem for her aspirations to head the IMF.

"It is a matter which is without grounds, without foundation, this is clearly engineered and instrumented by the opposition at the moment."

She said top legal experts had already concluded "there was nothing at all" to the case. "On June 10, what could very well happen, and I'm not worried about it, is the approval of the current panel finds it a little bit too complicated and refers it for further investigation, but that would be part of the process and I would not be worried about it at all," she said.

Sacci reports another dip in business confidence

MARIAM ISA
Economics Editor

BUSINESS CONFIDENCE dipped for the second month in a row, signalling a possible downward trend in sentiment, the South African Chamber of Commerce (Sacc) said yesterday.

Trade flows were the main culprit but the poor performance of retail sales was another factor behind the fall of Sacci's business confidence, which dropped to 58.3 last month from 58.9 in April.

"The monthly index was significantly as it followed hard on the heels of another survey earlier this week, showing business confidence dried in the second quarter."

That fall was led by a sharp deterioration in mood among retailing, suggesting consumer demand is on the back foot.

"I think put together the surveys tell you there are rising concerns around both global growth and the consumer spending environment at home," Sean McCalgan, market analyst at Economist's Treasury Management, said yesterday. "They tell us the scope for interest rate hikes this year is declining — the Reserve Bank won't want to tighten policy when you have growth slowing both domestically and offshore."

Local markets are betting the Bank will raise its key repo rate from 5.5% to 6% in November to tame rising inflation.

Most economists expect a rate hike next year but some say the Bank will hold five until next year, given the patchy nature of the recovery.

Economic growth accelerated to 4.6% in the first quarter, from 4.3% in the previous quarter.

However, so far growth has been driven by consumer spending, the economy's main engine.

Investment by the private sector has been sluggish, as a slowdown in consumer demand would be particularly worrying. Sacci's business confidence index has receded from a March peak of 68.3.

The pessimism anticipated upward momentum has failed to gain a foothold and now the business confidence index faces the prospect of a downward trend, Sacci said.

The outlook of the index shows that export volumes weighed the most heavily last month, followed by imports, new vehicle sales and retail sales. The exchange rate of the rand, share prices and inflation also had negative effects.

Manufacturing made a positive contribution to the index, in step with the quarterly business confidence survey from the Bureau for Economic Research and Rand Merchant Bank.

Sacci said there were two significant events making place last month — the approval of Walton's takeover of local retailer Massmart and the outcome of the local government elections.

"Both of these will have significant consequences for the perceived ease of doing business and business confidence levels in SA," Sacci said.

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Jean-Louis Nadal, the public prosecutor of France's highest court, recommended earlier this year that the Court of Justice open an inquiry into Ms Lagarde's role in the payout to Mr Tapie.

A former left-wing government minister who switched sides to support Mr Sarkozy's 2007 presidential campaign, Mr Tapie was paid to settle his dispute with former state-owned bank Credit Lyonnais, which he had accused of defrauding him during the 1993 sale of his stake in sports giant Adidas.

Ms Lagarde agreed to drop the judicial proceedings and submit the case to a private arbitration panel, overruling some in her ministry who argued it should remain in court.

Her accusers say she ignored recommendations to check whether the arbitration was legal and to appeal against the size of the award. *Bloomberg, Reuters*

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20 OCTOBER 2020 – DAY 287

I can remember exactly where the meeting was set up. It was also in Melrose Arch at the restaurant. If I can recall the restaurant's name was JB's corner I think.

ADV SEGEELS-NCUBE: Okay. I just want to focus on trying to pin down an approximate date of this meeting. If you go – you say that soon after this meeting which was the initial meeting and the initial meeting you said happened before Transnet advertised the phase 2 tender. And if you look at page 43 at paragraph 53 we see that Transnet
10 advertised the tender on the 24 April 2014. Now would this meeting have been after the advertisement?

MR BESTER: From what I recall definitely this meeting was after the tender was advertised yes.

ADV SEGEELS-NCUBE: Okay so it would have been after April 2015?

MR BESTER: Yes.

ADV SEGEELS-NCUBE: Okay continue.

MR BESTER: So this meeting was set up at – and by the way I got notice of this meeting or request for this meeting
20 through Mr Dave Reddy who phoned me and said that Mr Salim Essa would like to see me as a follow up. And it was at a certain time and date was set and I went to this meeting at – at this location in Melrose Arch where I meet – I was met by Mr Dave Reddy and Mr Salim Essa.

ADV SEGEELS-NCUBE: Was there anybody else in

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attendance?

MR BESTER: No. Again it was just a little bit of a funny setup. It is – I went into the restaurant and everybody knew Mr Salim Essa. You know he was like a celebrity. Everybody greeting him. There was a table set out for us on the stage if I can recall. So it was only the three of us.

ADV SEGEELS-NCUBE: Okay and what transpired at that meeting? What was being discussed?

MR BESTER: It – it was again a very irritating meeting for
10 me personally because Mr Essa had a lot of cell phones with him that was ringing the whole time and he was talking and standing up and walking around and I was sitting there very irritated I remember. But when he was sitting down he told me that I – that we need to include him in our phase 2 tender for the manganese and he was talking about I recall asking him and what are you going to do? And he – I remember recalling he told me I must not worry about that I must just include his company he will give me the name. And if I – from what I can recall he also told me that I need to include
20 him for R80 million to which I laughed or told him something to – that he is – it is ridiculous. I told him about – it is a competitive process. I know exactly what the budgets and affordability of the project is you know how tight the budgets are – the business case that we have done and you know there is no error – room for errors to be made in the money.

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And he just laughed at me he said, do not worry you include me for R80 million and I will grow that to something ridiculous I can recall over R300 million. And he was loosely talking to me about money. I – also when I spoke to him about the budget for the project he said to me I do not know what I am talking about. He knows what – he know what the budget is and he will decide what the budget is going to be and where the project will end up. And I basically know nothing.

10 **CHAIRPERSON:** This was Mr Essa saying this?

MR BESTER: That is correct.

CHAIRPERSON: Now when he talked about you including his company was he talking about his company separate from Mr Reddy's company and Mr...

MR BESTER: Yes.

CHAIRPERSON: Mr Padayachee's company?

MR BESTER: Yes.

CHAIRPERSON: Was it a different entity?

20 **MR BESTER:** Yes it was – he made it clear to me that it is his company. He will give me the name. There is various companies to choose from and I must not worry about what they are going to do. I must just invoice.

CHAIRPERSON: Oh okay. And Mr Reddy was there?

MR BESTER: Mr Reddy was there he did not say a word he was just listening.

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CHAIRPERSON: Yes okay alright.

ADV SEGEELS-NCUBE: Now if we can just go to your statement because this is a very important meeting and I just want you to set out the full contents of what transpired. At paragraph 63 you say that – which is on page 46 of your statement. You say that – and this is now Mr Essa.

“He insisted that we should include his company and said that they have a lot of power.”

10 When did he say this during the meeting?

MR BESTER: It would have been at the time when I told him he does not know what he is talking about and he was now trying to tell me that I do not know what I am talking about.

ADV SEGEELS-NCUBE: And did he say who this “they” was that he was referring to?

MR BESTER: He did not go into the detail. But he said to me I must not worry about the detail or about budgets. I recall for instance he told me that they had already decided who is going to be the next CEO of Eskom. And I will clearly
20 see it when it happens that – what the power is that they have and how they make decisions if I do not believe him.

ADV SEGEELS-NCUBE: And who did he say that person would be?

MR BESTER: He said it is going to – they decided Mr Brian Molefe will be the CEO of Eskom.

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ADV SEGEELS-NCUBE: And this was all during that meeting?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay now this ...

CHAIRPERSON: I am sorry.

ADV SEGEELS-NCUBE: Sorry Chair.

CHAIRPERSON: We – we – this would have been after April 2014 you said? Did you say this meeting would have taken place after April 2014? Mr Bester.

10 **MR BESTER:** That is correct, yes.

CHAIRPERSON: Was Mr Brian Molefe not already Group CEO of Transnet at that time?

ADV SEGEELS-NCUBE: He said Eskom Chair.

CHAIRPERSON: Hm.

ADV SEGEELS-NCUBE: He said Eskom. That Mr Brian...

CHAIRPERSON: Oh Eskom.

MR BESTER: Eskom.

CHAIRPERSON: Oh he said they already knew who was going to be...

20 **MR BESTER:** Yes so at that time if I can recall Mr Brian Molefe was the CEO of Transnet.

CHAIRPERSON: At the time of the meeting?

MR BESTER: At the time of the meeting.

CHAIRPERSON: Ja but what was the remark that Mr Salim Essa said about Group CEO or something?

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MR BESTER: He was convincing me that I do not know what I am talking about and he was trying to indicate the power that they have. If I can recall at the time I could not recall the situation at Eskom. But said to me, “you will see we have already decided that Mr Brian Molefe will be the next CEO of Eskom and when it gets announced you will see the power that we have.”

CHAIRPERSON: Yes. Okay. Okay. Yes thank you.

ADV SEGEELS-NCUBE: Thank you Chair. Now the R80
10 million that he initially spoke about was that part of the SD component or would it be over and above the SD component according to your understanding?

MR BESTER: Well so his indicated was that we need to include the R80 million as part of the SD but what I – when I ask him what he is going to do for the R80 million

CHAIRPERSON: I am sorry. I am sorry.

ADV SEGEELS-NCUBE: My apologies Chair.

CHAIRPERSON: Well I have been sitting here listening to evidence from different work streams so I am just thinking
20 about this evidence that you are giving.

ADV SEGEELS-NCUBE: No problem Chair.

CHAIRPERSON: Because Mr Brian Molefe ended up being seconded to Eskom was it 2015 – 2014? Well I was hearing this evidence two weeks ago and so on. So I am just wondering Mr Essa knows sometime while Mr Brian Molefe is

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at Transnet that Mr Brian Molefe is going to end up being CEO of Eskom and he is mentioning this to you kind of in passing and just to show you that he and whoever he was talking about had a lot of power.

MR BESTER: That is correct. That is correct.

CHAIRPERSON: Had a lot of power. And we all know that ultimately Mr Molefe did end up being Group CEO of Eskom.

MR BESTER: That is correct.

CHAIRPERSON: Yes.

10 **MR BESTER**: He also mentioned to me if I can say?

CHAIRPERSON: Yes.

MR BESTER: At the meeting that with the power that they have they can do anything.

CHAIRPERSON: Yes.

MR BESTER: Because I told him that we are going to tender for this project. It is a competitive bidding process so you know each and every cent counts. And he said to me, no it is not the case. If I – or Hatch at that stage include him in our submission they can change all the prices, they will
20 make sure we get the job, they will grow the budgets and they are in control.

CHAIRPERSON: That is what he said?

MR BESTER: That is correct.

CHAIRPERSON: Yes. Yes continue.

ADV SEGEELS-NCUBE: Thank you Chair. On the R80

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who raised the concern which prompted me, finally, to go and address them and that was accepted but they never, not a single one ever goes public.

CHAIRPERSON: Well, I raise that because and maybe that can be dealt with later but you may or may not know much about it because I think you would not have been Chairperson of the Deployment Committee at the time. We – I have heard evidence in this Commission relating to, for example Mr Siyabonga Gama, who at a certain stage, I
10 think 2009/2010, at a certain stage was one of the applicants for the position of Group CEO for Transnet who was suspended as CEO of TFR, which is a division of Transnet.

And in the media there was a lot of talk about him and that position and various allegations, but there were reports in the newspapers of a number of senior ANC leaders who reportedly went public saying that Mr Gama should be appointed as Group CEO. And I wondered whether that might be because the Deployment Committee
20 had recommended him and that was maybe the reaction of some of its members who, if they were – if they thought if he was not being appointed.

So I thought you might be able to say whether they ever go public when maybe their recommendation does not seem to be accepted. But you say, as far you

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know, they do not?

PRESIDENT RAMAPHOSA: Yes, Chairperson as far as I know they do not and I guess in Siyabonga Gama's issue, he was then seen as a fairly successful CEO and that would have been something that was generally accepted and he would have been seen as a type of person whose capabilities could have been Head of Transnet.

So there would have been side noises, noises from the side but certainly not from the Deployment
10 Committee because it has always operated as, if you like, a rear dart type of committee.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Well, just because we have touched on it. When Mr Mantashe gave evidence we have touched on it as well. But this was a case where, at least at a certain point, there was a black candidate who had been recommended by the Board of Transnet who was seen as a credible candidate but Mr Siyabonga Gama had not been
20 recommended.

And the then Minister, namely, Ms Barbara Hogan was supportive of the candidate that had been recommended by the board but there were reports of criticism of why Mr Siyabonga Gama was not the one who was recommended or who was not been appointed. I think

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Mr Mantashe told me that he had not been aware of a black candidate having been recommended because I think, at least from his point of view, he was looking at the issue of black managers been given opportunities to lead some of these parastatals.

So there was that concern to say, who – if the problem was that there should be change in the CEO's of parastatals, what was the problem? Because here was a black candidate ...[intervenes]

10 **PRESIDENT RAMAPHOSA:** Ja.

CHAIRPERSON: ...who appeared to be credible and nobody appeared to have issues with him who was recommended by a largely black board that had been appointed by the ANC government.

PRESIDENT RAMAPHOSA: H'm.

CHAIRPERSON: So what was sort of the issue? But as I say, one, you might not have personal knowledge and two, you might not have been a member of the Deployment Committee at the time.

20 **PRESIDENT RAMAPHOSA:** Chairperson, I certainly was not a member of the Deployment Committee nor was I an official at that stage.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: But what I can address to you is. There was and there is still a concerted move to ensure

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that we do have as many black CEO leaders as possible, taking into account the diversity that we need to observe in our state-owned enterprises.

So that to me does not come as a surprise. It is very consistent with the approach that we also currently have that we need to have good diversity. That need to have diversity is so important and of course there are many who feel quite strongly about it to a point where they would say: When we appoint somebody who is not a black
10 African, they take umbrage but we then say but the call for diversity means that we must accept and embrace the fact that yes as much as, and we should, have the majority of the leaders of our SOE's and the DG's in government as being black African.

But we should also ensure that there is a balance because this country is not depopulated by Africans and our policy approach and thrust is for full diversity and we need to accept that that diversity will at times bringing in people who are not black Africans.

20 **CHAIRPERSON:** Yes, thank you. Mr Pretorius.

ADV PRETORIUS SC: Thank you. To return to the Gondwana[?] interview Mr President. In the context of deployment, once again, and we have now returned to the former deployment policies and your application. You spoke about patronage creeping in under the guides of

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commitment and processes. So people have a misunderstanding and a misconception of how well you can do in this industry in a short space of time and I need to make that in the context of what I'm going to say now. So I agreed to go to the meeting with him, he picked me up at the coffee shop in Oaklands in Johannesburg and he...(intervention).

CHAIRPERSON: And did he tell you in advance where the meeting would be?

MR RIAZ SALOOJEE: Yes he said to me – no not the meeting, he said I'll pick you up here and then we'll go to the meeting.

CHAIRPERSON: Oh okay so when he picked you up, you didn't know at the – where
10 the venue would be.

ADV LEAH GCABASHE SC: I didn't know.

CHAIRPERSON: Okay

MR RIAZ SALOOJEE: And then he picked me up and we drove – and then he drove me to the Gupta residence in Saxonwold. I was not aware that, that was the residence at that point in time but he informed me that it was and he said don't worry, again he said, this is the support of the very top.

ADV LEAH GCABASHE SC: And this is after you had gotten into his car and you're driving towards Saxonwold?

MR RIAZ SALOOJEE: Yes, so then we get to the place and we go inside and I'm
20 taken into a room and I'm introduced to Tony Gupta – Tony Rajesh Gupta that's...(intervention).

ADV LEAH GCABASHE SC: Yes.

MR RIAZ SALOOJEE: It's the first time I met with Tony Gupta...(intervention).

ADV LEAH GCABASHE SC: Had you met with any of the Gupta family prior to this?

MR RIAZ SALOOJEE: Not.

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ADV LEAH GCABASHE SC: Yes.

MR RIAZ SALOOJEE: So we engage in pleasantries and he's – obviously he says, how are you and whatever else and then shortly after that he escorts – Tony escorts me into another room, okay so we leave that room we go into another room. In that room he introduces me to his – and now he says this is my brother and he doesn't say who the brother is, he just said this is my brother and the brother greets me, he says hello Riaz how are you and I said I'm fine and then he turns around, and in the room was also Minister Malusi Gigaba and then he says to Minister Gigaba, Minister Gigaba this is the new CEO of Denel this is the new guy, Riaz and all Minister Gigaba said was, 10 hello how are you Riaz, that was it and there was not a further exchange – I mean there was no discussion about Denel or anything of that sort it was just an introduction and if I recall, Minister Gigaba said these are my friends, he hopes that at some point if there is anything you can do with them it would be good and that was it.

CHAIRPERSON: Please just repeat that, he said what?

MR RIAZ SALOOJEE: He said if at some point there is anything that you can assist them with that's fine that would be good.

CHAIRPERSON: That is the one that I'm missing, the earlier one. Did he say, these are my friend or something like that?

MR RIAZ SALOOJEE: These are friends and if at some point there is something you 20 can do together with them in Denel it would be good, something to that effect.

CHAIRPERSON: Okay.

MR RIAZ SALOOJEE: The meeting was very short and this person who I later found out was Atul, was just talking asked me how's Denel, how's it going and whatever else, and I said it's fine, I'm settling in and whatever else and we shook hands and we left and Essa took me back in his car to the coffee shop where he picked me up and on the

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way he said don't worry about this – these are good people it's okay.

CHAIRPERSON: That's...(intervention).

MR RIAZ SALOOJEE: Essa.

CHAIRPERSON: Mr Essa.

ADV LEAH GCABASHE SC: Can I ask you this, when Atul spoke and said to the Minister, Minister you know this guy, he is your new Denel GCEO, did you get the impression that he was communicating the idea that, he, Atul had, had a hand in ensuring that you were selected for appointment, do you think he was trying to attribute the fact that you were not the GCEO...(intervention)

10 **CHAIRPERSON:** Ms Gcabashe, don't you want to ask the question in another way there seems to be...(intervention).

ADV LEAH GCABASHE SC: Am I leading him?

CHAIRPERSON: Very leading – well look have you found a way?

ADV LEAH GCABASHE SC: I believe I have but Chairman your prerogative always...(intervention).

CHAIRPERSON: No, no it's fine if you have found.

ADV LEAH GCABASHE SC: What do you believe Mr Atul Gupta was communicating to the Minister at this point in time?

MR RIAZ SALOOJEE: What he was communicating to the Minister?

20 **ADV LEAH GCABASHE SC:** To the Minister yes, other than just – were there any undercurrents to what you were saying, was it more than just meet this chap?

MR RIAZ SALOOJEE: No Chair, I think it was meeting this person, and the fact that I was there without having known that I was going to that place, I think, he was trying to show to me, that's what I read, that he had a relationship with my political principal, I mean that's what I read into it, I didn't read it that he was saying to the Minister that he

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had instructed me to come there or because of any other reason.

ADV LEAH GCABASHE SC: I'm really interested in the dynamic between Mr Atul Gupta and the Minister and trying to decide who was the subordinate in that relationship, who was doing who a favour in this relationship. You may not have gotten a sense of that at all.

MR RIAZ SALOOJEE: Chair I did not.

CHAIRPERSON: Before you were picked up by Mr Essa to the meeting, is my understanding correct that he had asked you to come to a meeting, one he had not told you where the meeting would be and two he had not told you what the meeting was
10 going to be about or do I misunderstand something?

MR RIAZ SALOOJEE: No Chair sorry, he had said he wants me to go to a meeting because there were people who, it would be in the interest of Denel to meet because they could further the business of Denel, I mean that was primarily the reason.

CHAIRPERSON: So he had said he wanted you to meet certain people because meeting those people would be in the interest of Denel, if you met those people?

MR RIAZ SALOOJEE: Yes.

CHAIRPERSON: Is that right?

MR RIAZ SALOOJEE: Yes.

CHAIRPERSON: You must just say if I'm not getting it right, I just want to understand it
20 correctly. So you went there because you were going to meet these people that he was saying, if you as GCEO of Denel met them that would be in the interest of Denel?

MR RIAZ SALOOJEE: Exactly.

CHAIRPERSON: Yes he didn't tell you in advance who those people were?

MR RIAZ SALOOJEE: No he did not.

CHAIRPERSON: And you didn't ask?

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MR RIAZ SALOOJEE: No I did not.

CHAIRPERSON: Okay, he picks you up at a coffee shop in Oaklands and then you proceed and at what stage – or did he tell you on the way, before you reached the destination what those people were that you were going to meet...(intervention).

MR RIAZ SALOOJEE: Yes as I've indicated when he picked me up when we were in the car he indicated where he was taking me to and who the people are.

CHAIRPERSON: Yes, so he told you where he was – where you were going?

MR RIAZ SALOOJEE: Yes.

CHAIRPERSON: But he didn't tell you or in specific terms about, for example, the
10 Minister he just told you, you were going to the Gupta residence?

MR RIAZ SALOOJEE: Yes I was not – there was no indication of who I was going to meet there.

CHAIRPERSON: But you – from the fact that the destination was the Gupta residence you could tell, okay, we are going to meet the Gupta family?

MR RIAZ SALOOJEE: That's correct.

CHAIRPERSON: Yes okay, and then the – then you came into the Gupta residence, firstly you were put in one room and then later on you were taken to another room where Minister Gigaba was at the time, he was Minister of Public Enterprises at the time.

20 **MR RIAZ SALOOJEE**: Yes.

CHAIRPERSON: And in that room where Mr Gigaba was, ultimately it was yourself, Mr Gigaba and is it Atul, only the three of you?

MR RIAZ SALOOJEE: Yes.

CHAIRPERSON: Okay and all that happened, really was that he seemed to introduce you to Mr Gigaba is that right?

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MR RIAZ SALOOJEE: That's correct yes.

CHAIRPERSON: Yes and what else?

MR RIAZ SALOOJEE: No as I've indicated Chair, I mean, there was small talk about him asking me how things are going at Denel, how am I settling in at Denel and that he hopes that they will see me soon again.

CHAIRPERSON: Yes and what did you conclude was the purpose of this meeting, if you did think about it, even afterwards and conclude, what did you conclude was the purpose of this meeting?

MR RIAZ SALOOJEE: Chair my only view on this thing was that it was a display of
10 the influence that they had and the extent of that influence, I mean here I was asked to go to a meeting ostensibly to discuss with people who were going to further the interest of Denel and when I get to the meeting I'm confronted with this and the only conclusion that I could come to at that point was – in a sense it was a show of (indistinct).

CHAIRPERSON: How long do you think the meeting lasted?

MR RIAZ SALOOJEE: Probably, in total having got there and in the meeting itself, probably about seven minutes if that – seven, ten minutes, not even.

CHAIRPERSON: Okay thank you.

ADV LEAH GCABASHE SC: Thank you Chairman, then you drove back to Oaklands
20 with Essa and you left to go to Denel?

MR RIAZ SALOOJEE: Yes that's correct.

ADV LEAH GCABASHE SC: At paragraph 48...(intervention).

CHAIRPERSON: I'm sorry before you do that, from what you have said, I think, there are two things that Mr Gigaba said at that meeting that you have testified to, one, he greeted you he said hello Riaz, or something like that, after Mr Atul Gupta had

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introduced you to him, is that right, that was the first thing he said?

MR RIAZ SALOOJEE: Yes.

CHAIRPERSON: But he said something like – also like these are friends and something like you – if you can work together or, I can't remember how you put it but...(intervention).

MR RIAZ SALOOJEE: If we could work together in the future it would be good.

CHAIRPERSON: Yes, and that's about all he said in that meeting?

MR RIAZ SALOOJEE: That's it.

CHAIRPERSON: Yes what was your understanding of that message from him if you
10 had any particular understanding for it?

MR RIAZ SALOOJEE: I mean Chair there was no implicit view or connotation that you've got to do anything.

CHAIRPERSON: Yes it was just – if there's working together that's – you can work together but basically everything was left to both parties if they will find a way of working together.

MR RIAZ SALOOJEE: That's correct.

CHAIRPERSON: There was no instruction or anything like that?

MR RIAZ SALOOJEE: That's correct Chair.

CHAIRPERSON: Yes okay, thank you.

20 **ADV LEAH GCABASHE SC**: If you could then speak to what you've written in paragraph 48.

MR RIAZ SALOOJEE: But having interacted at that level, Chair, it became obvious, I mean, you don't come into an environment where you're called to a meeting, I didn't know who I was going to see, in the meeting I'm introduced to my political Principal, there was only one clear message there, is that we have influence, I mean, there was

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no other way of me interpreting – as I've indicated, from my perspective it was a show of force on their part to say, that this is the level at which we interact.

CHAIRPERSON: Let me go back to the statement by Mr Gigaba, I think if I understood you correctly, one of the statements he made was, these are friends. Was your understanding of that statement that he was meaning that these are his friends or what was your understanding of the statement or he meant to say, you must regard them as friends or what or any other meaning that I might not have thought of now?

MR RIAZ SALOOJEE: Chair the only way I could interpret that was that he was acquainted with them, the extent of which the acquaintance was, I cannot comment on that.

CHAIRPERSON: Yes, that's fine, sometimes people can make statements and you don't make much out of it and sometimes you do that's why I just wanted to find out whether you had a particular understanding that you attached to it but what you are saying is, your understanding he was – that he was saying that these were acquaintances and you can't take it further than that.

MR RIAZ SALOOJEE: That's correct.

CHAIRPERSON: Thank you, Ms Gcabashe.

ADV LEAH GCABASHE SC: Yes so we are back to paragraph 48 Mr Saloojee just to speak to what you have written in this paragraph.

MR RIAZ SALOOJEE: So as I've indicated there, I mean, that it was very clear that they wanted to show me Chair, that they had the support at the high political level and there was reference kept on being made by Essa even in the car that it has the support of the highest level which I had interpreted to mean that the highest level executive, in this instance, the President, the former President.

ADV LEAH GCABASHE SC: And of course you knew that Mr Gigaba was a Minister

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in Mr Zuma's cabinet and you were very much aware that talk in the public media was that the President was very close to the Gupta family?

MR RIAZ SALOOJEE: That's correct yes.

ADV LEAH GCABASHE SC: You've said that but you also go on to explain in that paragraph 48 that you had not personally met President Zuma, you did not know him, is the word you used.

MR RIAZ SALOOJEE: Advocate Gcabashe and Chair, I mean, we were in the ANC together, obviously the former President was long before me in the ANC, I mean because I'm obviously much younger but in terms of what he was responsible for and
10 where I was located within the ANC and MK structures were in very different regions and in different structures. So in my time in exile I've never had an opportunity to meet him as well neither have I ever met him since we came back in 1994. So I've never met the President before.

ADV LEAH GCABASHE SC: Let's move on to paragraph 49, Essa contacts you again and I'm interested in the use of the word "summoned" you say he summoned me to a meeting at the Gupta residence and later on you speak of being compelled, feeling that you had to attend that meeting, is this a deliberate use of the word "summoned", is my first question but joined to that question, why did you feel compelled to attend the meeting?

20 **MR RIAZ SALOOJEE:** Chair I think given the context that was led earlier, and this was a few weeks later okay and I must say I was extremely reticent about engaging with Essa but eventually I agreed because he had said, we want you to come to a meeting and within the context of which I've just described with regard to what happened earlier on I felt that there was some pressure being put on to me to engage again and as I've indicated there, I was very reluctant to attend but there were issues

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also, which I had to take into account myself. The fact is that, I've been in many situations where it has been difficult and I genuinely believe that I'm going to listen to what they've got to say but I'll be able to manage this thing and I was clear – there was also an element to know what do these people want.

ADV LEAH GCABASHE SC: Two questions arise from that, the first is, is the fact that you had met Mr Gigaba at your last visit to Saxonwold – the Gupta Saxonwold residence, did that factor influence your decision this time, you say a few weeks later, to go again?

MR RIAZ SALOOJEE: Chair it obviously played a part in it, I mean, it – I would be
10 naïve to say that it did not play a part in it ...(intervention).

CHAIRPERSON: And before Ms Gcabashe continues I'm just going back on your statement to paragraph 38 and 39, you don't necessarily have to go back but you may if you want to. I see that in 39 you say that Mr Essa said the request – request for you to meet people that could assist Denel and that's page 9 of your statement, the request for you to meet the people that he said it would be in Denel's interest to meet. I see in your statement that you say that he said to you that this request came from "the very top". So you may or may not have articulated that in your oral evidence but I did hear it, I just want you to confirm that, that is so?

MR RIAZ SALOOJEE: My reading was that he said it had come from the top.

20 **CHAIRPERSON:** Yes the request came from the top.

MR RIAZ SALOOJEE: And I don't know whether he was putting a spin on it or not but that's the words he used.

CHAIRPERSON: Yes I just – in terms of what he said to you whether it was true or not, we don't know but in terms of what he said to you, okay thank you, we can then go back to the second visit.

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be there. Tony Gupta would do most of the talking.

Mr Jonas said so about Mr Zuma in regard to the meeting that he had with a Gupta brother who may well have been Tony Gupta on the 23 October 2015 when he says he was offered the position of Minister of Finance and some money.

Mr Dukwana said the same thing about the meeting that he said he had at the Gupta residence with Mr Tony Gupta and he said Mr Duduzane Zuma was there where,
10 according to Mr Dukwana he was asked to fire his own HOD in the Free State and appoint Mr Richard Seleke and he says he was offered money on that occasion.

Mr, I think, Kona who was Chairperson of the SAA Board at some stage and was Acting Group CEO of SAA at some stage also had a meeting with Tony Gupta at the Gupta residence where he says he was offered money, if I recall correctly. I could be wrong on this occasion, Duduzane Zuma was there too but he did not say much and I think I could have another two or three people, so it is
20 quite interesting.

And then, in regard to Denel, part of the evidence given by Mr Saloojee is that at one of the meetings that he had at the Gupta residence with Mr Salim Essa, they brought in Duduzane Zuma and I think on another occasion they brought in Minister Gigaba who was Minister of Public

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Enterprises at that time.

He says even with regard to Minister Gigaba there seem to have been no particular obvious reason why they wanted him to be in that meeting because he did not have much to say, also with Duduzane Zuma, so it gives the impression as if they could bring certain people just to show you these are our connections.

So I am saying I am wondering whether you thought that they might not have brought you as a future
10 Chairperson of the board to say to Mr Saloojee look, you know, we have influenced the Chairperson of the new board, he is somebody that we know.

MR MANTSHA: Well, I do not think so, for these reasons, Chairperson. Mr Essa and Mr Saloojee had longstanding relationship and Mr Saloojee and Mr Essa had transacted before, long time when they actually acquired VR Laser. Apparently my information was the proposition for Mr Essa to acquire VR Laser came from Mr Saloojee and that is the proposition which Mr Essa went for and they
20 had a longstanding relationship of assisting one another in the acquisition of strategic business in defence and I had no information of any animosity between the two and I had no any information of animosity between either Mr Tony Gupta and Mr Saloojee and the meeting was not Mr Tony Gupta's meeting, the meeting was Mr Saloojee's meeting.

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973

Form CM 26

Client Ref: TRASEC

Special resolution
(Section 200)
(To be lodged in duplicate)

Registration No. Of Company
1990/000900/06



Name of company TRANSNET LIMITED

Date notice given to members WAIVED
Date resolution passed 31 JANUARY 2011

Special resolution passed in terms of section 62 of the Act/*paragraph of the memorandum/*article of the articles.

Copy of notice convening meeting attached.
Consent to waive period of notice of meeting (CM 25) attached/*not attached.

CONTENTS OF RESOLUTION
(Use reverse side if necessary)



RESOLVED THAT :

The following amendments to the existing Articles of Association of the Company are hereby approved
Article 69(b):
That the existing Article 69(b) of the Articles of Association of the Company be deleted in its entirety and be replaced with the following new Article 69(b):
"For so long as the State is the sole or majority shareholder in the Company, and subject to the provisions of the Companies Act, (including, without limitation, section 228 thereof), the Public Finance Management Act, 1 of 1999 and Applicable State Owned Enterprise Legislation, the Minister shall appoint the Group Chief Executive of the Company. The Board of Directors shall conduct the recruitment and selection process of the Group Chief Executive, in accordance with the guidelines issued by the Minister from time to time".
Article 69(c)
That the existing Article 69(c) of the Articles of Association of the Company be deleted in its entirety and be replaced with the following new Article 69(c):
"The Board of Directors shall appoint the Chief Financial Officer in consultation with the Minister".
Article 91
That the words "at least one-half" be deleted and replaced with the words "50% plus 1".

Rubber stamp of company, if any, or of secretaries.

Date 31 JANUARY 2011 Signature AN Ceba
Director/Secretary/Manager
Name (in block capitals) AYANDA NOLWAZI CLEOPATRA CEB
GROUP COMPANY SECRETARY

* Delete whichever not applicable.

Herewith copy of special resolution as registered.

Registration No. of Company
1990/000900/06

Name of Company: TRANSNET LIMITED

Postal address: P O BOX 72501
PARKVIEW
2122





**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 431 1035
Private Bag X8078, Cape Town, 8000 Tel: 021 481 6376/7 Fax: 021 485 2381/481 1741

Mr Mafika Mkwanazi
Chairperson: Transnet
P. O Box 72501
Parkview
2122

Tel: (011) 308 2309
Fax: (011) 308 2315

Dear Mr Mkwanazi

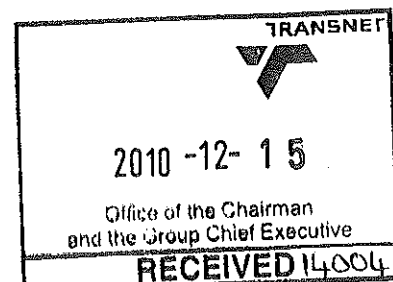
Guidelines for the Appointment of a Chief Executive Officer for a State Owned Enterprise ("SOE")

The above matter has reference.

As you may be aware, the South African company law authorizes the shareholders of a company to appoint the Board of Directors ("Board") to represent the shareholders and act in the best interests of the company. In addition, the shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assisting the SOE Boards with providing a framework for succession planning and the appointment of CEOs.

The guideline is further intended to enhance effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the South African economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder.



To this end, SOE within the Public Enterprises Portfolio are now expected with immediate effect; to have due regard to the Guidelines for the Appointment of CEOs. In this way there will be consistency in approach across all SOE. SOE should also amend their Articles of Associations to incorporate with the Guidelines.

I trust that you will find this in order.

Yours sincerely



Malusi Gigaba, MP
Minister of Public Enterprises

Date: 2010/12/14



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

GUIDELINES FOR THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICER FOR A STATE OWNED ENTERPRISE ("SOE")

INTRODUCTION

South African company law authorizes the shareholders of a company to appoint the Board of Directors to represent the shareholders and act in the best interests of the company. The shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises ("the Minister") has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure.

The guideline is further intended to ensure effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the SA economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder. The Governance and Nominations Committee of the Board (composed only of non-executive directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates, in order of priority, to the shareholder.

1. SUCCESSION PLAN

- 1.1 The Board, through its Governance and Nominations Committee, must develop an ongoing process to identify, develop and/or seek a CEO candidate with the relevant skills required to meet the challenges likely to be faced by the SOE in the foreseeable future and to implement Government's strategic objectives relative to such SOE. Accordingly, the Board shall prepare and submit an annual report to the shareholder Minister on its succession planning which must include, but not be limited to, the status of the CEO's contract, the CEO's performance and exit plans.
- 1.2 The Board must, at the earliest possible stage, seek the shareholder Minister's view on whether re-appointment of an incumbent is likely to be considered. If the Board recommends that the incumbent continue, the Board must submit the

CEO's performance report for the last 3 years and the reasons for continuing with such incumbent.

- 1.3 In the event re-appointment of an incumbent is not being considered, the Board, through the Governance and Nominations Committee, shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates.

2. DUE PROCESS

- 2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.
- 2.2 The Board must disclose to the shareholder Minister the recruitment process to be used by the Board in identifying the candidates.
- 2.3 Prior to commencing with the recruitment process, the Board must submit a description of the key specifications of the position as well as its selection criteria that will be used to select and assess candidates to the shareholder Minister for his/her consideration. The Board shall ensure that the said key specifications are informed by the SOE specific challenges, requirements and Governments' strategic objectives. Therefore, the candidates' profiles should match those of the SOE's challenges and Government's strategic objectives.
- 2.4 During the assessment of the candidates, the Board should verify and confirm that all shortlisted candidates have no conflicts of interest and will be able to fully execute and carry out executive duties required of a CEO. Should the recommended candidate hold any non-executive directorships in other Boards, such Board directorships should be a maximum of two directorships and should not interfere with his/her executive duties at the SOE. The Board must also advise the candidate that his/her acceptance of nominations onto other Boards post his/her appointment as CEO shall be subject to the Board's approval.
- 2.5 The Board shall, through its Governance and Nominations Committee, submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder Minister for further assessment and interview by the Minister if he/she deems it necessary especially if this is an external candidate.
- 2.6 The shareholder Minister may approve, disapprove and/or express an opinion on the shortlist. If the Minister approves the shortlist, s/he will submit his/ her recommendation to Cabinet for noting, prior to the Board appointing a candidate as CEO.

3. APPOINTMENT

- 3.1 The successful applicant should not commence with his/her duties until the contract of employment has been signed. The contract should include a performance agreement with the Board, which shall include the activities, performance measures and targets specified in the SOE's Shareholder Compact, Corporate Plan, as well as government's strategic intent communicated to the SOE from time-to-time.
- 3.2 The CEO of a SOE is an employee of that SOE and is accountable to its Board in terms of employment legislation. As an *ex officio* Board director, the CEO's position in this respect is governed by Company law and the Public Finance Management Act, 1 of 1999. Accordingly, to align the two offices and recognize that one arises by virtue of the other, the CEO's employment contract must ensure that the CEO's termination of employment results in the simultaneous removal as *ex officio* Board member.
- 3.3 The contract should specify the steps that the Board may take in the event of any alleged misconduct and specify the proposed measures to address the misconduct, including ensuring that the CEO will not be immune from prosecution in terms of applicable law.
- 3.4 Considering the critical and strategic role of the CEO must play in the operational success of a SOE's business, some of the key performance deliverables by the CEO, which must also for part of his/her Performance Agreement, are:
 - 3.4.1 Developing and recommending to the Board a long-term strategy and vision for the SOE to implement Government's strategic objectives, the shareholder compact and SOE corporate plan that will generate satisfactory levels of economic value;
 - 3.4.2 Developing annual business plans and budgets that support the SOE's long term strategy and prudently manages the SOE's resources within those budget guidelines according to the SOE's applicable regulatory framework and governing laws;
 - 3.4.3 Striving consistently to achieve the SOE's financial and operational goals and objectives, and ensuring that the SOE's day to day business affairs are appropriately monitored and managed;
 - 3.4.4 Ensuring continuous improvement in the quality and value of the products and services provided by the SOE, and that the SOE achieves and maintains a satisfactory competitive advantage within its industry;
 - 3.4.5 Ensuring that the SOE has an effective management team and to actively participate in the development of management and succession planning;
 - 3.4.6 Formulating and overseeing the implementation of major corporate policies, procedures and standards;
 - 3.4.7 Serving as the chief spokesperson of the SOE with a full appreciation of the necessity to protect the SOE against a loss of reputation and assuring the SOE and its mission, programmes, products and services are consistently presented in a strong and positive image to relevant stakeholders; and
 - 3.4.8 Ensuring alignment with the Minister's delivery agreement concluded with the President of the Republic of South Africa from time to time.

- 3.5 The Board should pay special attention to the right to terminate the employment contract as well as to any material changes to any declared material interests and conflicts of interest by the new CEO. There should be adequate mechanisms to address such changes and to allow the Board to terminate the contract, should the changes limit the CEO's ability to undertake and execute his or her duties in the interests of the SOE.
- 3.6 The remuneration package in the contract of employment must also be in accordance with the department's current Remuneration Guidelines for SOE. The key performance indicators in the shareholder compact should also be used to determine the CEO's remuneration and the discretionary pay.
- 3.7 The contract should also address any performance by the CEO that significantly and materially deviates from the SOE's strategic objectives and should provide for measures to address such material performance failures and deviations.
- 3.8 The notice period for termination of employment by the CEO should not be less than 6 months and should not contain an evergreen notice period.

DECEMBER 2010



Mafika Mkwanazi, Chairman and Acting Group Chief Executive

Mr Malusi Gigaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Fax: (012) 431 - 1039

Dear Minister

UPDATE ON THE SUCCESSION PROCESS FOR THE APPOINTMENT OF THE GROUP CHIEF EXECUTIVE: TRANSNET LIMITED

1 BACKGROUND

Subsequent to the appointment of the new Transnet Board of Directors ("the Board") on 13 December 2010, the Board, through the Corporate Governance and Nominations Committee ("the Committee"), revived the succession process in line with the DPE Guidelines for the appointment of a Chief Executive Officer for a State Owned Entity ("DPE Guidelines").

The process followed by the Transnet Board in filling the vacancy thus far includes the following steps:

- The Company procured the services of an independent external Executive Search Company, Leaders Unlimited; and
- A specification for the position has been developed, and is transmitted herewith together with the document outlining the process being followed.

The Board has taken a decision was taken that the Company will conduct an internal and external search simultaneously. The members of the Transnet Group Executive Committee interested in the position have been invited to participate in the selection process.

Transnet Limited
Registration Number
1990/000900/06

Carlton Centre
150 Commissioner Street
Johannesburg
2001

P.O. Box 72501
Parkview, Johannesburg
South Africa, 2122
T +27 11 308 2313
F +27 11 308 2315

Directors: ME Mkwanazi* (Chairman and Acting Group Chief Executive) MA Fanucchi HD Gazendam NBP Gcaba MP Malungani BD Mkwanazi T Mnyaka N Moola MP Moyo NR Ntshingila IM Sharma Prof JE Schrempff IB Skosana E Tshabalala DLJ Tshepe A Singh* (Acting Chief Financial Officer)
*Executive *German

www.transnet.net

Group Company Secretary: ANC Ceba

A handwritten signature in black ink, appearing to be "ME", is located in the bottom right corner of the page.

2. PROCESS

2.1. Process Map

Transmitted herewith, marked **Annexure "A"**, please find the agreed upon process map approved by the Committee and shared with the entire Board.

After a thorough consideration of the shortlisted candidates, the Committee, will recommend its preferred candidates to the Board at a Special Board of Directors' meeting scheduled for 25 January 2011, for approval.

2.2 Selection Criteria

The Committee met on 07 January 2011 to develop and approve a job specification for the position. The job specification is transmitted herewith **Annexure "B"**.

The Committee has ensured that the job specification encapsulates the commercial objectives of the Company as well as the role that the Company has to play in a developmental state. To this end, we have introduced elements of the New Growth Plan as key strategic challenges for the position.

2.3 Process Documentation

A questionnaire for the interview process has been developed and the Committee is satisfied that the questionnaire is adequately structured to ensure that the Board is in a position to identify and recommend the best candidate for the position. For ease of reference, we transmit the questionnaire herewith marked **Annexure "C"**.

2.4 The Interviews

We are planning to conduct the interviews for the shortlisted candidates during 21 – 23 January 2011. All interviews will be competency based, measuring and evaluating each individual's competency for the specific position. The shortlisted candidates will also be required to participate in a psychometric screening test. The screening process will incorporate competency based screening techniques; strategic and cultural fit as well as competency assessments.

2.5 Guideline on Remuneration

As you are aware, the nature of the process is such that we cannot proceed to finality on the offer of employment until the Shareholder's approval for the successful candidate has been obtained.

We will, however, request the Group Remuneration Committee to propose an in principle offer for the successful candidate for purposes of confirming this with yourself in early February 2011. The



Group Remuneration Committee recommendation will be based on a total cost to company remuneration package that is aligned with current executive remuneration levels at Transnet.

3. IMPLEMENTATION PLAN

- 3.1 A five year term contract will be concluded with the successful candidate.

4 ORGANISATIONAL AND PERSONNEL IMPLICATIONS

- 4.1 This post exists within the Transnet structure. The successful candidate will be filling the position vacated by Ms Ramos in February 2009, and currently held by the Company's Chairman in an acting capacity.

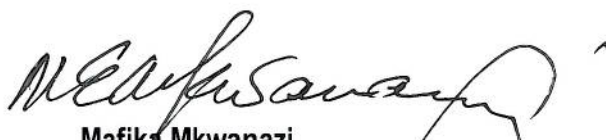
5 COMMUNICATION IMPLICATIONS

- 5.1 The Chairman of the Board will inform the successful candidate of his/her appointment, once the Shareholder approval is obtained.
- 5.2 The Chairman of the Board will also inform the internal candidates of the outcome of the recruitment process once the Shareholder process has been finalised.
- 5.3 The other external candidates will be informed by the Executive Search Company, Leaders Unlimited.
- 5.4 All the candidates will be given quality feedback.
- 5.5 Once all the requisite internal announcements have been made, a press release will be issued by the Company.

We are in the process of amending our Articles of Association to meet the spirit of the DPE Guidelines.

I trust you will find the above in order.

Kind regards


Mafika Mkwanazi
Chairman
Date: 14/01/2011

From: Ashu
Sent: Wednesday, 11 May 2011 14:12
To: Ronica Ragavan
Subject: FW: Jet Airways eTicket and Invoice
Attachments: Jet Airways eTicket (5892182345206) - NORTJE 141842.pdf; Jet Airways eTicket (5892182345243) - ZUMA 142740.pdf; Jet Airways eTicket (5892182345254) - MAGASHULE 143722.pdf; Jet Airways eTicket (5892182345258) - MAHLANGU 143722.pdf; Terms & Conditions.pdf; Invoice.pdf; Breakdown of Barter.docx

From: Ashu
Sent: Thursday, January 27, 2011 8:58 AM
To: Mansi Saxena
Subject: Fw: Jet Airways eTicket and Invoice

Sent via my BlackBerry from Vodacom - let your email find you!

From: 9WRES6 <9wres6.jnb@rogers-aviation.co.za>
Date: Wed, 19 Jan 2011 15:27:14 +0200
To: Ashu<ashu@sahara.co.za>
Cc: vvarma@jetairways.co.za<vvarma@jetairways.co.za>; navisha.ghoorun@rogers-aviation.co.za<navisha.ghoorun@rogers-aviation.co.za>; jnbadmin@jetairways.com<jnbadmin@jetairways.com>
Subject: Jet Airways eTicket and Invoice

Dear Ashu

Please find attached your Jet Airways eTicket and Invoice for the short payment of ZAR13142.00 on the Barter Agreement. Kindly note that you will be required to carry a printout of your eTicket to gain entry into the airport and for check-in along with your passport.

Should you require more information please do not hesitate to contact me. We thank you for choosing Jet Airways. Looking forward to having you on board

With thanks and kind regards
Andiswa

JET AIRWAYS  Jetlite

Represented by Rogers Aviation
Tel: +27 11 622 1363
Fax: +27 11 622 5281
9wres.jnb@rogers-aviation.co.za

Find us on  Follow us on 

12th Floor Office Towers
Bedford Centre
Bedfordview Johannesburg
P O Box 751046
Gardenview



2047

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This is an eTicket itinerary. To enter the airport and for check-in, you must present the itinerary receipt along with valid photo identification, viz: Official Government issued photo identification, driving license, election photo id, passport (for international passengers) and photo credit card.

Booking Details

Booking reference no (PNR): GJJCWI
Issuing Airline: Jet Airways

Place of issue: JNBGA
Issued date: Wednesday, 19 Jan, 2011

Passenger Details

Passenger Name
Mahlangu/Siyabonga Mr

Frequent Flyer #

eTicket Number
5892182345258

Itinerary Details

Flight	Depart	Arrive	Stops	Class	Fare Basis	Status	NVB	NVA	Baggage
9W 241	Johannesburg (JNB) 24 Jan 2011 11:00 hrs	Mumbai (BOM) 24 Jan 2011 23:30 hrs	0	Première - P	P4RTSCCP	Confirmed	24JAN	24JUN	40K
Operated by Jet Airways - Departure: TERMINAL A					/ Arrival: TERMINAL 2 INTERNATIONAL				
9W 351	Mumbai (BOM) 25 Jan 2011 13:50 hrs	Delhi (DEL) 25 Jan 2011 15:50 hrs	0	Première - P	P4RTSCCP	Confirmed	25JAN	25JUN	40K
Operated by Jet Airways - Departure: TERMINAL 1 DOMESTIC					/ Arrival: TERMINAL 3				
9W 352	Delhi (DEL) 31 Jan 2011 14:00 hrs	Mumbai (BOM) 31 Jan 2011 16:00 hrs	0	Première - P	P4RTSCCP	Confirmed	31JAN	01JUL	40K
Operated by Jet Airways - Departure: TERMINAL 3					/ Arrival: TERMINAL 1 DOMESTIC				
9W 242	Mumbai (BOM) 02 Feb 2011 02:05 hrs	Johannesburg (JNB) 02 Feb 2011 07:35 hrs	0	Première - P	P4RTSCCP	Confirmed	02FEB	02JUL	40K
Operated by Jet Airways - Departure: TERMINAL 2 INTERNATIONAL					/ Arrival: TERMINAL A				

Note
Check-in counters for flights within India* will now close 45 minutes prior to flight departure and the boarding gate(s) closes 25 minutes prior to departure.
For our guests who wish to Tele or SMS Check-in, please ensure that you collect your boarding pass for your assigned seat no later than 50 minutes prior to departure.
Check-in counters for International flights continue to close 60 minutes prior to flight departure.
**Applicable only for flights from Mumbai, Hyderabad, Chennai, Bengaluru, Kolkata and Delhi*

Fare Details(Includes Base Fare, Taxes, Fees and Charges)

FARE ZAR 16100 1089YQ 72YR TAX 621XT
TOTAL ZAR 17882
FARE CALC JNB 9W BOM P4RTSCCP 9W DEL P4RTSCCP 9W BOM P4RTSCCP
9W JNB P4RTSCCP ZAR16100ENDROE6.90012XT198ZA150WC1
1EV120WO142IN

Legend : YQ = Airline Fuel Charge, YR = Airline Congestion Charge, OC = Transaction Fee, IN = User Development Fee
JN = Service Tax

Additional Collections

Form Of Payment

CASH
DATE OF ISSUE-19JAN11 ISSUED AT-JNBGA JNB HAH

Endorsement

NONEND VLD 9W TAR NO 280298 DTE 18JAN2011

Tour Code

IT9W5401002I

Important Notes

Meals are applicable for guests traveling on Jet Airways and in 'Konnnect Select' on Jet Airways Konnect flights.
Meals will need to be purchased on board JetLite and in 'Economy Class' on Jet Airways Konnect flights.
Lounge access is not available for guests travelling on Jet Airways Konnect and JetLite codeshare/Interline.

For international travel, please ensure that the validity of the passport is as per the requirements of the destination country.

Due to Security reasons, liquids, aerosols and gels (LAGs) in carry-on baggage are restricted to containers of 100ml each.
At some airports, duty-free LAGs may be purchased after screening checkpoints. At most airports, including Indian airports, transit guests are not allowed to carry Duty-free LAGs purchased on a previous sector in cabin baggage, these will be confiscated at the Security Checkpoint.

For any assistance you may contact us on the following numbers

Reservation/Tele check in and JetPrivilege:
. 3989 3333 for Bengaluru, Chennai, Delhi, Hyderabad, Kolkata and Mumbai.
. Other cities: Affix local code of any of these 6 cities and dial 3989 3333

Jet Airways Toll Free Numbers:
. India toll free number for international services: 1800 22 55 22*
. UK toll free number for reservation: 0808 101 1199
. USA toll free number for reservation: 1-877-uflyjet (1-877-835-9538)

*The India toll free number for international queries will be reachable from BSNL and MTNL lines.
This toll free number can be dialled only from India.

For real-time Flight Status:
SMS Jet <Flight No.> to 56388
56388 service can be accessed from India only.



eTicket Itinerary / Receipt

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Booking Details

Booking reference no (PNR): EARWNL
Issuing Airline: Jet Airways

Place of issue: JNBGA
Issued date: Wednesday, 19 Jan, 2011

Passenger Details

Passenger Name
Zuma/Duduzane

Frequent Flyer #

eTicket Number
5892182345243

Itinerary Details

Flight	Depart	Arrive	Stops	Class	Fare Basis	Status	NVB	NVA	Baggage
9W 241	Johannesburg (JNB) 24 Jan 2011 11:00 hrs	Mumbai (BOM) 24 Jan 2011 23:30 hrs	0	Première - P	P2RTZA	Confirmed		24JAN	40K
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9W 351	Mumbai (BOM) 25 Jan 2011 13:50 hrs	Delhi (DEL) 25 Jan 2011 15:50 hrs	0	Première - I	I2IP	Confirmed	25JAN	25JAN	40K
Operated by Jet Airways - Departure: TERMINAL 1 DOMESTIC					/ Arrival: TERMINAL 3				
9W 352	Delhi (DEL) 31 Jan 2011 14:00 hrs	Mumbai (BOM) 31 Jan 2011 16:00 hrs	0	Première - I	I2IP	Confirmed	31JAN	31JAN	40K
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9W 242	Mumbai (BOM) 02 Feb 2011 02:05 hrs	Johannesburg (JNB) 02 Feb 2011 07:35 hrs	0	Première - P	P2RTZA	Confirmed		24JAN	40K
Operated by Jet Airways - Departure: TERMINAL 2 INTERNATIONAL					/ Arrival: TERMINAL A				

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**Applicable only for flights from Mumbai, Hyderabad, Chennai, Bengaluru, Kolkata and Delhi*

Fare Details(Includes Base Fare, Taxes, Fees and Charges)

FARE ZAR 21810 1089YQ 72YR TAX 621XT
TOTAL ZAR 23592
FARE CALC JNB 9W BOM1265.19P2RTZA 9W DEL Q10.00 304.60I2IP 9W
BOM Q10.00 304.60I2IP 9W JNB1265.19P2RTZA NUC3159.
58END ROE6.90012 XT198ZA150WC11EV120WO142IN

Legend : YQ = Airline Fuel Charge, YR = Airline Congestion Charge, OC = Transaction Fee, IN = User Development Fee
JN = Service Tax

Additional Collections

Form Of Payment

CASH
DATE OF ISSUE-19JAN11 ISSUED AT-JNBGA JNB HAH

Endorsement

NON END NONEND VLD 9W TAR NO 280300 DTE 18JAN11

Tour Code

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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISON, PRETORIA**

CASE NUMBER: 43469/2020

(1)REPORTABLE: Yes/No

(2)OF INTEREST TO OTHER JUDGES: Yes/No

(3)REVISED: Yes



11 Feb 2021

SignatureDate

In the matter between:

NOMACHULE GIGABA (born MNGOMA)

Applicant

and

MINISTER OF POLICE
DIRECTORATE FOR PRIORITY
CRIMES INVESTIGATIONS
MAJOR GENERAL MO NGWENYA
CAPTAIN K.M MAVUSO
SERGEANT NORTON NDABAMI
DIRECTOR OF PUBLIC PROSECUTIONS:

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

NATIONAL PROSECUTING AUTHORITY

Sixth Respondent

WISE 4 AFRICA

Seventh Respondent

JUDGMENT

SARDIWALLA, J:

Introduction

- [1] This is an urgent application in terms of Rule 6 (12) (a) brought by the applicant in respect of a series of conduct to obtain relief in the form of declaratory relief of the unconstitutionality regarding the egregious infringements of her rights. More specifically the applicant seeks the following relief:
1. Dispensing with the normal provisions of the Rules and dealing with this application on the basis of urgency, in terms of Rule 6(12) (a) of the Rules, read with the relevant directives.
 2. Declaring that the decision of the third and fourth respondents to apply for the warrant of arrest of the applicant is unconstitutional, irrational and invalid.
 3. Declaring that the decision to issue the warrant of arrest of the applicant is unconstitutional, irrational and invalid.
 4. Declaring that the decision to execute the warrant of arrest by third and fourth respondents is unconstitutional, irrational, invalid and of no force or effect.
 5. Setting aside the decision to effect the arrest and/or to prosecute the applicant.
 6. Declaring the confiscation of the applicant’s information and communication technology equipment to be unlawful, unconstitutional and accordingly invalid.
 7. Ordering the respondents to restore all information unlawfully removed from ICT equipment.
 8. Directing the third, fourth and fifth respondents to return the information which was downloaded from electronic gadgets of the applicant by the third and fourth respondents, including the information contained in Disc 1 to Disc 6 referred to in these papers, forthwith.
 9. Directing that the costs of this application on an attorney and own client scale are

paid by those respondents who will deliver notice(s) to oppose.

9. Alternatively to paragraph 10 above: Directing that the third, fourth and fifth respondents to pay the said costs, in their personal capacities.

Factual Background

- [2] The applicant is lawfully married to Mr Malusi Gigaba (hereinafter referred to as Mr Gigaba) a national leader of the ruling party and a former Minister of Home Affairs, Public Enterprises and Finance in South Africa. They have two male children aged 9 and 7. They all currently reside at 308 Derrick Street, Waterkloof Ridge, Pretoria.
- [3] On or about 20 July 2020, the fourth respondent (hereinafter also referred to as “Captain Mavuso”) and the fifth respondent (hereinafter also referred to as “Sergeant Ndabambi”) arrived at the Gigaba residence, ostensibly to investigate two alleged offences related to:
- 3.1. malicious damage to property in respect of a Mercedes Benz G- Wagon, which had been allegedly scratched on its body with a sharp instrument, which we now know to be a vegetable slicer. The car had been parked at the garage of the applicant’s house;
 - 3.2. *crimen injuria* in respect of a WhatsApp message which had been sent from the applicant’s cellular phone to one Mr Pietersen Siyaya, who is a friend or business partner of Mr Gigaba, which message Mr Siyaya had apparently found to be insulting.
 - 3.3 These offences were said to have been allegedly committed on 19 July 2020.
 - 3.4. Two days later, on 22 July 2020, the two policemen returned to the Gigaba residence. They identified themselves as members of the Hawks. They told the applicant, in the presence of her two minor children, that she was under investigation and facing arrest.
 - 3.5. They further demanded all the applicant’s electronic communication devices and gadgets in connection with the abovementioned *crimen injuria* complaint laid by Mr Siyaya.
 - 3.6 On 30 July 2020 the Hawks returned and placed the applicant under arrest.

The Issues

- [4] The applicant has asked this Court is to determine the following:
- 4.1. was the arrest lawful and constitutional?
 - 4.2. is the prosecution lawful and constitutional?
 - 4.3. was the confiscation of the ICT equipment lawful and constitutional?

The applicant's case

- [5] The applicant's version can be summed up as follows: -
- 5.1. The applicant voluntarily indicated which cellular phone she had used in respect of any communication with Mr Siyaya and offered it to the policemen. They stated that according to "the law", they had to take each and every such gadget in her possession, regardless of whether or not it had been used in the commission of the relevant offence.¹³
 - 5.2. The applicant requested to call her lawyer and was advised that the right to talk to a lawyer did not apply to the Hawks but only to investigations carried out by the regular police. As a lay person, the applicant believed this to be true.
 - 5.3. The applicant requested to use the bathroom and Sergeant Ndabambi followed her to the bathroom. When she came out, both members of the Hawks were standing outside and instructed her to go to her bedroom to fetch her other gadgets which were kept there. It is common cause that they went with the applicant into her private bedroom.
 - 5.4. Once they were in possession of all her gadgets, they demanded that she should tell them all the secret pin codes. When she refused, they threatened her that refusing an instruction from the Hawks was a criminal offence. She provided them with the secret pin codes which they tested on the devices before taking the devices away.
 - 5.5. The applicant pleaded that she required the use of her laptop, as she is a party-time student and depended thereon during the Covid-19 crisis.
 - 5.6. The applicant consulted a friend who advised her that the police conduct was unlawful and advised her to make enquiries at the Brooklyn Police Station.
 - 5.7. Upon arrival at the Brooklyn Police Station at about 9.00 pm, the applicant was informed that the two cases had indeed been opened but the dockets had been booked out by the Hawks. They knew nothing about the alleged assault charge.

They also advised the applicant to get the assistance of a lawyer. They also revealed that it was curious to them that the Hawks were involved in the investigation and, to make matters worse, it was the Hawks from the Mpumalanga province.

- 5.8. On 24 July 2020, the applicant consulted with her current attorneys, who contacted the Hawks and spoke to Sergeant Ndabambi who indicated that the devices “were with the experts” and would only be returned once they had finished examining them. He also gave him the contact details of General Ngwenya, from whom they took instructions in relation to the matter.
- 5.9. After doing what is known as a sim-swap, the applicant discovered that some of her information had been wiped off and she no longer had access to her social media applications. Some of the messages had been deleted.
- 5.10. On 30 July 2020, the applicant informed Mr Gigaba that unless her gadgets were returned by the evening, legal proceedings would be instituted for their return. On Friday 31 July 2020, Mr Gigaba informed the applicant that the Hawks would be arriving to return the gadgets. When the Hawks arrived instead of returning the gadgets, they informed the applicant that they were placing her under arrest.
- 5.11. At the police station, Sergeant Ndabambi repeatedly told the applicant that she would remain in the police cells until Monday 3 August 2020. The conditions in the cells were unpleasant in that apart from the winter cold, the other two inhabitants of her cell refused to wear their masks to prevent the possible risk of transmission of the Coronavirus.
- 5.12. At no point was the applicant shown a warrant of arrest. An argument ensued between the police station members and the Hawks about the necessity of the applicant’s arrest. When the applicant requested to call her lawyer, Sergeant Ndabambi refused again. It was the regular police who intervened and offered her the landline at the police station, stating that she was now under their custody and she had a constitutional right to call her lawyer. She accordingly made telephonic contact with Mr Nkhwashu.
- 5.13. When Mr Nkhwashu arrived at the police station before 18h00, it transpired that the members of the Hawks had already left with the dockets. This made it impossible to secure the release of the applicant on that Friday.
- 5.14. The following day, Saturday 1 August 2020, and while arrangements were underway to bring a High Court application to secure the applicant’s release,

her attorney and the prosecutor reached an agreement, which resulted in her release on R5,000.00 bail, approximately 26 hours after her arrest.

5.15. It later transpired that the Hawks had made an application in terms of section 43 of the Criminal Procedure Act and obtained a warrant of arrest from one, Magistrate King based on the information contained in the docket compiled by the Hawks.

5.16. On 2 August 2020 and following her release, the applicant instructed her attorneys to demand the release of her gadgets by no later than 17h00 on 3 August 2020, failing which to bring an urgent High Court application. The gadgets were returned at 09h00 on 4 August 2020.

5.17. When the applicant was provided with copies of the docket she discovered that the information from her confiscated gadgets had been downloaded onto two discs which had not been furnished to her lawyers and some specific information had been removed or erased which had no relationship to the allegations of the two criminal charges.

5.18. On 3 August 2020 the applicant appeared in the Hatfield Magistrates Court and by agreement the matter was remanded to 14 September 2020 to allow for the bringing of the present application.

- [6] It is the applicant's submission that her unlawful arrest and detention was tainted by improper and corrupt motives and was therefore executed for the unlawful purpose of gaining unlawful access to the applicant's ICT communications equipment and/or obtaining and deleting specific information. The applicant submits that the execution of the warrant and confiscation of her electronic equipment infringed upon her constitutional rights and was *ultra vires* the powers of the respondents. The applicant also contends that the affidavit that supported the warrant of arrest related to the crime of "defamation of character" which is different from the crimes of malicious damage to property and *crimen injuria* which the applicant has been charged with therefore the warrant is defective *ab initio*. It is the applicant's submission that her unlawful arrest, detention, confiscation of equipment and prosecution is ultimately a breach of the principle of legality and was an orchestrated scheme to intimidate and harass her.

The respondents' version

[7] The respondents who opposed this application raised two points *in limine* namely urgency and whether this Court has the jurisdiction to grant the relief sought. It submits that the application is without merit as the applicant is merely seeking to obstruct and delay the pending criminal proceedings against her. Its version can be summarised as follows: -

- 7.1. During June 2020 the former Minister Mr Malusi Gigaba laid a complaint with the Hawks that he had reason to believe that there was conspiracy to murder him and that such complaint was then directed to the task team to investigate further;
- 7.2. It submits that following the complaint the task team commenced investigations and inquiry docket was registered and opened as it regarded the conspiracy to commit murder a very serious crime;
- 7.3. The task team was subsequently informed of the other alleged offences that were committed which involved Mr Gigaba and that such offences may be linked or may influence the investigations of the conspiracy to commit murder of Mr Gigaba. The task team resolved to also investigate the related complaints as reported by and involving Mr Gigaba and that they did so lawfully;
- 7.4. Mr Gigaba laid a complaint at the Brooklyn Police station under CAs No 341/07/2020. In an affidavit deposed by Mr Gigaba he stated that a suspicious vehicle had come to his house which he later found that the people in the vehicle were people from the “counter-intelligence” and that they were called by the applicant. He stated that he felt unsafe in his own home;
- 7.5. On 21 July 2020 Mr Gigaba deposed to an affidavit that the applicant scratched his friend’s car (a Mercedes Benz G-Wagon 63 with registration number FH13LPGP) which was parked at their marital home. He informed them that the malicious intent to property was perpetrated by the applicant and asked them to investigate the matter further.;
- 7.6. When the DPCI became aware of Mr Gigaba’s complaints they resolved to investigate and that Section 17D93) of the Saps Act clearly permits the directorate to be involved in the investigation of any offence, which it suspects to be possibly connected to the subject of its pending investigations;
- 7.7. That the applicant voluntarily deposed to a warning statement before Captain Mavuso in which she admitted that she caused damaged to the Mercedes Benz G-Wagon 63;

- 7.8. A charge of *crimen injuria* was laid against the applicant by Mr Peterson Sibiya which the applicant admitted to the Whatsapp messages she sent but claimed that it was not wrongful or unlawful;
- 7.9. That on 30 July 2020 having satisfied itself that there was reasonable suspicion and sufficient *prima facie* evidence contained in the two dockets that the investigating officer applied for a warrant of arrest.
- 7.10. A warrant of arrest was secured on 30 July 2020 and lawfully executed on 31 July 2020 and processed at the Brooklyn Police Station.
- 7.11. The applicant was released on bail on 1 August 2020 and only launched the current application on 2 September 2020 and as such the nature of the matter should not be addressed on an urgent basis.

Urgency

- [8] The general principles applicable in establishing urgency are dealt with in Rule 6(12) of the Uniform Rules of this Court. The importance of these provisions is that the procedure set out in Rule 6(12) is not there for the mere taking. Notshe AJ said in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) in paras 6 and 7 as follows:

‘[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard.

- [9] This leaves the requirement of the applicant's ability to obtain proper substantive redress in due course, for consideration. Obviously, and where a matter is struck from the roll for want of urgency, then the merits of the application remains undetermined. It follows that the application can still be considered and granted by a Court in the ordinary course. But I understand that in this case, there is a unique consideration. Considering the undeniable realities of litigating in the ordinary course, by the time the criminal matter proceeds, the applicant would be subjected to continuous and ongoing violations to her reputational dignity, restrictions of movement, privacy and abuse of power. The applicant is therefore not able to obtain substantive redress in the ordinary course. However even if the application failed on urgency, it is possible, in appropriate circumstances, to even dispose of the matter on the merits, where a matter is regarded as not being urgent, instead of striking the matter from the roll. The Court in *February v Envirochem CC and Another*¹ dealt with this kind of consideration, and even though the Court accepted that urgency was not established, the Court nonetheless proceeded to dismiss the matter in the interest of finality and so the matter should be dealt with once and for all.
- [10] The applicants explained that pending the criminal trial which was postponed to allow for the bringing of this application, that she has been deprived of her equipment as well as certain information being provided to her legal representatives to adequately prepare and is direct result of the abuse of power by organs of the State and her politically affiliated husband.

Who will probably suffer irreparable harm?

- [11] The determinative question is therefore who will suffer harm if the relief is not granted? I am of the view, that on a balance of probabilities, the applicant will suffer irreparable harm if the application is not heard, and respondents will not suffer irreparable harm. My reasons are essentially these:

11.1. The applicant is a private citizen who freedom and liberty has been deprived by the events leading up to the criminal proceedings If in the

¹ (2013) 34 ILJ 135 (LC) at para 17. See also *Bumatech (supra)* at para 33; *Bethape v Public Servants Association and Others* [2016] ZALCJHB 573 (9 September 2016) at para 53.

meantime the respondents were permitted to act in accordance as they have done previously leading up to the arrest of the applicant, the applicants will have lost completely the benefit of the protection of her constitutional rights. Ultimately, she will have a court order in her favour but despite this fact, her rights will have been rendered meaningless. That harm is irreparable and cannot be ignored.

- 11.2. If the respondents succeed in the criminal case but in the meantime the relief is not granted, it would have suffered no harm and certainly does not constitute irreparable harm. The costs it would incur to remedy its unlawful conduct does not, in my view, constitute irreparable harm.

The Jurisdictional Challenge

- [12] In *Kwemaya v National Commissioner, Correctional Services and another*², Olsen J referred to the case *Makhanya v University of Zululand* 2010 (1) SA 62 (SCA) at paragraphs 71 and 72, where it was held that the proper approach for a court confronted with a claim, and an objection that the court lacks jurisdiction to entertain the claim, is to accept that the claim before the court is “a matter of fact”. If a claimant says that the claim arises from the infringement of a right to enforce a contract, then the court must deal with it accordingly. When the claimant says the claim is to enforce a right created by the Labour Relations Act then that is the one before the court, as a matter of fact. When the claim is said to be for the enforcement of a right derived from the Constitution then that as a fact is the claim. The question as to whether the claim is bad is beside the point. The court went on to say that a claim which exists as a fact is not capable of being converted into a claim of a different kind by the mere use of language; and a court cannot under the guise of “characterising” a claim purport to convert the claim placed before the court into a claim of another kind.

- [13] He went on to say that approaching the matter in the light of what was said in *Makhanya supra*, would mean that one should reach an understanding about what a claim is by having regard only to the label attached to it by the claimant; and not by looking to the elements of the cause of action pleaded by the claimant in order correctly to label the claim where the claimant might have done so incorrectly. His view was

² (13535/2016) [2017] ZAKZDHC 33 at paragraph 27

that *Gcaba v Minister for Safety and Security*³ illustrates that *Makhanya* should not be read that way and he went on to state the following:

“[29] Gcaba concerned a policeman who had applied for a position unsuccessfully. He approached the High Court with an application to review the decision not to appoint him. The High Court decided that it lacked jurisdiction to entertain the application because it was an employment matter. Before the Constitutional Court the applicant contended that his claim was from inception one which fell under PAJA, as he sought to vindicate his right to just administrative action. The respondents contended that the applicant’s claim was a labour matter which had to be adjudicated through the “finely tuned mechanisms provided for in the LRA”. The court in Gcaba held that before addressing the issue of jurisdiction, and indeed in order to address that question, the court had to decide whether the conduct complained of by Mr Gcaba was administrative action. (See paragraph 63 of the judgment.) Having found that it was not, the court held (in paragraph 75 of the judgment) that where the court’s jurisdiction is challenged in limine at the outset, the pleadings and, in motion proceedings, also the contents of the supporting affidavits, must be interpreted “to establish what the legal basis of the applicant’s claim is”. If, “properly interpreted”, that enquiry establishes that the applicant is asserting a claim within the exclusive jurisdiction of the Labour Court, the High Court would lack jurisdiction. On that basis the decision of the High Court in Gcaba was found to have been correct.

[30] It seems to me that I must follow the same approach as was followed in Gcaba. There (in paragraph 64 of the judgment) it was held that where a grievance is raised by an employee relating to the conduct of the State as employer, and there are “few or no direct implications or consequences for other citizens”, then the conduct complained of is not administrative action. Here, perhaps even more than in the case of Mr Gcaba, the conduct of the department in which the applicant was employed carried no implications and generated no consequences for anyone outside the particular relationship between the applicant (as employee) and her employer, the State. The applicant

³ 2010 (1) SA 238 (CC)

wrongly pleads in her papers that what happened is governed by PAJA. She erroneously attaches the label “administrative action” to the conduct she complains of. For that reason, following Gcaba, the conclusion must be that this court lacks jurisdiction if the characterisation of the conduct of the State as administrative action is the only basis upon which the applicant asks the court to decide her claim⁴.”

- [14] It is therefore important to consider the applicants’ interest in this matter. In ***Giant Concerts CC v Rinaldo Investments (Pty) Limited***⁵ Cameron J dealt with the requirements to establish own interest standing in a legality challenge. The following appears in paragraph 35 of the judgment.

“Hence, where a litigant acts solely in his or her own interest, there is no broad or unqualified capacity to litigate against illegalities. Something more must be shown.”

- [15] The requirement to be established is whether the illegality directly affects his or her rights or interests, or potential rights or interests. The applicants’ standing is that the confiscation of her equipment was convened unlawfully and without a warrant together with the fact that she was refused the right to legal representation, conduct which she claimed extinguished her rights and violated her right to dignity and privacy. The current rights applicant seeks to enforce are directly related to the unlawful arrest and confiscation of her equipment. Ultimately the applicant has come before this court to vindicate her constitutional rights which are protected by the provisions of section 38 (a) of the Constitution, whose task it is to protect those rights.

- [16] In the circumstances I conclude that this court has jurisdiction to determine the present application.

The functions and mandate of the Hawks

- [17] Established under Chapter 6A of the South African Police Service Act 68 of 1995, the essential job description of the Hawks is to “prevent, combat and investigate national

⁵ 2013 (3) BCLR 251 (CC)

priority offences, in particular serious organised crime, serious commercial crime and serious corruption”.

[18] The Hawks was deeply rooted in the ashes of the Directorate of Special Operations formally known as the Scorpions. However, unlike the Scorpions, the Hawks are not located in the office of the National Prosecuting Authority, which is explicitly mandated by the Constitution to function without “fear, favour or prejudice”. The Hawks are located in the South African Police Service. Initially this created uncertainty because under section 206 of the Constitution, a politician is ultimately “responsible for policing”. The argument was that this political accountability could not be squared with the constitutional need for a corruption-busting unit to be adequately independent.

[19] Section 205(3) of the Constitution requires the establishment of a national police service in order to “prevent, combat and investigate crime”. Section 205(2) requires that the legislature “establish the powers and functions of the police service” in order to “enable the police service to discharge its responsibilities effectively”. This means that for the police service to effectively discharge its responsibilities under the Constitution, it must not be subject to undue influence. That is the extent of the obligation imposed by the Constitution, and it is in this context that the obligation imposed by section 7(2) of the Constitution must be understood. The question therefore for determination was whether the impugned laws established an anti-corruption unit that has the capacity to “discharge its responsibilities effectively”, as required by the Constitution. The Constitutional Court declared the unconstitutionality and invalidity of Chapter 6A in *Glenister II v President of the Republic of South Africa and Others*⁶ where the court found that: “What is required is not insulation from political accountability, but only insulation from a degree of management by political actors that threatens imminently to stifle the independent functioning and operations of the unit.”

[20] In that case the court went on to further say;

“[118] What is apparent from international instruments is that the requirement of independence is intended to protect members of the agency from undue influence. This is

⁶ (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011)

necessary to ensure that the anti-corruption unit can “discharge its responsibilities effectively”. The independence of anti-corruption agencies is “a fundamental requirement for a proper and effective exercise of [their] functions.” This is so because corruption largely involves the abuse of power. In corruption cases involving the public sector, at least one perpetrator comes from the ranks of persons holding a public office. Hence the need to shield anti-corruption units from undue influence. This is a theme that recurs in the international and regional instruments cited by the amicus. Independence in this context therefore means the ability to function effectively without any undue influence. It is this autonomy that is an important factor which will affect the performance of the anti-corruption agency.

... ..

“ [132] The starting point in determining the sufficiency of the independence of the priority offences, and to establish an independent anti-corruption unit that is apparent from the provisions of chapter 6A of the SAPS Act.¹¹¹ The core provision in this regard is section 17B. It provides that among the factors that must be taken into account in the application of the provisions of this chapter, is the “need to ensure that the Directorate . . . has the necessary independence to perform its functions . . . [and] is equipped with the appropriate human and financial resources to perform its functions”. Thus, chapter 6A is premised on the independence of the DPCI. To this extent, it provides an interpretive injunction for the application and implementation of its provisions. Those who are charged with the application and implementation of the provisions of this chapter are bound by this injunction. It is an injunction that is deeply rooted in the need for an anti-corruption unit, free from any undue political influence or otherwise.”

- [21] The sentiments of **Glenister II** was also echoed in *S v Shaik and Others*⁷, where the Supreme Court of Appeal pointed out that—

“the seriousness of the offence of corruption cannot be overemphasised. It offends against the rule of law and the principles of good governance. It lowers the moral tone of a nation and negatively affects development and the promotion of human rights. As a country we have travelled a long and tortuous road to achieve democracy. Corruption threatens our constitutional order. We must make every effort to ensure that corruption with its putrefying effects is

⁷ 2007 (1) SA 240 (SCA).

halted. Courts must send out an unequivocal message that corruption will not be tolerated and that punishment will be appropriately severe."

- [22] In *Helen Suzman Foundation v President of the Republic of South Africa and Others*⁸ the Court held that the amended Act does not ensure adequate independence for the Hawks, finding certain sections to be unconstitutional to the extent that they did not sufficiently insulate the Hawks from potential executive interference. In its judgment the Constitutional Court confirmed *inter alia* the following:

- 22.1. National priority offences. The Court found that the provisions in relation to national priority offences that provide for the policy guidelines (issued by the Minister of Police), that determine the functions of the Hawks, are inconsistent with the Constitution, and should be excised. The issuing of guidelines in relation to national priority offences by political actors who can then influence the functional activities of the Hawks was held to undermine the independence of the DPCI.
- 22.2. Selected offences. The term "selected offences" in section 17D (1) (aA) were not defined in the amended Act and there was no indication as to how they are selected and by whom. The Court found that this could easily limit the functional independence of the Hawks, and allow for undue executive or political interference. The Court held that an institution of this importance should never be left guessing as to what its functions are. The undefined "selected offences" were thus held to be a threat to the operational independence of the Hawks. The offending wording was thus severed from the provision.
- 22.3. Any other offence or category of offences. The Hawks were charged under the Act with the duty to prevent, combat and investigate "any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Minister and approved by parliament". The Court found that this provision, by vesting in the Commissioner the power to prescribe part of what the Hawks are to

⁸ 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC)

do, was a constitutionally impermissible encroachment and interference into the operational space of the Hawks and thus at odds with an adequately independent anti-corruption unit. It was thus confirmed that section 17D(1)(d) is constitutionally invalid.

[23] Subsequent to the declaration of invalidity The Directorate for Priority Crime Investigation has now been established as an independent directorate within the South African Police Service in terms of Section 17C of the South African Police Service Act, 1995 as amended by the South African Police Service Amendment Act, 2008 (Act 57 of 2008).

[24] Section 17D of the SAPS amended Act specifically deals the functions and/or mandate of the DPCI and provides as follows: -

“17D. Functions of Directorate.

(1) The functions of the Directorate are to prevent, combat and investigate—

(a) national priority offences, which in the opinion of the Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the Ministerial Committee; and

(b) any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Ministerial Committee.

(2) If, during the course of an investigation by the Directorate, evidence of any other crime is detected and the Head of the Directorate considers it in the interests of justice, or in the public interest, he or she may extend the investigation so as to include any offence which he or she suspects to be connected with the subject of the investigation.

(3) The Head of the Directorate may, if he or she has reason to suspect that a national priority offence has been or is being committed, request the National Director of Public Prosecutions to designate a Director of Public Prosecutions to exercise the powers of section 28 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998).

[25] Interestingly in a briefing held on 17 September 2014 titled Mandate and Activities Directorate for Priority Crimes Investigations⁹ which focused on the DPCI mandate and

⁹ <http://pmg-assets.s3-eu-west-1.amazonaws.com/140917saps.pdf>

operating model of “Seek, Find, Strike and Succeed with impact” the Hawks highlighted its mandate as follows:

“Any offence referred to in:

- *Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);*
- *Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002);*
- *Chapters 2, 3 and 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);*
- *Section 13(l) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);*
- *Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No.87 of 1993);*
- *Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);*
- *Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), or the Prohibition of Mercenary Activities and the Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act No. 27 of 2006);*
- *National Conventional Arms Control Act, 2002 (Act No. 41 of 2002);*
- *High treason; and*
- *Sedition”.*

[26] It went on to further state that its mandate involved;

- *“Organised crime is defined as criminal entities that are designed for the commission of serious National and Transnational crimes geared towards profit achieved through illegal activities.*
- *They operate within an Organised criminal business system with a structure greater than any individual member and the potential for corruption and/or violence to facilitate the criminal activities and processes.*

[27] It also identified its mandated priorities, such as the types of National Threat problems that were being addressed by the DPCI:

- Narcotics
- Human Trafficking

- Rhino Poaching
- Illicit Mining
- Non Ferrous Metals
- Specific Violent Crimes
- Vehicles Crimes
- Illicit Cigarettes
- Economic Crimes

Women's rights are human rights

[28] Historically, women have been excluded from political life and decision-making processes. Women's campaigns for participation in the public and political arena date back to the nineteenth and twentieth centuries and continue today. Although women's many of women's rights have been secured in nearly every country of the world, in practice, those rights can sometimes be meaningless when other conditions make it virtually impossible or very difficult for women. Such as, the absence of free and fair freedom of expression, or lack of security, which tends to affect women disproportionately. Other obstacles such as stereotyping and traditional perceptions of men's and women's roles in society, as well as lack of access to relevant information and resources, also inhibit women's possibilities or willingness to exercise their rights fully. Traditional working patterns of many political parties and government structures continue to be barriers to women's rights in addition to patriarchy, discriminatory attitudes and practices. Patriarchy¹⁰ is very much a part of African life and is deeply entrenched in the "norms, values and customs". The male is seen as lord over the female and it is the males will and cultural norms which dominate and legislate the relationship. This domination over woman is reflected right from the process of contracting a marriage during which a man pays a bride price for his wife, which ultimately makes her the property of her husband.

[29] Women's human rights are abused when they cannot participate in decisions that affect their lives, are not given fair representations and suffer violence within their own homes. The Convention on the Elimination of All Forms of Discrimination

¹⁰ Ademiluka, "Patriarchy and Women Abuse," OTE 31/2 (2018): 339-362

Against Women (CEDAW), a key international agreement on women's human rights, was adopted by the United Nations General Assembly in 1979 and ratified by South Africa on 15 December 1995. CEDAW is often described as an international bill of rights for women. Its preamble and 30 articles aim to eliminate gender discrimination and promote gender equality. The convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex" that impedes women's "human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." It sets an agenda for national action to end such discrimination, requiring all parties to the convention to take "all appropriate measures, including legislation, to ensure the full development and advancement of women" and guarantee their fundamental freedoms "on a basis of equality with men."

The current application

- [30] The applicant seeks an order against The Minister of Police as the first respondent, The Directorate for Priority Crime Investigation, the second respondent, setting aside arrest warrant issued by members of the second respondent and ordering them to return to them all items seized from the applicants pursuant to the warrant. The application is opposed by all the respondents.
- [31] It is common cause that the applicant did not consent to the entry or the search of her property nor, obviously, to the removal of the various items which were seized. According to the applicant the search commenced over her objections. It is also not disputed that the applicant was not presented with a search warrant or an arrest warrant. More important is that no reason was offered by the respondents in this regard. Further that the fourth and fifth respondents made an application in terms of section 43 of the Criminal Procedure Act 51 of 1977.
- [32] The applicant was arrested and released on bail on 1 August 2020. The applicant appeared in the Hatfield Magistrate court on 3 August 2020 on one charge of malicious damage to property and one charge *crimen injuria*. These charges are still pending and according to the respondents the criminal court is the correct forum to deliberate on constitutionality of the arrest and the admissibility of the evidence. It has argued that this court must be mindful of making a preliminary finding in this regard. I have already

found that this Court has jurisdiction to hear the application, however what must now be determined is if it would be in the interests of justice to do so.

- [33] A basic rule of fairness is that a person who will be adversely affected by an act or a decision of the administration or authority shall be granted a hearing before he suffers detriment¹¹. Peach sums up the *audi* rule as follows:¹²

“The audi alteram partem rule implies that a person must be given the opportunity to argue his case. This applies not only to formal administrative enquiries or hearings, but also to any prior proceedings that could lead to an infringement of existing rights, privileges and freedoms, and implies that potentially prejudicial facts and considerations must be communicated to the person who may be affected by the administrative decision, to enable him to rebut the allegations. This condition will be satisfied if the material content of the prejudicial facts, information or considerations has been revealed to the interested party.”

- [34] The requirement that in certain circumstances decision-makers must act in accordance with the principles of natural justice or procedural fairness has ancient origins. In general terms, the principles of natural justice consist of two component parts, *to wit*; the first is the hearing rule, which requires decision-makers to hear a person before adverse decisions against them are taken. The second and equally important component is the principle which provides for the disqualification of a decision-maker where circumstances give rise to a reasonable apprehension that he or she may not bring an impartial mind to the determination of the question before them. The latter aspect is not relevant in this matter.

- [35] The principles of natural justice are founded upon fundamental ideas of fairness and the inter-related concept of good administration. Natural justice contributes to the accuracy of the decision on the substance of the case. The rules of natural justice help to ensure objectivity and impartiality, and facilitate the treatment of like cases alike. Natural justice broadly defined can also be seen as protecting human dignity by ensuring that

¹¹ See De Smith, SA (1955) "The right to a hearing in English Administrative Law" 68(4) Harvard Law Review 569-599, 569.

¹² See Peach, VL (2003) "The application of the audi alteram partem rule to the proceedings of commissions of inquiry" Thesis (LL.M. (Public Law))—North-West University, Potchefstroom Campus (Accessed at <http://hdl.handle.net/10394/58>), 8.

the affected individual is made aware of the basis upon which he or she is being treated unfavourably, and by enabling the individual to participate in the decision-making process. The application of the principle of natural justice has however proved problematic.

[36] The challenge is always how to strike the right balance between public and private interest. Whilst this court, in the circumstances of this matter seems compelled to respond to the vulnerability of the applicant facing the pervasive power of the Hawks, is also at the same time aware that the courts have to avoid a situation where the unconstrained expansion of the duty to act fairly threatens to paralyse its effective administration.

[37] In my respectful view, the public interest necessarily comprehends an element of justice to the individual. The competing values of fairness and individual justice on the one hand and administrative efficiency on the other hand, constitute the public and the private aspects of public interest. It seems plain to me that the principles of natural justice are intended to promote individual trust and confidence in the administration. They encourage certainty, predictability and reliability in government interactions with members of the public, irrespective of their stations in life and this is a fundamental aspect of the rule of law.

Search, Seizure and Privacy rights

[38] Section 14(a) of the Constitution¹³ specifically protects the right not to have one's person or home searched. A person's home, it is widely accepted, constitutes the highest expectation of privacy, which reflects the old adage that the home is a person's castle¹⁴.

[39] The most important legislative provisions that *prima facie* infringe on these rights are to be found in the Criminal Procedure Act¹⁵. The right to enter premises, search those

¹³ *Constitution of the Republic of South Africa 1996. S 14 provides as follows: "Everyone has the right to privacy, which includes the right not to have – (a) their person or home searched; (b) their property searched; (c) their possessions seized; or (d) the privacy of their communications infringed."*

¹⁴ *R v Silveira (1995) 97 CCC (3d) 450 (SCC).*

¹⁵ *Cheadle, Davis and Haysom South African Constitutional Law 51*

premises and remove goods therefrom is a significant invasion of the rights of an individual and must therefore be exercised within certain clearly defined limits so as to interfere as little as possible with the rights and liberties of the person concerned¹⁶.

- [40] It is significant to note that no right is absolute and perhaps applies more to privacy than any other right. The balance is struck in the Bill of Rights read together with legislation authorising searches. The Bill of Rights confers certain rights on individuals but it also authorises the limitation of those rights in the limitation clause. According to section 36 of the Constitution, rights in the Bill of Rights may be limited by a law of general application, provided that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. Search and seizure will therefore be constitutional if it is authorised by a law of general application, such as the Criminal Procedure Act (which in itself contains reasonable requirements to be complied with before a search may be conducted and which indicates how it must be conducted).
- [41] Power of the police to enter premises in connection with state security is dealt with in section 25 of the Criminal Procedure Act¹⁷ and empowers a police official to enter premises in connection with state security. If it appears to a magistrate or justice from information on oath that there are reasonable grounds for believing that the internal security of the Republic or the maintenance of law and order is likely to be endangered by or in consequence of any meeting which has been held or is to be held in or upon any premises within his area of jurisdiction, or that an offence has been or is likely to be committed or that preparations for the commission of any offence are being made or are likely to be made upon any premises within his area of jurisdiction, he may issue a warrant authorising a police official to enter the premises at any reasonable time for the purposes of carrying out such investigations and taking such steps as such a police official may consider necessary for the preservation of law and order or the prevention of crime¹⁸.

¹⁶ Cited *National Director Public Prosecutions v Mahomed* 2008 (1) SACR 309 (SCA).

¹⁷ Act 57 of 1977

¹⁸ S 25 Criminal Procedure Act

- [42] Entering of premises by a police official for purposes of obtaining evidence is dealt with in section 26 of the Criminal Procedure Act. If a police official who is investigating an offence or alleged offence reasonably suspects that a person who may furnish information with reference to such an offence is on any premises, such a police official may enter such premises without a warrant for the purposes of interrogating such a person and obtaining a statement from him, provided that such a police official shall not enter any private dwelling without the consent of the occupier thereof¹⁹.
- [43] Since a search may also infringe upon the rights to dignity²⁰ and to bodily security, including the right against cruel, inhuman or degrading treatment²¹, it must be conducted consonant with those rights. In terms of section 29 of the Criminal Procedure Act the search of a person must be conducted with strict regard to decency and order.
- [44] The power to seize is limited to articles which are either involved in, used during, or may provide proof of the commission of an offence in the Republic or elsewhere, or provide proof of the fact that the commission of the offence was planned. The State may in terms of section 20 of the Criminal Procedure Act seize anything that:
- (a) is concerned or on reasonable grounds believed to be concerned in the commission or suspected commission of an offence within the Republic or elsewhere;
 - (b) may afford evidence of the commission or suspected commission of an offence in the Republic or elsewhere; or
 - (c) is intended to be used or on reasonable grounds believed to be intended to be used in the commission of an offence²².
- [45] In terms of section 21 of the Criminal Procedure Act, unless the circumstances set out in section 22, 24 and 25 of the Criminal Procedure Act exist an article may be seized only in terms of a search warrant. If it appears to a magistrate or justice of the peace

¹⁹ S 26 Criminal Procedure Act. *Minister van Polisie v Gamble* 1979 (4) SA 759 (A) at 764D-F.

²⁰ S 10 Constitution of the Republic of South Africa 1996 (hereinafter referred to as the Constitution)

²¹ S 12 (1) Constitution

²² S 20 Criminal Procedure Act.

that there are grounds for believing that such an article is in the possession or under the control of a person or upon any premises, and such information is provided to him or her under oath, a search warrant may be issued. In order for the search to be lawful, the premises to be searched must be clearly and properly identified in the warrant.²³

- [46] The applicants' case in the present application is that the search and seizure of her home was unlawful in that firstly, a warrant was not obtained, she was not shown a warrant and that she did not consent to the search and seizure nor was it authorised by any statutory provisions. Furthermore, she avers that search and confiscation of the electronic equipment was unfounded as it did not relate to the crime of *crimen injuria* and malicious damage to property which was allegedly being investigated by the Hawks, in connection with a conspiracy to murder Mr Gigaba and that only her cell phone was related to those charges. Further that the warrant of arrest secured in terms of section 43 of the Criminal Procedure Act was accompanied by an affidavit which related to a crime of "defamation of character" and not the crimes of *crimen injuria* and malicious damage to property for which she is currently facing charges for. Therefore, the warrant which was belatedly relied on, was also unlawful, both for procedural reasons and by reason of flaws in the warrant itself. The applicant's case is furthermore that the search, seizure and arrest was accompanied by egregious conduct on the part of the Hawks in that she was denied legal representation because they informed her that it was not an ordinary police matter. As she was not *au fait* with the law she believed there ascertains to be true. As a result, the applicant avers, her statement and equipment was taken as she believed she had no choice and that the officer who took the statement was also the commissioner of oaths. However, upon seeking legal representation her legal representatives are being denied copies of the material seized as it has not been disclosed in the copies of the dockets that they have been provided with. Lastly that she was treated in a degrading manner as she was not even allowed to enter her own bedroom alone and was followed to the bathroom, conduct which the applicant avers invaded her rights to privacy and dignity.

- [47] The respondents' notably in their case, firstly have not averred that arresting the applicant in the manner in which they did, was in terms of section 20 and principally

²³ *Toich v The Magistrate, Riversdale 2007 (2) SACR 235 (C)*.

under section 22 of the Criminal Procedure Act 51 of 1977 to conduct a search and seizure operation at the applicants' residence. Section 22 specifically sets out the circumstances in which articles may be seized without a warrant. In any event, the respondents' case proceeds, that section 17D of the SAPS Act mandates the Hawks to investigate cases regarding conspiracy to commit murder and aver that section 17D(3) specifically permits them to investigate any matter connected to the subject of its pending investigations. Further that the task team was appointed to investigate a complaint of such nature made by Mr Gigaba, who also informed them of the other alleged crimes involving him and so they were required to investigate them. It is significant to note that the respondents offered no explanation why a search warrant was not obtained first and did not deny that the applicant's version that she did not consent to the seizure of the articles as required by section 22 of the Criminal Procedure Act.

- [48] This Court is mindful that without a warrant and the consent of the applicant to enter her premises, the result was that the Hawks had license to search for and seize anything they considered relevant. The respondents also remain silent, particularly in regard to the detail of the search and seizure operation and in particular the alleged egregious conduct on the part of the Hawks officials. The question of the appropriateness of this court determining the lawfulness of the search and seizure operation rather than in the magistrate's court where the criminal proceedings are pending, was addressed in the heads of arguments which were filed. The question remains whether it is appropriate for this court to determine the application and if so, why this court should exercise its discretion by granting declaratory relief. In *Thint (Pty) Limited v National Director of Public Prosecutions and Others*²⁴ concerned the validity of six warrants of search and seizure in terms of Section 29(5) and (6) of the National Prosecuting Authority Act 32 of 1998, which had been executed. The warrants were challenged in two divisions of the High Court with varying results and were ultimately the subject of a consolidated appeal to the SCA which upheld the warrants. The applicants then approached the Constitutional Court to have the orders of the SCA set aside. Shortly after execution of the warrants, two of the subjects thereof were indicted to stand trial in the High Court on charges of corruption. The appeal to the

²⁴ [2008] ZACC 13; 2009 (1) SA 1 (CC)

Constitutional court threw up many issues, the first of which was whether it was in the interest of justice to grant leave to appeal. The court ultimately granted leave to appeal. Langa, CJ's reasoning, on behalf of the full Court in this regard, at paragraph 62 and 63, is instructive and I will quote it in full:

"62. The prosecution argues that regardless of whether the applicants' arguments bear reasonable prospects of success, it is not in the interest of justice to grant leave to appeal. It bases this submission on several grounds. First, this case concerns "justice in theory" not "justice in fact", because the applicants have made no attempt to establish that they have suffered any actual prejudice, despite having had ample opportunity to do so. Second, the applicants launched these proceedings for one purpose only, namely to prevent the state from using the seized items as evidence against Mr Zuma and the Thint companies in a subsequent criminal trial. They thereby are trying to circumvent the application of Section 35(5) of the Constitution, which is the way the Constitution chooses to admit unlawfully obtained evidence. This is particularly invidious, they argue, given that the evidence is incriminating of Mr Zuma and the Thint companies, and for that reason it is of great public importance that the truth emerges. Third, this form of preliminary litigation unduly delays the commencement of criminal trials and, therefore, should be strongly discouraged. The trial court, rather than preliminary courts, is best placed to balance the varying public and private interests at stake, namely the public and private interests in the emergence of truth, the applicants' interests in their privacy and property and the accused's persons fair trial rights. Leave to appeal should, therefore, be refused to allow the trial court to do so in this case.

63. There is certainly a great deal of merit in these arguments but I do not agree that it would be in the interest of justice for leave to appeal to be refused in these applications. There are several reasons for my conclusion. The first reason is that were this court to refuse leave to appeal, the Supreme Court of Appeal decision that the warrants and searches and seizures were lawful, would stand and would in all probability bind any subsequent trial court. It would follow that the seized evidence would have been lawfully obtained and Section 35(5) would have no application. The relevant competing interests would not fall to be balanced at all."

The Chief Justice when on to state in paragraph 65:

"65. I nevertheless do agree with the prosecution, that this court should discourage preliminary litigation that appears to have no purpose, other than to circumvent the application of Section 35(5). Allowing such litigation, will often place prosecutors between a rock and a hard place. They must, on the one hand, resist preliminary challenges to their investigations and to the institution of proceedings against accused persons. On the other hand they are simultaneously obliged to ensure the prompt commencement of trials. Generally, disallowing such litigation would ensure that the trial court decides the pertinent issues, which it is best placed to do, and would ensure that trials start sooner rather than later. There can be no absolute rule in this regard, however. The court's doors should never be completely closed to litigants. If, for instance, a warrant is clearly unlawful, the victim should be able to have it set aside promptly. If the trial is only likely to commence far in the future the victim should be able to engage in preliminary litigation to enforce his or her fundamental rights. But in the ordinary course of events and where the purpose of the litigation appears merely to be the avoidance of the application of Section 35(5) or the delay of criminal proceedings, all courts should not entertain that. The trial court should then step in and consider together the pertinent interests of all concerned. If that approach is generally followed, the state would be sufficiently constrained from acting unlawfully by the application of Section 35(5) and by the possibility of civil and criminal liability. The nature and degree of unlawfulness of the search warrant, are important factors to be borne in mind for the purposes of a decision under Section 35(5). It is for this reason that the same court should consider the unlawfulness of the warrant and its impact."

- [49] Applying these principles to the present matter, it is clear that the purpose of the relief sought by the applicant is not to remove from the court hearing the criminal trial, any opportunity to weigh up the competing private and public interests in admitting any of the evidence found and seized in the search and seizure operation, if indeed it was legally obtained, but rather it is to have access to copies of evidence in the docket which was not provided to her to adequately address the charges against her. Secondly, that the applicant alleges that the warrant was unlawful and as such is entitled to engage in litigation to enforce her fundamental rights. Following the reasoning of the Chief Justice that since no court has yet made a determination on the legality of the search and seizure operation the trial magistrate in this matter will not be constrained by the finding of any other court in his or her judgment on this issue and the admissibility of any evidence so procured. This is especially so in view of the alleged egregious conduct on the part of

the Hawks and the invasion of privacy the applicant was subjected to when the Hawks gained entry to the premises; her bedroom and or followed her to the bathroom without any warrant to do so.

Parallel proceedings

- [50] Generally permitting parallel proceedings and risking inconsistent decisions in multiple forums on substantially the same dispute is undesirable even where a single event triggered the actions. The ultimate question in both these proceedings is whether the arrest and prosecution was lawful and constitutional. In a delicate balancing act, it is the duty of the courts to uphold and vindicate the constitutional rights of the applicant to her good name but in this particular case, which is unique by its circumstances, it cannot have the effect of precluding the Criminal Court from discharging duties and responsibilities exclusively assigned to it by the Constitution.
- [51] Resolving these disputes of fact through the hearing of evidence in any trial-within-a-trial relating to the admissibility of evidence, is preferable to determining them on affidavit. Any findings by this court could, quite conceivably, be the subject of an appeal or even a series of appeals, the effect of which will be to further delay the criminal trial. It is also not clear at this stage whether the state will, indeed, seek to use any of the material it obtained in the search and seizure operation against the applicant. It is conceivable that it might not, in which event there would have been limited point in this court pronouncing on the legality of the search and seizure operation at this stage.
- [52] What must also be taken into account is the desirability of the trial magistrate presiding over the criminal trial to do so without constraints in the form of pronouncements from this court, which encroaches on what evidence is admissible before him or her. The judgment in *Thint supra*, although landmark in the sense that it was a post-constitutional examination of the principles to be followed when higher courts are presented with challenges to search warrants before the admissibility of evidence so obtained is weighed in lower court proceedings, by no means adopted a novel approach. Sixty years ago in *Wahlhaus and Others v Additional Magistrate Johannesburg and*

Another 1959,²⁵ the Appellate Division confirmed the general approach later followed in *Thint* by the Constitutional Court. In *Wahlhaus* it was held:

"While a superior court having jurisdiction in review or appeal will be slow to exercise any power, whether by mandamus or otherwise, upon the uninterminated of course of criminal proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result, or where justice might not by other means be attained. In general, however, it will hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal, will ordinarily be available."

- [53] In *Mineral Sands Resources v Magistrate for the District of Vredendal*²⁶. Rogers, J was faced with a review of a search warrant issued in terms of Section 21 of the Criminal Procedure Act and where he ultimately pronounced on its validity, but issued a preservation order in respect of the items seized pursuant to the warrant. Rogers, J found that the warrant was invalid for various reasons and declared its execution unlawful. Discussing the request by the respondents for a preservation order, which ultimately he granted, the learned judge stated as follows regarding inappropriate preliminary litigation at paragraph 215:

"I did not understand Mr Paschke to press for the dismissal of the application as constituting inappropriate preliminary litigation. As Langa, CJ observed in Thint, para 65, there is no absolute rule. He said that if a warrant is clearly unlawful, the victim should be able to have it set aside promptly. If the trial is only likely to commence far in the future, the victim should be able to engage in preliminary litigation to enforce its fundamental rights. The litigation which the courts should not entertain, is litigation having as its purpose to avoid the application of Section 35(5) of the Constitution or to delay criminal proceedings. This is not the case here. MSR has not yet been charged. No criminal trial is imminent. MSR has raised points of substance. The issue regarding the inspector's mandates requires resolution in any event."

²⁵ (3) SA 113 (AD)

²⁶ [2017] 2 ALL SA 599 (WCC)

[54] The factors in the present matter are slightly different in that the applicant has been criminally charged and criminal proceedings have commenced, however the criminal trial is not imminent. Significantly furthermore, the applicant has requested the return of the information that is not connected to the warrant of arrest or any search and seizure warrant. The applicant has stated that the only device in connection with the offences she has been charged with is her cell phone which she had voluntarily offered to the Hawks upon their arrival at her home and that the return of her communication equipment will in no way affect the criminal case pending. This Court cannot find that there are any indications that the purpose of the present application may well be to avoid the application of Section 35(5) of the Constitution.

[55] The point in this matter is clear, there are compelling reasons why these issues should be addressed by this Court. There are serious allegations of abuse of power and breach of privacy in that the applicant's home was searched and items seized without her consent all at the behest of her politically affiliated husband who directed a domestic dispute to the DPCI under the guise of a conspiracy to commit murder against him. This Court has noted significantly that whilst section 17D does confer a mandate to the Hawks, its mandate is limited to national priority offences and that any suspected national priority offence in terms of section 17D (2) must be referred by the National Head in terms of section. There is no evidence before this Court that the Hawks complied with this requirement. There were mere vague submissions by the respondents that the National Head of the Hawks Lieutenant Lebeya established a task to deal with cases regarding "conspiracy to commit murder" and that General Ngwenya was appointed the head of the task team with Captain Mavuso and Sergeant Ndabambi forming part of that team. What the submissions by the respondents do not establish is whether or not Lieutenant Lebeya sanctioned the operation into the investigation of the complaint laid by Mr Gigaba. There is also evidence before this Court that there is or was a conspiracy to commit murder against Mr Gigaba or how, if at all, the applicant is connected to this offence. The only suggested link that the respondents rely on is the vague ascertain by Mr Gigaba that the members of the counter-intelligence were called by the applicant to his home and for that reason he felt unsafe. The respondents furnished relatively little information regarding the material seized or any information regarding the case of conspiracy to commit murder. The applicant described the

necessity of the return of the equipment seized saying "I am a registered student and my work is done through my laptop, particularly because there are no longer contact classes during the period of Covid-19".

- [56] It is common cause that the electronic devices were returned to the applicant. What has sparked the present application is that the applicant is unaware of the extent of the material extracted from these devices and stored on discs 1-6 as attested to by Mr Ndlovu, a Sergeant in the Hawks digital forensic investigation in Mpumalanga, in his affidavit annexed to the section 43 application for an arrest warrant. The applicant submits that these discs do not appear in the docket and is uncertain why the Hawks of the Mpumalanga division were even involved as the matter was not a high level technical investigation. Given the applicant's grave and detailed contentions, I consider that there is a particular convincing case has been made out for the Court to determine at this stage the lawfulness of the warrant or the search and seizure operation generally, rather than leaving this to the trial court should these issues indeed arise in the trial. For all these reasons, I find that the applicant has satisfied me that this Court should intervene at this stage even before the criminal proceedings have properly commenced. What I must now consider whether the warrant of arrest is unlawful and must be set aside.

Unlawfulness of the warrant of arrest

- [57] Section 12(1)(a) of the Constitution provides that "everyone has the right to freedom which includes the right not to be deprived of freedom arbitrarily or without just cause. Section 13(3)(a) of the South African Police Service Act provides that "a member of the Police Service who is obliged to perform an official duty, shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances".
- [58] It is common cause that this application is pursuant to the applicant's arrest on 31 July 2020 following the issue of a warrant in terms of section 43 of the Criminal Procedure Act issued on 30 July 2020. It is trite that the onus rests on a defendant to justify an

arrest. In *Minister of Law and Order and Others v Hurley and Another*²⁷ at paragraph 65 Rabie AJ explained:

‘An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems fair and just to require that the person who arrested or caused the arrest of another person should bear the onus of proving that his action was justified in law.’

[59] As to whether the discretion is exercised properly the following was stated in *Minister of Safety and Security v Sekhoto*²⁸:

“[39] This would mean that peace officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. The standard is not breached because an officer exercises the discretion in a manner other than that deemed optimal by the court. A number of choices may be open to him, all of which may fall within the range of rationality. The standard is not perfection, or even the optimum, judged from the vantage of hindsight and so long as the discretion is exercised within this range, the standard is not breached.”

[60] The following was laid down by Bertelsmann J in *Louw v Minister of Safety and Security*²⁹ at 186a -187e, about an arrest where an offence listed in schedule 1 has been committed:

‘I am of the view that the time has arrived to state as a matter of law that, even if a crime which is listed in Schedule 1 of Act 51 of 1977 has allegedly been committed, and even if the arresting peace officers believe on reasonable grounds that such a crime has indeed been committed, this in itself does not justify an arrest forthwith. An arrest, being as drastic an invasion of personal liberty as it is, must still be justifiable according to the demands of the Bill of Rights. . . . Police are obliged to consider, in each case when a charge has been laid for which a suspect might be arrested, whether there are no less invasive options to bring the suspect before the court than an immediate detention of the person concerned. If there is no reasonable apprehension that the suspect will abscond, or fail to appear in court if a warrant is first obtained

²⁷ 1986 (3) SA 568 (A)

²⁸ (2011 (5) SACR 367 (SCA)

²⁹ 2006 (2) SACR 178 (T)

for his/her arrest, or a notice or summons to appear in court is obtained, then it is constitutionally untenable to exercise the power to arrest.’’

[61] The question whether a decision is rationally related to the purpose for which the power was given calls for an objective enquiry. Otherwise a decision that, viewed objectively, is in fact irrational, might pass muster simply because the person who took it mistakenly and in good faith believed it to be rational. Such a conclusion would place form above substance, and undermine an important constitutional principle. See: ***Pharmaceutical Manufacturers Association of South Africa: in re Ex parte Application of President of the RSA [2000] ZACC 1; 2000 2 SA 674, 2000(3) BCLR 241 (CC) paragraphs [85] to [86].***

[62] An arrest pursuant to a warrant is *prima facie* lawful. The onus of proving the wrongfulness of the arrest by showing that the warrant was irregular, generally rests on the applicant. A warrant in the proper form and issued by a duly authorised official provides the arresting officer with a defence.

[63] Section 43 of the Criminal Procedure Act, reads:

"43 Warrant of arrest may be issued by a magistrate or justice;

(1) Any magistrate or justice may issue a warrant for the arrest of any person upon the written application of an attorney-general, a public prosecutor or a commissioned officer of police-

a) which sets out the offence alleged to have been committed;

b) which alleges that such offence was committed within the area of jurisdiction of such magistrate or, in the case of a justice, within the area of jurisdiction of the magistrate within whose district or area application is made to the justice for such warrant, or where such offence was not committed within such area of jurisdiction, which alleges that the person in respect of whom the application is made, is known or is on reasonable grounds suspected to be within such area of jurisdiction; and

c) which states that from information taken upon oath, there is a reasonable suspicion that the person in respect of whom the warrant is applied for, has committed the alleged offence.

(2) A warrant of arrest issued under this section, shall direct that the person described in the warrant shall be arrested by a peace officer in respect of the offence

set out in the warrant and that he be brought before a lower court in accordance with the provisions of Section 50.

(3) *A warrant of arrest may be issued on any day and shall remain in force until it is cancelled by the person who issued it or, if such person is not available, by any person with like authority, or until it is executed."*

- [64] The first issue is whether or not the applicant has established that the Magistrate who issued the warrant acted *mala fides* in authorizing the warrant which is what she would need to prove according to the relevant authorities. In *May v Union Government*³⁰, it was inter alia stated

'It is not necessary for the issuing of the warrant that all the facts necessary for a conviction be given under oath. It is only necessary that reasonable grounds appear from the affidavit. The official requesting the warrant is not limited to the information under oath -when the suspicion is formed. The information under oath must be assessed in the context of all the facts which have been determined, both those under oath and others. The official also does not have to accept all the information under oath as true: he or she can accept some allegations and not others, even doubt them all He or she must have information under oath and, from that, in the correct context, form a reasonable suspicion.'

- [65] The *bona fide* exercise of a discretion by a magistrate or justice of the peace under this section cannot be assailed in a court. See *Groenewald v Minister van Justisie*³¹ with reference to *Shidiack v Union Government*³². Although Groenewald is not fully supported in *Prinsloo v Newman*³³ at 500C and 505D it is nevertheless confirmed (at 500B-505C) that the discretion the magistrate or justice of the peace has to exercise cannot, barring exceptional circumstances, be questioned in a court. It is evident from the foregoing that a Magistrate's discretion, exercised in good faith, is not justiciable in a court of law.

³⁰ 1954 (3) SA 120 (N) at 125B confirmed in *Minister van Polisie v Kraatz supra* at 504H)

³¹ 1973 (3) SA 877 (A) at 883H

³² 1912 AD 642 at 651

³³ 1975 (1) SA 481 (A)

- [66] In *Minister of Safety and Security v Sekotho and Another supra*³⁴, contains a discussion on the role of peace officers and the discretion they hold in respect of an arrest which would, with respect, finds equal application in determining the discretion of a Magistrate.

"Harms DP (Nugent JA, Lewis JA, Bosiello JA and K Pillay AJA concurring)

[34] These principles are in substance no different from those formulated by Innes ACJ in Shidiack v Union Government. Now it is settled law that where a matter is left to the discretion or the determination of a public officer, and where his discretion has been bona fide exercised or his judgment bona fide expressed, the Court will not interfere with the result. Not being a judicial functionary no appeal or review in the ordinary sense would lie; and if he has duly and honestly applied himself to the question which has been left to his discretion, it is impossible for a Court of Law either to make him change his mind or to substitute its conclusion for his own, . . . There are circumstances in which interference would be possible and right. If for instance such an officer had acted mala fide or from ulterior and improper motives, if he had not applied his mind to the matter or exercised his discretion at all, or if he had disregarded the express provisions of a statute — in such cases the Court might grant relief. But it would be unable to interfere with a due and honest exercise of discretion, even if it considered the decision inequitable or wrong,"

- [67] In applying the principals *supra* the applicant in her has failed to set out any basis upon which it could be inferred that the Magistrate acted *mala fides*. On the face of it, it is illustrated that the magistrate acted upon the evidence presented to her in the form of an affidavit by Sergeant Ndabambi. The magistrate had no reason to disbelieve what was contained therein or foresee that that Sergeant Ndabambi was acting with malice or ulterior motives. However, the *bona fides* of the Magistrate was not placed in issue as there would not be legitimate basis for rejecting that the Magistrate acted properly and prudently in issuing the warrant on the information placed before her and that such information compiled with the provisions of section 43 of the Criminal Procedure Act. She had no reason to disbelieve or question the veracity of the information given to her and she properly acted in accordance with that information. On the basis of the legal proposition, in the absence of *mala fides* the warrant by the Magistrate King was not wrongful, unlawful or *mala fides*.

³⁴ at paragraph 34

- [68] What can therefore only be attacked is the duty of the disclosure by the officer when the warrant was applied for. This raises the next question which is whether or not Captain Mavuso and Sergeant Ndabambi's decision to arrest of the applicant was lawful or unlawful and whether they are responsible for the malicious prosecution of the applicant.
- [69] In her founding affidavit the applicant alleges that when the two officers arrived at her home on 22 July 2020 they advised her that she was facing arrest for *crimen injuria* and malicious damage to property. She claims that her arrest and detention had been unlawful as the offence is not a priority crime and should not have involved the Hawks. Further that she was refused legal representation and that the arrest itself was unnecessary as the fourth and fifth respondents had visited her house 10 days prior to conduct the investigation on 21 July 2020 as stated in his affidavit in support of the warrant of arrest. She avers that it was unclear why her arrest became crucial only on 30 July 2020, ten days after the commission of the offence and that her attendance at court could have been secured by other means. The applicant also further contends that the entire arrest was orchestrated to obtain unlawful access to her information which was an invasion of her privacy.
- [70] The applicant submits that she was not shown a warrant of arrest and was merely informed by Captain Mavuso or Sergeant Ndabambi of the charges against her. She further testified that her constitutional rights were violated as she was forced to make a statement without legal representation. She also alleges that the docket pertained to *crimen injuria* and assault but the affidavit marked A3 by Sergeant Ndabambi states "defamation of character" which is untrue coupled with the nonsensical explanation about the text message which she sent to Mr Sibiya which the Hawks were already in possession of when they first arrived her home. The respondents are silent on these allegations save to mention that they are mandated in terms of Section 17D of the SAPS Act to investigate a conspiracy to murder and any subject matter related to pending investigations such as the complaints laid by Mr Gigaba involving the applicant as previously discussed in this judgment.

[71] In *Minister of Safety and Security v Sekhoto supra*, the Supreme Court of Appeal did to some extent curb the approach adopted by the High Courts in assessing whether the arrest is justified when a summons could have been used. However, the court stated that where the case is trivial, an arrest would clearly be rational. The SCA went on to say the following:

"What I have said must not be understood as conveying approval of the use of arrest where there is no urgency and the person to be charged has a fixed and known address; in such cases, it is generally desirable that a summons be used".

[72] The evidence in this case is clear that the whereabouts of the applicant were known as the Hawks arrived at the applicant's home and interrogated her. No information was forthcoming from the respondents why an arrest in the manner that it was conducted was necessary or imminent.

[73] Notably in this case the respondents have not advanced any arguments regarding the validity or defectiveness of the warrant in its defence. Before leaving this topic there is an observation that needs to be made. The police have a duty to carry out policing in the ordinary way. They have no business setting out to turn an arrest into a showpiece. When executing a warrant of arrest, the police are obliged to do so with due regard to the dignity and the privacy of the person being arrested. In *Independent Newspapers Holdings Ltd v Suliman*³⁵ that to allege that a person has been arrested does not imply that he or she is guilty, but it does imply that there is a reasonable suspicion that he or she has committed the relevant offence, which is itself defamatory. In that case the majority held that before the suspect is brought before a court it is generally not in the public interest or of public benefit that the identity of the arrested suspect should be disclosed, even if the allegation is true. But once the suspect has been brought before a court his or her identity may be published with impunity.

[74] In *Minister of Safety v Sekotho and Another supra*³⁶ the court discusses section 40(1) of the Criminal Procedure Act (arrest without a "warrant") as opposed to section 43

³⁵ [2004] 3 All SA 137 (SCA).

³⁶ 2011 (5) SA 367 (SCA) (also at [2011] 2 ALL SA 157 (SCA)) -

(arrest with a warrant), but the principles seem to be equally applicable. The Court reaffirmed that an arrest is *infraudem legis* when the arrestor has used a power for an ulterior purpose, but a distinction must be made between the object of the arrest and the arrest or motive - ‘object relevant while motive is not’

- [75] Courts have sometimes interfered to protect an injured party against an abuse of power, example, in those well recognised cases in which powers, given to public bodies to be used for certain purposes, are wrongly used by them to achieve other purposes. See *Sinovich v Hercules Municipal Council*³⁷, to profess to make use of a power which has been given by statute for one purpose only, while in fact using it for a different purpose, is to act in *fraudem legis*, see also *Van Eck and Van Rensburg v Etna Stores*³⁸. Thus, where a warrant of arrest is requested under the pretext that it is acquired for a legitimate purpose while in fact the intention is not to use it for that purpose, but for another unauthorized purpose such person acts *mala fide* and in *fraudem legis*. See *Minister van die SA Polisie v Kraatz*³⁹.

In Fraudem Legis

- [76] In fraud of the law; “A transaction is in *fraudem legis* when it is designedly disguised so as to escape the provisions of the law, but falls in truth within these provisions⁴⁰”. In such cases the important point is “not the interpretation of the law as the interpretation of the transaction⁴¹”. See also *R v Gillet 1929 AD 364*; *McAdams v Fiander’s Trustee* and *Bell 1919 AD 227*. As to the principles to be applied in determining whether a transactions See *Wills’s Principles of South African Law*⁴².
- [77] It appears in this matter that the arresting officers abused their powers and position as members of the Hawks presumably to avenge a wrong or perceived wrong as complained and alleged by Mr Gigaba and not for any lawful purpose and was accordingly *infraudem legis*. The warrant was obtained for an ulterior motive. The argument of the respondents that they were investigating a conspiracy to commit

³⁷ 1946 AD 783

³⁸ 1947 2 S 984 (A) 998

³⁹ 1973 3 SA 490 (A) 508

⁴⁰ *Dadoo Ltd v Krugersdorp Municipal* 1920 AD 547

⁴¹ *ibid* 544

⁴² 6ed 319 436 525

murder against Mr Gigaba is not sustainable in light of the fact they have alluded no further information on this alleged conspiracy or how the charges against the applicant are connected to it. There is also no evidence of this in the docket and takes the matter no further. It is clear that this is in fact a domestic dispute between two prominent members of society, however the offences are not deserving of the high priority of the Hawks and the involvement of the Hawks itself speaks to the abuse of power by Mr Gigaba as a former Minister in using the State administrations for his own personal benefit with an intention to intimidate his wife in a domestic spat. The scourge and dominance of patriarchy in our society must be pierced and women's right to fair and equal treatment must be protected.

[78] I have already found that the warrant itself was properly authorised as already indicated and cannot be set aside with regard to any deficiencies relating to the bona fides of the Magistrate. On the respondents own version, despite the warrant being issued on a weekday 30 July 2020, they chose to wait until Friday afternoon on 31 July 2020 to execute the same. Again the respondents have offered no plausible explanation to this court why if the applicant's actions were as threatening as they alleged, therefore the only way to secure her attendance at court was through a warrant of arrest, it then waited an entire day after obtaining the warrant to actually arrest her. If nothing else, this Court is of the view that this only further demonstrates the abuse of power by the fourth and fifth respondents who were called by Mr Gigaba. Their actions ensured that the applicant could not be taken immediately upon execution of the warrant and apply for bail, with the hopes that she would spend the weekend in a jail cell in the middle of winter during a pandemic.

[79] The actions of the fourth and fifth respondents in obtaining the warrant of arrest upon furnishing information about the *crimen injuria* and malicious damage to property to the Magistrate and executing the same clearly constitutes an abuse of rights, when there is no link between those crimes and that crime of conspiracy of murder it allegedly was initially investigating. There is no explanation why the docket was not returned to the Brooklyn police to take up the matter further and to them to secure the arrest. Although the warrant was properly issued their conduct tainted their ulterior motives and as such

unlawfulness of the execution as echoed by *Fourie J in Brown and Another v Director of Public Prosecutions and Others*⁴³ when he said;

"The question, however, remains whether the execution of the warrant in regard to ISI applicant on 9 May 2008 constituted a lawful arrest Put differently, is there merit in the contention of the 1st applicant that there was no need for the 2nd respondent to have had him arrested, as his attendance at Court could have been secured by less intrusive measures, such as warning or summoning him to appear in Court on these new charges? In this regard I (sic) incline to the view that, even if a warrant for the arrest of suspect has been lawfully obtained in terms of section 43 of the Criminal Procedure Act, this in itself does not justify an arrest to secure the attendance of the suspect in Court... Put differently the conduct of the person effecting an arrest should not constitute an abuse of the right given to such person to effect the arrest"

[80] I am satisfied that the evidence before me demonstrates that the fourth and fifth respondents acted with malice, in that their actions appeared to have been motivated by an abuse of power by a former minister and member of the Executive. There is no evidence that an investigation was conducted regarding a conspiracy to commit murder of Mr Gigaba and the respondents have failed to give any evidence to gainsay the applicant's version.

[81] Based on the evidence as tendered, the applicant has discharged the onus resting upon her to establish that despite the execution of warrant of arrest by the fourth and fifth respondents was wrongful and unlawful and that they set in motion her prosecution.

[82] **In the result the following order is made:**

1. **The application is granted on an urgent basis.**
2. **The decision of the fourth and fifth respondents to apply for the warrant of arrest of the applicant is unlawful.**
3. **The decision to execute the warrant of arrest by the fourth and fifth respondents is unlawful.**
4. **The confiscation of the applicant's information and communication technology equipment is unlawful.**

⁴³ 2009 (1) SACR 218 (CPD) at 226 J - 227 C. See also *Theobald v Minister of Safety and Security* 2011 (1) SACR 379 (GSJ) at 406 paragraph 320

- 5. The respondents are ordered to restore all information unlawfully removed from applicant’s ICT equipment.
- 6. The third, fourth and fifth respondents are directed to return the information which was downloaded from electronic gadgets of the applicant by the respondents, including the information contained in Disc 1 to Disc 6 referred to forthwith.
- 7. The costs of this application are to be borne by the third, fourth and fifth respondents on an attorney and own client scale.



SARDIWALLA J
JUDGE OF THE HIGH COURT

APPEARANCES

Date of hearing	:	15 September 2020
Date of judgment	:	11 February 2021
Applicant’s Counsel	:	DC Mpofu Sc TN Ngcukaitobi SC
Applicant’s Attorneys	:	Victor Nkhwashu Attorneys
Respondent’s Counsel	:	D.J Joubert SC H.A Mpshe
Respondent’s Attorneys	:	State attorney Pretoria

AFFIDAVIT

I, the undersigned,

JOHANNA SUSANNA ROSSOUW

do hereby state under oath that:

1. I am the Bursar at [REDACTED] Primary School ("the School") since 24 January 2011.
2. All the facts stated in this affidavit are, unless the context indicates otherwise, within my personal knowledge. They are to the best of my knowledge and belief both true and correct and I am duly authorised to depose to this affidavit.
3. I give this affidavit to the Judiciary Commission of Enquiry into State Capture, Fraud and Corruption in the Public Sector ("the Commission"), in response to a request from the Commission for the information supplied further below in this affidavit.
4. This affidavit is in relation to the settlement of the school fees of the children of Mrs Norma Gigaba and Mr Malusi Gigaba, who are pupils at the School.

SETTLEMENT OF SCHOOL FEES

5. I have extracted the following information from the School's records and bank statements where needed.
6. The Gigaba family has a school account with the School with an account number [REDACTED].
7. The amounts paid into the School account, that were settled in cash, were paid either by direct payments at the school or cash deposited into the School's banking account.



8. The amounts paid in cash for the settlement of the school fees are as follows:
- 8.1. 2013: Not enrolled

8.2. 2014: Not enrolled

8.3. 2015: R22 450 admission fees paid in cash;

8.4. 2016: R136 404 paid in cash;

8.5. 2017: R143 668 paid in cash;

8.6. 2018: R154 328 paid in cash;

8.7. 2019: R318 399 paid in cash;

8.8. 2020: R229 418 paid in cash; and

8.9. 2021: R14 461 paid in cash.




DEPONENT

I certify that the deponent who acknowledges that she knows and understands the contents of this affidavit; that it is the truth to the best of her knowledge and belief and that she has no objection to taking the prescribed oath and regards same as binding on her conscience; and the administration of the oath complies with the Regulations published under Government Notice R1258 in Government Gazette 3619 of 21 July 1972, as amended. This affidavit is signed and sworn to before me at Woodhill on this 30 day of **May** **2021**.

Dewald Erasmus
Commissioner of Oaths (COA)
CA (SA)
327 Tanzanite Street, Mookkloof Heights Estate
Pretoria, 0059

I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objections to taking this oath and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me

CERTIFIED A TRUE COPY OF THE ORIGINAL

Signature: 
Date: 30/5/2021
Place: Woodhill

COMMISSIONER OF OATHS

AFFIDAVIT

I, the undersigned,

SIYABONGA MAHLANGU

do hereby make oath and state that:

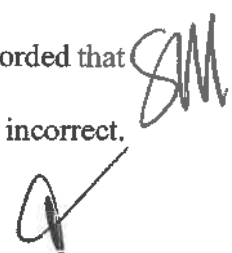
1. I am an adult male non-practising attorney and a former special advisor to former Minister of Public Enterprises, Mr Malusi Gigaba, whom I refer to as “Minister Gigaba” or, simply, as “the Minister”. I served as the Minister’s special advisor from 1 December 2010 to 24 May 2014.
2. I refer to the Department of Public Enterprises – which fell under the auspices of the Minister during the time that I served as his special advisor – as “the DPE” or “the Department”.
3. The facts contained in this affidavit are, save where otherwise stated or indicated by the context, within my personal knowledge and are, to the best of my knowledge and belief, true and correct.

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THE PURPOSE OF THIS AFFIDAVIT

4. On 5 August 2020, I received a telephone call from Mr Sakhile Masuku of the Commission of Inquiry into State Capture ("the Commission"). He informed me that he and Commission Evidence Leader Ms Mpho Rasivhetshela, wished to discuss (i) the role I played during my time as special advisor to Minister Gigaba; and (ii) the report titled "*Forensic investigation into various allegations at DPE, Tender Number NT 022-2016, RFQ 026-2017*" ("the Fundudzi Report") prepared by Fundudzi Forensic Services ("Fundudzi").
5. The Fundudzi Report was provided to me by Mr Masuku on 5 August 2020. In order to avoid making this affidavit bulky, I will only refer, and not attach, it to this affidavit.
6. I have noted from the report that Fundudzi was appointed by the National Treasury to investigate allegations of irregularities within the DPE, including the role that DPE officials, including me, played in the appointment of directors to the boards of state-owned companies ("SOCs"). The Fundudzi Report is the culmination of this investigation.
7. Until I received a copy of the report from Mr Masuku, the only knowledge I had of Fundudzi's investigation is that they were investigating certain irregularities at the DPE. I had no knowledge of Fundudzi's mandate, scope of work, or terms of reference. I note in paragraphs 13.8.4 to 13.8.6 of the report that it is recorded that I refused to cooperate with Fundudzi in their investigation. This is incorrect.

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When I was contacted by Ernest Nekhavhambe of Fundudzi, during January of 2019, I did not know anything about the investigation. I asked him in writing on numerous occasions to provide me with his terms of reference so that I could assess my legal position considering the nature of his questions and the fact that I was under certain legal obligations as the then Minister's advisor. He refused. The best I could do under the circumstances was to respond to allegations that related to me and not to my official duties as the special advisor to the Minister. In support of my response to the allegations by Fundudzi, I attach a series of correspondence between me and Fundudzi marked "SM1" to "SM14" .

8. On 24 August 2020, I met with Ms Rasivhetshele and Mr Masuku. Ms Rasivhetshele and Mr Masuku informed me that the Chairperson of the Commission requires me to submit an affidavit explaining my role as Minister Gigaba's advisor, and to respond to the allegations in the Fundudzi Report that relate to me.
9. In this affidavit I explain the role I played as the Minister's special advisor, particularly insofar as it pertained to: (i) the appointment of board members to the SOCs that fell under the umbrella of the DPE; and (ii) the interactions I had with members of the Gupta family.
10. I note that from the index to the report that there are 115 exhibits attached to the report. I have been provided with 18 exhibits, namely, exhibits 7, 9, 16, 17, 18, 19, 21, 22, 23, 24, 25, 28, 29, 30, 31, 33, 34 and 35. I understood from Ms

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Rasivhetshele and Mr Masuku these are the only exhibits that relate to me and the issues that I am required to address.

11. Should I become aware that I have not fully addressed any issue referred to in the Fundudzi Report that relates to an exhibit not furnished to me, I will seek the leave of the Commission to supplement this affidavit at the appropriate time.
12. In this affidavit I also respond to allegations made about me by Ms Cheryl Carolus, Ms Siza Mzimela, and Mr Vuyisile Kona in their statements and oral evidence before the Commission.
13. I also address the allegations that the former Group CEO of Eskom Limited, Mr Brian Dames, made about me in the Parliamentary inquiry into the affairs of Eskom.
14. I depose to this affidavit voluntarily and with the intention to assist the Commission in its inquiry.

THE STRUCTURE OF THIS AFFIDAVIT

15. This affidavit follows the following thematic structure:

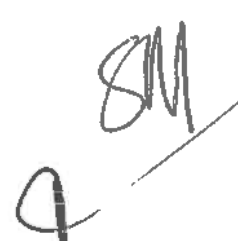
15.1. my background and employment history;

15.2. how I became Minister Gigaba's special advisor;

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- 15.3. my interactions with the Gupta family;
- 15.4. Facts that prove that in 2013 I had scaled down my activities as special advisor and focused on my job search;
- 15.5. the purchase of the house;
- 15.6. my trip to India in January 2011;
- 15.7. Invitation to Rajesh Gupta to my wedding;
- 15.8. details regarding my role as special advisor to the Minister;
- 15.9. the appointment of Salim Essa on the board of Infracore;
- 15.10. the appointment of Zola Tsotsi and Ashok Sharma to the board of Eskom;
- 15.11. my involvement in the appointment of the SAA board;
- 15.12. the removal of directors from the Transnet board;
- 15.13. the appointment of Anoj Singh as GCFO;
- 15.14. Vuyisile Kona's testimony made before the Commission;

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15.15. The testimony of Ms Carolus;

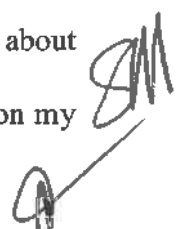
15.16. Ms Mzimela's evidence; and

15.17. Mr Dames's meeting with Rajesh Gupta;

MY BACKGROUND

Academic background

16. I hold a Bachelor of Arts Degree in Political Studies, Industrial Sociology and Legal Theory and a Bachelor of Laws Degree, both from Rhodes University.
17. In addition to these qualifications, I hold a Master of Laws Degree from the University of the Witwatersrand, majoring in tax law. I studied for my Masters degree in tandem with my articles of clerkship, which I served at Webber Wentzel Bowens, as it then was known ("Webber Wentzel").
18. I have recently satisfied the requirements for the University of the Witwatersrand to confer on me the Doctor of Philosophy degree in Administrative Law. I graduate in December 2020.
19. Prior to discussing my employment history and how I joined the Minister as his special advisor, it is perhaps opportune at this point to set out a few facts about my personal background. These facts are relevant because they shed light on my

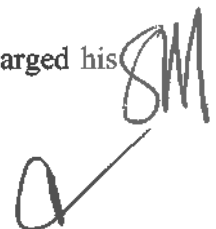


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personal principles, ethics and outlook on life. They detail the events that shaped me into the person I am today.

Upbringing

20. I grew up in Mpumalanga in what was previously the Bantustan of KwaNdebele.
21. At that time, my father was the Chief Magistrate for the magisterial district of Mkobola in Kwaggafontein. My mother was a shopkeeper. They raised me to value hard work, the uprightness of character and to be just in my dealings with all people. I had the rare privilege of witnessing my parents live up to these ideals, both during their most trying times and when life was going well.
22. In 1986, our family was persecuted by the Bantustan government and the mighty but cruel apartheid security apparatus. My parents were both detained under the state of emergency because they actively opposed the Bantustan's quest for independence from Pretoria. It was their belief in justice and freedom that drove their political activism. They had choices in life. They could have chosen an easier route but, on the basis of principle, they did not – for which they suffered.
23. The advent of democracy saw my father become the second Premier of Mpumalanga in 1999. He did not enrich himself with state resources and at the expense of the public. He maintained the same lifestyle as he did before his appointment. He continues to lead the same lifestyle today. He discharged his mandate as Premier honestly and, in my view, with diligence.

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24. My parents' lessons and principles are ingrained in me and have always informed how I navigate my life. I am inspired by a strong sense of justice and propriety, a respect for law, the uprightness of character, and hard work. It is because I hold these ideals that the matters I have been called upon to answer to in this affidavit are painful and distressing to me.
25. In 1993, I began my higher education at Rhodes University in Grahamstown (now Makhanda).
26. Although I came from an ANC-inspired home and was politically active on campus, it took me a year to decide whether I should join a student movement. I attended political gatherings and participated in protests against actions by the university administration that I believed to be unjust, but I was not immediately moved to join any student movement.
27. In 1994, I joined the South African Students Congress ("SASCO"). I was drawn to SASCO by its level of organisation and activism.
28. But as I began to grow in my political consciousness, I drifted towards Pan Africanism. I joined the Pan Africanist Student Organization ("PASO") and, at some stage, served as its branch chairperson. At the time, I tried to make sense of the impact of colonialism and the protracted subjugation of Africans and read widely about the subject and related political topics.

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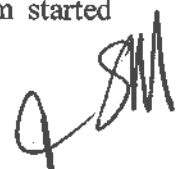
29. In 1995, I was elected to serve on the Rhodes University Student Representative Council as an executive committee member responsible for labour and community liaison. In this role, I came face-to-face with the poverty that gripped the people of Tentyi and Joza in Rini township, a township that surrounds Grahamstown. I took from these experiences and observations that public power should not be exercised, or public resources expended, for any other purpose other than to better the circumstances of those who live on the margins of society.
30. Although I was not personally affected by the policy of financial exclusions, I spoke out against this policy, as I found it repugnant and unjust. In my assessment at the time, this policy had the effect of allowing a rich student with ordinary or low marks to continue with their education solely because they had the means to fund their education, but the policy would see a poor student excluded (despite their high academic marks) because of lack of the financial means to pay for their tuition timeously or regularly.
31. Whilst pursuing my LLB degree, I enrolled for the Practical Legal Training elective, which required that I spend time at the Legal Aid Clinic run by the university. This opened my eyes to how access to lawyers by the poor was an indispensable requirement for justice. I encountered and assisted clients who suffered at the hands of powerful administrators. That sparked in me an interest in public law and the belief that public power should constantly be kept in check.
32. In about 1996 or 1997, the Rhodes University Law Faculty awarded me the Butterworths Alistair Kerr Law of Contract Prize for attaining the highest mark in

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the law of contract course. During my time in the law faculty, I made it to the Dean's merit list for one or other academic achievement. By virtue of this, I was also appointed as a tutor to undergraduate students.

33. In the final year of my LLB, I secured articles of clerkship at Webber Wentzel, which was then, and still is, one of the most prestigious commercial law firms in South Africa.
34. In 1999, I commenced my articles. I was trained in corporate commercial law, employment law, financial services and media and telecommunications law. I developed a particular passion for telecommunications law because it complemented well my interest in administrative law.
35. In 2001, I became an associate in the employment law department at Webber Wentzel. Although I worked mostly on employment law matters, my practise had a decent amount of telecommunications work.
36. In March 2002, I pursued my dream of establishing a large black commercial law firm. I joined Sihlali Molefe Attorneys as a partner. In September 2002, I co-founded Mahlangu Nkomo and Associates, which later became Mahlangu Nkomo Mabandla Ratshimbilani Attorneys ("MNMR").
37. Initially, MNMR was made up of four partners. MNMR held the real promise of growing into a large, full-service black commercial law firm. The firm started small. We put our savings into it and worked long hours.



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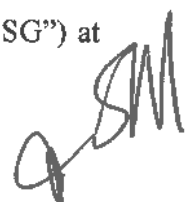
38. At no stage during the existence of MNMR did I or any of my partners sacrifice ethics or principles in order to attract work and clients. We believed that hard work would set us apart and pay dividends.
39. MNMR grew in stature and scale. The firm attracted good commercial work. For instance, during that time, I acted for the Independent Communications Authority of South Africa and the Competition Commission. The firm also advised on a number of notable transactions in the telecommunications sector, such as the proposed merger between BCX and Telkom, and the acquisition of the media and broadcasting assets of New Africa Investment Limited by Kagiso Media Limited and Johnnic Communications. Together with Webber Wentzel, MNMR successfully opposed the proposed merger between Sasol and Engen on behalf of BP.
40. In 2005/6 MNMR had grown to about 15 to 20 lawyers. The firm was busy. We also had an association with a law firm known as Hall and Langa, with the intention of ultimately merging the two firms. This allowed us to tap into the wealth of knowledge that Mr. John Hall, a very seasoned and respected practitioner, brought to the firm.
41. I worked alongside Mr Hall when we acted for Transtel, a division of Transnet responsible for providing telecommunication services, in the transfer of its portion of network assets to Neotel. The transaction saw the carving out and transfer of metro assets to Neotel, with the national long-distance network assets remaining with Transtel. The national long-distance fibre business became what is known



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today as Broadband Infraco ("Infraco"). Later and where appropriate I say more about Infraco and the role I played in the compilation of the names of directors that sat on its board.

42. In 2007, MNMR had to face up to its growth challenges. It required dedicated and skilled management. None of us were trained as managers of professional services firms. It was now no longer just a law firm but a growing business. The firm required major capitalisation to meet growth demands. We needed more staff, resources and systems to manage the volume of work. We had to think about extending our bank facilities to manage the growing debtors book and service the firm's operational expenses whilst we awaited payment from clients. We were at a crossroad. We had to decide whether to grow the business or to sell it. Growing meant more debt and increasing fixed cost.
43. We took professional advice from a reputable management consulting firm that specialised in advising law firms. We decided that corporate action was the only viable alternative. MNMR was a perfect candidate for a takeover. That is how we ended up Edward Nathan Sonnenbers ("ENS") at the beginning of the year 2008. Letting go of MNMR was a heart breaking but realistic and necessary business decision.
44. For the period 2002-2007, the ANC was a client of MNMR. I worked closely with the Secretary-General's office on matters that the firm handled on its behalf. It is during my interaction with the Secretary-General of the ANC ("the SG") at that time that I considered joining a political organisation.



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45. Although I was politically literate, I was not affiliated with any political organisation. My informal interactions with the SG of the ANC helped me better understand South Africa's liberation history and helped me locate my political views. In 2009/10, I joined the ANC branch in Midrand.
46. In 2008, MNMR merged with ENS and I became a director in the firm's litigation department.
47. December 2008 was the first time I had proper annual leave. Prior to that, I had not taken annual leave of any significance since I started working in January of 1999. I began to feel the weight of having owned a law practise. I was fatigued. I began a conversation with myself about my future. I started considering different options, including a position as in-house counsel at a corporation, or a life in the public service.
48. Whilst at ENS, I continued to do work for the ANC. Some of this work was referred to me by my fellow directors.
49. During the 2009 general elections, I enlisted as a volunteer in the National Legal and Monitoring Team of the ANC. This entailed giving advice to the ANC on matters that related to the electoral laws and regulations.
50. By the year 2010, I had done work for the ANC for over a decade and had had interactions with some of its senior leadership.

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51. Having set out my background, I now turn to the issues I have been called upon to address.
52. This affidavit is prepared almost 8 to 9 years since some of the events occurred. I have done my best to recollect all relevant events and facts. However, given the passage of time, I may not remember the specific dates and times of certain events or some of the details relating thereto, but may recall the events themselves and their significance.

HOW I BECAME MINISTER GIGABA'S SPECIAL ADVISOR

53. In November 2010, I became aware through colleagues and acquaintances in the legal profession that Minister Gigaba was looking for a legal advisor.
54. I considered myself to hold a combination of the experience and skills to be pointed to the position. I made enquiries that led me to Mr Thami Msomi, the Minister's then Chief of Staff. I submitted my CV and was later interviewed by Minister Gigaba. Prior to my interview, I had not had any professional or social interactions with Minister Gigaba.
55. A week or two later after the interview with the Minister, Mr Msomi contacted me by telephone and informed me that the Minister had decided to appoint me to the position. I believe I secured the appointment to the position on the merit of my qualifications, experience and skill.

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56. I took up the employment with the Minister on 1 December 2010.

MY INTERACTIONS WITH THE GUPTA FAMILY

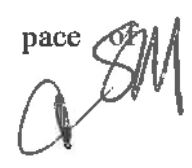
57. Before I took up employment as the Minister's Special Advisor, I had never heard of or met any member of the Gupta family.

58. Shortly after I commenced employment with Minister Gigaba in December 2010, the Minister briefed me on the Gupta family. He described them as one of a number of business people who were aligned or favourably disposed to the ANC.

59. The Minister tasked me, as one of my duties as his special advisor, to manage the Gupta family on his behalf as they were considered within ANC circles important stakeholders. I was required to interact with the Guptas and help them if they required assistance within the Minister's area of responsibility. During this briefing, the Minister advised me to expect a telephone call from a "Mr Gupta", and after a few days, Mr Rajesh Gupta phoned me and requested a meeting. I duly obliged and met with him at the Gupta family residence in Saxonwold in that same month.

60. This is not uncommon. It is important to point out that the Gupta family were not the only important stakeholders of the Minister that I was required to interact with and who I visited at their homes. I recall having meetings with eminent black business leaders at their homes in my capacity as the Minister's special advisor.

Typically, black business people complained about the slow pace of



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transformation and had specific proposals or grievances, which I was tasked with relaying to the Minister.

61. In my role as special advisor I also met with union leaders that organised in the SOC environment. For instance, at their instance and request, I met with the leadership of the South African Transport and Allied Workers Union (“SATAWU”) to discuss a strike that was taking place at SAA. I would report to the Minister after my engagement with particular stakeholders.
62. In another instance, I facilitated a meeting between Mr Dames – the then Group Chief Executive of Eskom – and a group of engineers from a coal mine in Mpumalanga. The mine in question was, at the time, facing closure. The engineers wanted to mount a management buyout of the mine as, in their view, that would save jobs that were at risk at the mine. I briefed the Minister about this overture from the engineers. He suggested that I put them in touch with Mr Dames.
63. Another typical interaction with stakeholders and interested parties involved meetings I attended separately with representatives of black commercial law and accounting firms. They wanted to meet the Minister in order to discuss the skewed briefing patterns by SOC’s. I raised their issues with the Minister. This led to the Minister meeting with these two sectors separately to hear their respective plights.



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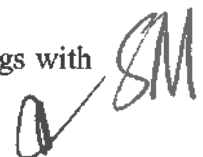
64. At all times, I kept the Minister informed of my interactions with different interlocutors , including Rajesh Gupta, the only member of the Gupta family that I dealt with.
65. In the first meeting with Rajesh Gupta, only he and I were in attendance. Mr Gupta introduced himself to me and we exchanged pleasantries. He explained that he wished to meet with me, as the Minister's advisor, because he supported broad-based black economic empowerment and wished to contribute to the government's efforts to empower black people. That sums up the first time I met Rajesh Gupta.
66. I met with Rajesh Gupta again in January 2011 and on a number of occasions subsequent to that. During these other subsequent engagements, he would be joined by Mr Tshepiso Magashule and Mr Duduzane Zuma. I came to learn that they were business partners. Save for what I have read in the media about their business relationships, I have no knowledge of the nature and extent of their business relations.
67. Over time, I learned that Rajesh Gupta predominantly conducted his business at his family's residence in Saxonwold. That is the reasons most of my meetings with him took place at his family's residence.
68. My engagements with Rajesh Gupta were in the period between January 2011 and March 2013. Throughout my interactions with Rajesh Gupta, I maintained a



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professional relationship with him. I engaged with Rajesh Gupta in my capacity as the Minister's special advisor only.

69. Save for exchanging pleasantries, I did not interact or engage with any other member of the Gupta family in my capacity as the Minister's special advisor.
70. What was clear to me was that they were embedded deeply within the ANC and had taken a side in the factional battles that gripped the ANC. In my assessment, they were aligned to the faction that supported former President Jacob Zuma.
71. By late 2012 or early 2013, the Gupta family began attracting negative publicity relating to the manner in which they conducted themselves towards cabinet ministers and political leaders, i.e how they exercised their political influence. Some of the allegations in the media related to the support that Gupta-owned The New Age newspaper ("TNA") received from the public sector. I viewed the negative media reports through the prism of the ongoing political contestation between the different warring factions within the ANC. I found nothing unusual about that in a hotly contested political space. I say so because the year 2012 was the year of the elective conference of the ANC where its leaders including its President would be elected. The position of President was contested. In the 2013 political calendar, the ANC dealt with the fallout from this conference between the losing and the winning factions.
72. Whilst the Gupta family had attracted controversy during my time as the Minister's special advisor, I did not become aware of any unlawful dealings with



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which they were involved. I held the view then that the controversy that they attracted was as a result of their stake in the politics of the ANC. As I explain later, already by early 2013 I had begun to distance myself from dealings with the Gupta family.

73. In March 2013, I consciously scaled back on my meetings with Rajesh Gupta, distanced myself and eventually ceased interacting with him altogether. To the best of my recollection, the last time I met with Rajesh Gupta was in about mid 2013.

74. I took this action because, in March 2013, the Minister was confronted by a media query relating to a meeting in October 2012 that I had arranged between Mr Vuyisile Kona and Rajesh Gupta at the Gupta residence. The Minister's spokesperson, in answer to this media query, told the relevant journalist that I had gone to the meeting in my private capacity when, in fact, I had gone to the meeting on official business in my capacity as the Minister's special advisor. I felt hurt and betrayed by this untruth. I took a decision to expedite my plans to leave my employment, which I began considering in the latter part of 2012.

75. The March 2013 incident was a culmination of events that were unsettling to me. For reasons that remain unknown to me, from about the third or fourth quarter of 2012, my relationship with the Minister began to deteriorate. Whilst our relationship remained cordial and professional, it became distant. He was no longer as accessible to me as he used to be. I maintained a professional outlook but knew that I needed to exit the job.



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76. I confided in some of my colleagues at the Minister's office to understand the basis of my now strained relationship with the Minister. I spoke to those colleagues who I considered to be closer to the Minister than I was and who had a history of having served with him in the youth and student movement, but I never got to the bottom of the issue. I became excluded from work in the office whilst the rest of the team remained cohesive and functioned normally.

**THE FACTS THAT PROVE THAT I HAD SCALED DOWN MY
ACTIVITIES AS SPECIAL ADVISOR AND FOCUSED ON MY JOB
SEARCH**

77. Throughout 2013 and until July 2014, I applied for jobs in different sectors, ranging from government, multinational institutions, automotive manufacturing, legal practice and telecommunications. I also approached recruitment agencies for assistance.
78. In December 2012, I approached Mr Ben Martins – who was then Minister of Transport and who was the former Deputy Minister of Public Enterprises – in order to ascertain if he had any objections if I were to apply for the post of Director General in his office.
79. I continued to look for other employment and in July 2014, I secured employment with Telkom.

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80. I mention my attempts to secure a job to show that I had not just decided to leave the employ of the Minister, but took active and concerted steps to do so. By the time my term with the Minister was nearing its end, I had reasonable prospects of finding a job.
81. A day after the presidential inauguration in 2014, the Minister called me to his official residence. He conveyed to me and my colleague, Ms Phelisa Nkomo, who was also the Minister's special advisor, that he had been designated as the Minister of Home Affairs in the fifth administration and that he would not need us in his new role because it required different skill-sets to those we possessed.
82. I happily accepted the Minister's decision because it saved me the awkwardness and difficulty of declining to follow him to his new ministry. After the meeting, I stayed to have small talk with him and Ms Nkomo to ease the tension and display maturity.

THE PURCHASE OF THE HOUSE

83. In the first quarter of 2012, I first contemplated purchasing the house. I came to know about it because, in one of my conversations with Rajesh Gupta, I mentioned that my fiancée (now wife) and I were looking to settle in the Houghton, Rosebank, Bryanston or Morningside areas, which were all suburbs that had good schools in anticipation of starting our family. Rajesh Gupta then mentioned the property and suggested that I should consider it, which I did.

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84. After viewing the property in about the first quarter of 2012, I felt that it met the requirement for the proximity to good schools. I disclosed verbally to the Minister my intention to acquire this property in order to avoid any conflict of interest. He did not object but cautioned that all must be above-board.
85. The house was owned by Islandsite 180 Investments (Pty) Ltd. We made the offer to purchase the house directly to Islandsite. The purchase price was agreed at R5 million, payable partly in cash and partly financed.
86. At all times, I dealt with the management of Islandsite and not directly with Rajesh Gupta.
87. In 2012, my fiancée and I applied for bank finance to purchase the house. Whilst awaiting the approval of the loan application, and in anticipation that the loan would be granted, we obtained the seller's consent, at own risk, to commence with renovation of the house to suit our specific need. We duly commenced with the renovations.
88. In 2013, whilst we were busy with the construction but before the financing was approved, the Gupta family started attracting a fair amount of bad press about their proximity to power and how they exercised their political influence. Some of this bad press was visited on me. This unsettled me and my family. We halted the work whilst we considered our position in the circumstances. In the interim, the bank declined the loan application on the basis that the property was not adequate security for the loan we sought. The sale fell through as a result.



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89. In 2014, my fiancée and I decided to proceed with the purchase of the house. A number of factors led to us to reviving discussions with Islandite to purchase the house. These included the following.

89.1. In April/May 2014, I now knew that I would no longer be working for the Minister going forward, which gave me greater confidence in proceeding with the purchase of the house.

89.2. Also, the brighter prospects of a new job allowed me to consider revisiting the purchase of the house.

89.3. Further, we had already taken the risk of making unfinished alterations to the property, so we decided to proceed with the purchase.

90. Despite these legitimate considerations, at all times we were conscious of the negative press that the Gupta family had attracted at that time, and we thought carefully about whether to proceed with the purchase of the property.

91. Having decided that the purchase was legitimate and that we were not breaking any laws, we proceeded with the transaction on the same terms as we offered in 2012, partly financed with a bank loan of R3.6 million. A copy of the approval of the bank facility is annexed marked "SM15". The balance of the purchase price of R1.4 million came from the sale of one of our properties. The proof of the transfer of funds to transferring attorneys is annexed marked "SM16". In total we paid R5 million for the property.

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92. There was no conflict of interest in the purchase of the property. The property was purchased in April/May 2014. I did not then believe, nor do I believe now, that the purchase of the property gave rise to a conflict of interest on my part.

MY TRIP TO INDIA IN JANUARY 2011

93. In January 2011, at the invitation of Rajesh Gupta, I travelled to India to attend the wedding of one of his family members. At the time, I had only met Rajesh Gupta twice, first in December 2011 after the Minister briefed me about the Gupta family and tasked me to manage them, and the second time in January 2011. On both occasions I met with him in the course of my duties. I did not have any personal relationship with him when he invited me to the wedding.
94. To the best of my recollection, Rajesh Gupta covered the expenses for the trip. Because I did not consider this a social excursion and I was not friends with Rajesh Gupta, I would not have undertaken the trip at my own expense.
95. I disclosed this invitation to the Minister. I annex a copy of my email to the Minister dated 18 January 2011 marked "SM17", in which I informed the Minister of the trip and sought his approval to undertake it.
96. I considered the trip of strategic political importance to the Minister, as did he, because it was important to understand the Gupta family as part of the responsibility that the Minister had tasked me with. I, however, had no concept of how big Hindu weddings could be. I spent very little time with Rajesh Gupta and

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only saw him at the organised events, which were large and not conducive to any social or other serious discussion.

97. If you discount the Christmas break, I was barely a month into my job as the Minister's special advisor at the time of the invitation to the wedding. Because I disclosed the trip and had no decision-making powers within the hierarchy of the DPE, I concluded that the trip raised no conflict of interest on my part. In addition, the Gupta family had not attained infamy, so apart from informing the Minister of my trip, I had no cause to be uncomfortable attending the wedding at Rajesh Gupta's invitation.

THE INVITATION TO MR GUPTA TO MY WEDDING

98. At paragraphs 13.16.1 to 13.16.3 of the Fundudzi Report, it is suggested that my invitation of Messrs Rajesh Gupta, Tshepiso Magashule and Duduzane Zuma is contrary to the statement I had made in answer to questions posed to me by Fundudzi, to the effect that I had no special relationship with these individuals. This inference by Fundudzi is unreasonable.
99. In the beginning of my interactions with Rajesh Gupta, I met with him alone always at his invitation and in the course of time, I came upon Magashule and Zuma at the Gupta residence. Outside of meeting Magashule and Zuma at the Gupta residence, I had no other dealings with them.



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100. During one of my interactions with the three men, they came to know that I was engaged to be married. I considered it courteous to invite them to my wedding in the circumstances. For the same reason, I also invited some colleagues from the Minister's office and some that I interacted with in the SOC environment. Notably, the three gentlemen did not attend my wedding. This was understandable because I did not have a social relationship with them.

DETAILS REGARDNG MY ROLE AS SPECIAL ADVISOR TO THE MINISTER

101. In paragraph 13.3 of the report and other parts, Fundudzi state that I motivated for the appointment of board members when it was not my job to do so, and that there was no evidence to demonstrate that, at all times, I was acting on the Minister's direction and under his authority. In paragraphs 13.3.20 to 13.3.23, Fundudzi misconstrues the role I played as the Minister's special advisor in the appointment of boards, and reaches incorrect conclusions about the processes that were followed.
102. Principally, Fundudzi misunderstands the process that was followed in the appointment of directors, the roles and responsibilities of the Minister, special advisors and the Department in the appointment of board members. This has led to it arriving at erroneous conclusions about my role in the appointment of the boards of SoCs.

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103. The Minister appointed board members. At all times, the Minister exercised this discretion and was not unduly influenced by me, as his special advisor, or the DPE or anyone else as far as I am aware.
104. At the time of my employment with the Minister, a Minister was allowed up to two special advisors. Special advisors accounted directly to a Minister. Generally, the term of employment of a special advisor is tied to that of his or her political principal. This means that when an incumbent Minister ceases to be a Minister, for whatever reason, the employment of the advisor generally also terminates.
105. The DPE's primary mandate is to manage the government's shareholding in the SOCs that fall under it.
106. The core functions of the Minister entailed overseeing the performance of the SOCs that fell under his responsibility and exercising shareholder powers in respect of those entities. The latter function involved the appointment and removal of directors of the DPE-related SOCs.
107. Thus, my duties as the special advisor to the Minister included advising the Minister in respect of the decisions he was required to make in discharging his core functions, including the appointment and removal of directors, amongst other functions. In this regard, I attach email from the Minister to me dated 23 May 2013 marked "SM18" to show that giving advice to the Minister on the appointment of boards was part and parcel of my job.



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108. In paragraph 13.3.24 of the Fundudzi Report, it is noted, correctly so, that the Minister appointed me in terms of section 12A of the Public Service Act 103 of 1994. This provision reads, *inter alia*, as follows:

“12A Appointment of persons on grounds of policy considerations

- (1) Subject to this section, such executive authorities as the Cabinet may determine may appoint one or more persons under a contract, whether in a fulltime or part-time capacity-
 - (a) to advise the executive authority **on the exercise or performance of the executive authority's powers and duties;**
 - (b) to advise the executive authority on the development of policy that will promote the relevant department's objectives; or
 - (c) **to perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority's powers and duties.”**

109. These provisions entitled – indeed, *required* – me to advise the Minister on matters that fell within his responsibilities, which matters included all matters relating to the appointment and removal directors at SOC's.

110. Annexure “SM19” is a thread of emails exchanged on 21 August 2012, starting with an email from Ms Nkomo to the Minister, followed by one from the Minister to me and ending with my email to the DDG: Legal and Governance, in which email was attached the CV of one of the candidates who sent her credentials via Ms Nkomo. This candidate was later appointed to the SAA board. The emails reflect the nature of the Minister's interaction with his special advisers on matters of board appointments.



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111. The Minister accepted or rejected advice as he deemed appropriate. For instance, the Minister rejected my advice about the removal of Mr Andrew Mthembu as the chairperson of Infraco. The Minister followed the contrary advice of the Deputy Directors General and other staff members in the ministerial office. Similarly, in 2013, the Minister accepted the advice of other colleagues to make an appointment to the SAA board over my advice to the contrary.
112. Furthermore, it is important to mention that cabinet supervised the Minister in the appointment of board members. It is established custom and convention that the Minister would seek cabinet's concurrence before appointing anyone to a board. That is how cabinet exercised its oversight over the board appointments. It has happened that cabinet questioned the Minister's decision to appoint a board member. The idea that I determined or influenced appointments to board of SOCs is not accurate. It places on me a power that I could not exercise as a mere special adviser.
113. Further, at the relevant time, the DPE had the following units each headed by a Deputy Director General: Transport Enterprises, Manufacturing, Energy and Broadband, and Legal and Governance. The Transport Enterprises unit dealt with Transnet, SAA, and South African Express Airways. The Manufacturing team handled matters relating to Alexkor (the diamond mine), SAFCOL (forestry), and Denel (defence and aerospace). The Energy and Broadband Unit oversaw Eskom and Infraco.



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114. The relevant unit responsible for the specific SOC and the Legal and Governance were responsible for the formal processes leading to the appointment of board members. Broadly, the department assessed the skills requirements of particular SOCs, conducted background checks on candidates and prepared a formal motivation for the Minister to approve specific appointments.
115. The Minister's office, which included his special advisors, his chief of staff, and his spokesperson, also received names from different sectors of the public.
116. The applications or nominations emanated from a variety of sources, including from the candidates themselves, persons nominating the candidate, individual business people, organised business and labour, organised professions and individual members of the public.
117. Once the applications or nominations were received, they were deposited with the Legal and Governance unit for further process. At times, we (both the DPE and the Minister's office) would seek advice from business, professionals in the relevant sectors and the organised professions on the names to be considered for a specific board.
118. In my capacity as the Minister's special advisor, as did my counterpart Ms Nkomo, I received applications directly from candidates and persons who wished a particular person to be appointed to a board of an SOC. I received these through emails and hand deliveries.



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119. After receiving a candidate's CV, I would pass it on to the Legal and Governance unit, which was the custodian of applications and nominations. I did so in the normal discharge of my duties. I was not personally vested in the outcome of any nomination or application other than to assist the Minister select suitable candidates. The test I applied to all CVs that I received was whether the candidate had the skill-set and experience required to serve a particular SOC.
120. The appointment of board members at the DPE broadly followed the following process:
- 120.1. Applications or nominations would be received from the public by departmental officials, ministerial advisors (such as myself) and the Minister himself;
- 120.2. The credentials of the candidates would be kept in a database by the Legal and Governance unit when there was no board appointment under consideration;
- 120.3. When names were received during the appointment process of a board, they would be referred to Legal and Governance for immediate process;
- 120.4. Based on the assessment of the skills gap in a particular board, the Legal and Governance unit, together with the unit responsible for that SOC, would prepare a skills matrix. This document guided the consideration of candidates and the composition of the board;

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- 120.5. Informal discussions would take place between the special advisors and the responsible DDGs on the different permutations of the proposed board;
- 120.6. The DDGs and the special advisors would then settle on a list of candidates. I would then take this list to the Minister for his consideration. This ensured that the Minister's views were taken into account before an official memorandum was submitted to him by the department to approve recommended candidates;
- 120.7. Once the Minister has indicated his views, I would communicate those to the relevant colleagues in the department and the Minister's office. This marked the end of my involvement and those of my colleagues in the Minister's office;
- 120.8. The Legal and Governance would vet or conduct background checks on the proposed candidates.
- 120.9. The specific sector unit and the Legal and Governance unit would then prepare a decision memorandum with motivation for the appointment of specific members and requesting the Minister to approve;
- 120.10. The Minister would either approve the list, with or without conditions; and

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120.11. On the strength of the Minister's approval, the Department would prepare a cabinet memorandum requesting the cabinet's concurrence. Once the cabinet has approved the list, the Minister would proceed to appoint the candidates as board members.

121. All the board appointments that took place during my time as the special advisor to the Minister followed the process I describe above.

122. This process is broadly consistent with the handbook for the appointment of persons to the boards of state-controlled entities approved by the national cabinet on 17 September 2008 ("the handbook").

123. Section 30 of the handbook provides that:

"There are a **number of ways** to source candidates. They range from consulting departmental databases (discussed earlier), advertising in the media and head-hunting, to **using referrals** and recruitment agencies. A preliminary selection of methods should be made when the time line for the appointment process is being developed. When developing the time line, seek clarification from the Executive Authority about when the Executive Authority wishes the candidate to be contacted. It is possible that the Executive Authority may wish to consider the candidate before he/she is contacted about the position." [my emphasis]

124. Section 31 of the handbook supports the contention that candidates may be sourced through referrals from the public, amongst a number of other ways. Section 31 states, *inter alia*, that:

"31 Sources of identifying candidates include –

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- (a) seeking declarations of interest via public advertising;
- (b) **using nominations provided by the public;**
- (c) consulting with the Directors-General Cluster, the Executive Authority and his/her Cabinet colleagues;
- (d) consulting with the board, in particular with the chair;
- (e) **consulting with interested parties, sectoral groups and other stakeholders;**
- (f) consulting with the parent department;
- (g) using outside companies or selection consultants;
- (h) using departmental databases, the Directors' Database of the Department of Public Enterprises and the Department of Public Service and Administration as discussed earlier;
- (i) using a nomination committee as discussed later in the section dealing with "Short- listing candidates"; and
- (j) using a nomination committee that was established as a committee of a board."

125. Section 20 of the handbook sets out the obligations imposed on special advisors. The section provides, *inter alia*, that special advisors are entitled to advise a Minister on decisions of cabinet (which necessarily includes the appointment or removal of directors from the boards of SOC's) unless such a special advisor serves on the board of an affected SOC. Section 20 reads as follows:

"Special advisers must be impartial and perform their duties objectively without fear, favour or prejudice. When a member of Cabinet is to participate in decisions of Cabinet regarding a state or state controlled institution, advice from his/her special adviser who serves on the board of that institution will raise questions about the objectivity of the advice and/or a possible conflict of interest."

126. Not only was I entitled to source CVs from the public as contemplated in sections 30 and 31 of the handbook, but I was also entitled, in my role as special advisor, to advise the Minister on board appointments.



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127. Fundudzi's findings against me is that third parties outside of the DPE and the Government (in this case, the Guptas) may have influenced the appointment of board members. This is unfounded.

128. The findings made against me are captured by the following passages in the Fundudzi Report:

“13.3.21 During the analysis of various documentation which included emails, we determined that during Minister Gigaba's tenure, Siyabonga Mahlangu (“Mahlangu”) who was the advisor to the Minister played a role in the appointment of some of board members (sic) at the SOC's. The said board members' motivations for appointment to the SOC boards were sent by Mahlangu to Minister Gigaba, Matona and Makholo. Makholo indicated that it was not Mahlangu's role to send motivations for Board appointment to Minister Gigaba.

13.3.22 We could not find any indication that Minister Gigaba requested Mahlangu to provide candidates and or motivations for board appointments.”

129. That my role involved engaging with stakeholders as aforesaid is supported by the findings made in the Fundudzi Report attributed to Minister Gigaba. The report states the following, which is attributed to the Minister [Fundudzi Report, para 13.3.24]:

“In his response to our written questions relating to Mahlangu's role in the appointment of board members, Minister Gigaba indicated that Mahlangu was appointed in terms of Section 12A of Public Service Act (sic) 103 of 1994 as his special advisor. He further stated that Mahlangu's responsibility was to advise him on matters relating to his duties as the Minister.”

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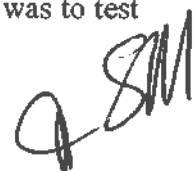
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130. The contention in paragraph 13.3.22 of the Fundudzi Report that special advisors should only direct their inputs to the Minister is a narrow and erroneous understanding of the role of a special advisor. In practice, there is dynamic interaction and exchange of ideas between the advisors and the departmental officials, with each maintaining their respective lines of accountability.
131. Whilst the Department and the Minister's advisory teams maintained and respected each other's statutory responsibilities, we consulted each other frequently and collaborated in a seamless way. It was pragmatic and efficient to do so. It was also customary for the Department to invite the office of the Minister to strategic planning meetings of the department where we gained context and background to their work.
132. The Minister convened regular meetings between the Department and his advisory team known with the acronym "SMC". I do not recall whether it stood for Senior or Strategic Management Committee. At these meetings, the Minister's advisors were not passive participants waiting to intervene through the Minister at a later stage as contended by Fundudzi. On the contrary, the advisors actively participated in the SMC discussions. The SMC dealt with key policy and strategic issues that the Department wished to raise with the Minister. The registry of the DPE kept a record of these meetings.
133. Throughout my time at the DPE, I received no complaint about my interactions with the officials of the DPE.

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134. There were no nomination forms as Fundudzi contends. Members of the public, organised business, organised labour, civil society and applicants themselves would send their CVs to the Minister through different functionaries within the DPE or the office of the Minister.
135. Outside of the context I have set out above, I deny the allegation in paragraph 13.3.23 of the Fundudzi Report, which holds that I motivated for the appointment of board members. All motivations to the Minister for the appointment of board members were made by the department to the Minister through the decision memoranda. Any advice I gave to the Minister in respect of the appointment of board members I made within the context and processes I have described above. The Minister made up his own mind on the issues tabled before him.
136. I did not act outside of the scope of my duties as is suggested by Fundudzi. Nor did I recommend anyone independently of the processes outlined above, as suggested in paragraph 13.7.3 of the Fundudzi Report. This paragraph also conflates the receipt of nominations and applications with recommendations. I received nominations and applications in my official and representative capacity many times. These nominations and applications were destined for the Minister. Only he had the power to appoint. The Minister acted on the formal recommendation of the DPE.
137. Testing the names with the Minister prior to the DPE submitting its recommendations cannot amount to a recommendation by me. My job was to test

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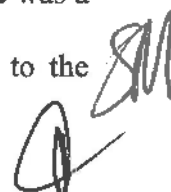
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with the Minister the lists that had been discussed by the DPE and the advisors.

This was done to facilitate an efficient and expeditious process.

THE APPOINTMENT OF SALIM ESSA ON THE BOARD OF INFRACO

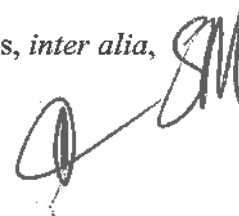
138. Fundudzi suggest that my involvement with the appointment Salim Essa to the board of Infraco was irregular. This is incorrect.
139. Infraco is one of the smaller SOCs under the DPE's portfolio and is a company that operates in the ICT sector.
140. I received Mr Essa's CV from Rajesh Gupta. His motivation to me was that Mr Essa was an upcoming businessman with a bright future in ICT. I submitted Mr Essa's CV in line with the processes I have outlined above.
141. At the time that I received Mr Essa's CV, there was nothing untoward in the public domain about Mr Essa or his association with the Gupta family that militated against his appointment. On the contrary, he qualified for the appointment and his credentials as appeared on his CV suggested that he would be beneficial to the business of Infraco.
142. Like all other directors that were appointed with him to the board of Infraco, his appointment went through the DPE's formal processes. The only thing that was flagged in respect of Mr Essa was his participation on many boards. There was a concern that he may not have had the time to devote himself properly to the



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affairs of Infraco. This much is clear from a decision memorandum dated 5 September 2011 prepared by the then Deputy Director General for Energy and Broadband Enterprises, Mr Chris Forlee, and which is exhibit 9 to the Fundudzi Report.

143. According to paragraph 13.8.19 of the Fundudzi Report, it appears that Mr Essa had interests in businesses in the IT/broadband space. The allegation is that he was not properly vetted before he was appointed on the board of Infraco (Fundudzi Report, paras 13.8.20 – 22).
144. I have no knowledge of the correctness or otherwise of this finding and am therefore unable to comment on it. However, I wish to point out that the conduct of background checks and the verification of any conflict of interest on the part of prospective candidates was the duty of the DPE.
145. At paragraphs 13.8.47 – 48 of the Fundudzi Report, it is stated that, once appointed to the Infraco board, Essa used his position to divert contracts to entities linked to the Guptas. The suggestion is that my role (and the role of others on the project team) was intended to achieve this outcome – using Essa to channel work to Gupta-linked companies.
146. This suggestion can be gleaned from paragraph 13.8.51 of the Fundudzi Report. It is stated there that Essa's numerous directorships (which caused a potential conflict of interest) were overlooked by the project team (of which it is stated I was member). The recommendation made by the Fundudzi Report is, *inter alia*,

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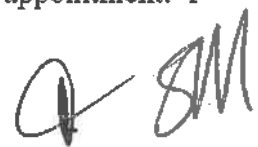
that it should be investigated whether I received any form of gratification and whether my conduct constituted a contravention of section 34(1) of the Prevention of Combatting of Corrupt Activities Act [Fundudzi Report, paras 13.8.60 – 61].

147. I reiterate that I was not responsible for vetting candidates. The infrastructure, resources and responsibility for doing so lay with the DPE. I acted *bona fide* in the discharge of my duties. My involvement in his appointment ended when the Minister exercised his discretion to appoint him and cabinet approved the appointment. I did not have the power that Fundudzi attributes to me. The findings and recommendations by Fundudzi in this regard are not sound.

148. Importantly, the other directors that were appointed, together with Mr Essa, to sit on the Infraco board – namely Mr. Mandla Ngcobo, Dr Anthony Githiari, Ms Nadia Bulbulia, Ms Nokuthula Selamolela – were put forth by the ICT sector and not Rajesh Gupta. Their nominations were routed through me.

149. At the time of his appointment, I had only seen Mr Essa once or twice from a distance. I had never interacted with him personally or professionally. I did not know him. I processed his nomination dispassionately in the ordinary discharge of my duties confident that he had the skill and experience to serve Infraco.

150. I have been requested by the Commission to state what I know about the email address infoportal1@zoho.com referred to in paragraph 13.8.30 of the Fundudzi Report. This paragraph appears under the discussion of Mr Essa's appointment. I



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have no knowledge of this email address. As far as I can recall, I have not interacted with it before.

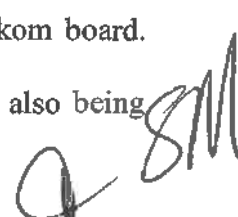
151. In paragraph 13.8.30 of the Fundudzi Report, it is stated that there has been wide media coverage about Mr Essa's involvement in the state capture project. To my knowledge, this was not the case at the time of his appointment. There was nothing in the public domain, and in my knowledge, that cast any doubt on Essa's fitness to be appointed to the Infraco board.

152. The assertion in paragraph 13.8.50 of the Fundudzi Report that Mr Essa's appointment was not transparent is wrong. He was appointed as part of a list of candidates that went through a number of iterations before it was settled. These iterations reflect the discussions that took place internally at the DPE before the latter made its final recommendation to the Minister.

THE APPOINTMENTS OF ZOLA TSOTSI AND ASHOK SHARMA TO THE ESKOM BOARD

153. The appointment of the Eskom board followed a similar process to that I described earlier. The list reflected in paragraph 13.9.4.1 of the Fundudzi Report is only one of a number of drafts that were considered and deliberated on.

154. Zola Tsotsi's CV came directly from him to me. I vaguely recall that it was at the time when the Minister was considering rotating members of the Eskom board. At the time that he was selected onto the Eskom board, Tsotsi was also being

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touted to lead the board of Lesotho's power utility. I seem to recall that the Minister met with Tsotsi before appointing him.

155. In paragraph 13.9.5 of the Fundudzi Report, the appointment of Mr Ashok Sharma is specifically raised. Based on his CV, he is an Indian national with technical expertise in power transmission.
156. I have no independent recollection of the appointment of Mr Ashok Sharma to the Eskom board. It is possible that I received his CV from Rajesh Gupta. I would have received Sharma's CV as part and parcel of my job as the Minister's special advisor.
157. I have checked Eskom's annual reports for the financial year ended 31 March 2012. Mr Sharma does not seem to have taken up his appointment as a board member.
158. Although I do not have an independent recollection of my email to the DG dated 10 May 2011 regarding the Minister's preferences for the Eskom board (exhibit 15 to the Fundudzi Report), it is consistent with the way we approached the process leading up to the appointment of board members. The email would have been preceded by a meeting between me and the Minister in which I tested what he thought about the proposed list as it stood at that time.

MY INVOLVEMENT IN THE APPOINTMENTS OF THE SAA BOARD



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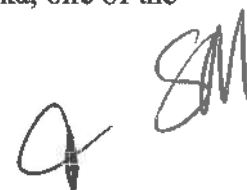
159. There are three issues that are raised in the Fundudzi Report that relate to the appointment of the board of SAA.
160. First, it alleged that there was no transparency in the manner in which SAA board members were nominated and appointed (para 13.10.10 of the Fundudzi Report). This report relies on an email by my fellow advisor to Minister Gigaba, Ms Phelisa Nkomo.
161. Second, the report questions the propriety of the appointment of Dr Rajesh Naithani to the Eskom board.
162. The third relevant finding of the Fundudzi Report, insofar as it concerns me and appointments of directors to the SAA board, is that I worked closely with Ashu Chawla, now a known Gupta associate, to ensure that Dr Naithani was appointed to the SAA board [para 13.11.46]; there was a lack of transparency in Naithani's appointment [para 13.11.47] and that Naithani was strategically placed at SAA to ensure that SAA closed down the Johannesburg-Mumbai route to benefit the Gupta family [para 13.11.42].
163. I first deal with the allegation of a lack of transparency in the process leading to the appointment of Dr Naithani to the Eskom board.

The alleged lack of transparency in nominations made to the SAA board

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164. The appointment of board members followed the fairly standard process that I have outlined above. Ms Nkomo was part of that process.
165. Ms Nkomo joined the Minister as his special advisor in late 2011 or early 2012 after the departure of Professor Vusi Gumede. The Minister tasked me to recruit Ms Nkomo, which I did. I met with her and facilitated her meeting with the Minister.
166. Ms Nkomo's objection – as expressed in her email of 30 August 2012 , which was addressed to the Minister and which is exhibit 19 to the Fundudzi Report – over the composition of the SAA board was based on her desire to have certain named candidates that she preferred to be placed on the list that was provided to the Minister. In her email, she correctly raised the issues she had with the Minister as the appointing authority.
167. The list underwent a series of changes until a final one was tested with the Minister. In her email, Ms Nkomo states that the finalisation of the list that I submitted to the Minister "*was not consultative*". This was not correct. The list had undergone the processes I described earlier and, at all times, Ms Nkomo was aware of developments, or at least should have been aware, because the compilation of the list was a collaboration between the Minister's office and the DPE.
168. Importantly, the Minister ultimately appointed Ms Nonhlanhla Kubeka, one of the candidates suggested by Ms Nkomo, as part of the SAA board.



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169. I placed no great import on Ms Nkomo's objection because I took it as a typical part of the deliberative processes within the office. In my mind, it was never elevated to anything beyond that.
170. Ms Nkomo's assertion that I was not part of the discussions on the diagnostic report (a diagnostic report would have been a report prepared by SAA or its consultants on what needed to be done to turn it around) and thus not qualified to consolidate the discussions on the formation of the SAA board, was mistaken.
171. I worked very closely with the department. At the time of the discussion of the SAA list, I would have had engagements with the DDG for Transport Enterprises. In any event, I had been part of numerous discussions on the woes that beset SAA at the time. Specifically, I recall a briefing to the Minister by the department's Transport Enterprises unit and McKinsey, which was held at a hotel in Hatfield. International experts participated in this discussion and gave advice. I am not certain whether this happened in 2011 or 2012.
172. Unlike Ms Nkomo, I also had the benefit to observe the performance of SAA over a full financial year, so my views on the board appointments were fairly more in-depth than hers.
173. In any event, at best, Ms Nkomo's email *epitomises* that discussions over the appointment of board members to SOCs were robust, had built-in checks and balances (in the form of objections) and that the final decision on these matters was that of the Minister.

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174. Having due regard to the period it took to settle on the final list – which involved numerous deliberations from 10 May 2012 to September 2012 – the number of iterations the list underwent and the quality of the candidates that were considered and ultimately appointed to the board, any contention that the process was not transparent is completely unfounded.

My role in the appointment of Dr Naithani to the SAA board and the issue of the Johannesburg-Mumbai route

175. In respect of the appointment of Dr Naithani, the query relates to certain emails I received at the time from Mr Ashu Chawla, which elaborated on the credentials of Dr Naithani. The relevant paragraphs in the Fundudzi Report are 13.11.3 – 13.11.7 and 13.11.9 – 13.11.18.
176. The essence of the allegations made in these paragraphs is that I collaborated with Mr Chawla to motivate for the appointment of Dr Naithani to the SAA board. The Fundudzi Report casts doubt over my lack of knowledge that Mr Chawla had apparently modified the documents that he sent to me [Fundudzi Report, para 13.11.18].
177. My recollection is that I received Dr Naithani's nomination to serve on the SAA board from Rajesh Gupta. I am not certain whether the nomination was unsolicited or that I sought Rajesh Gupta's help taking into account that the primary consideration was the improvement of the SAA/India relations.



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178. Rajesh Gupta claimed that Dr Naithani had strong links with the Congress Party and the government of India. According to him, Naithan had the potential or capacity to improve SAA's relations with the government and people of India. SAA ran a route from Sao Paulo to Mumbai via Johannesburg. The Johannesburg- Mumbai leg of the route had caused SAA serious losses. This was attributed partly to challenges with its landing and time slots in India, so much so that its passengers had difficulty connecting to their last destinations when they landed in Mumbai. SAA, at the time, also needed to attract more customers from India to render the Mumbai route profitable. I received Dr Naithani's CV on these bases and deposited it with the Department.
179. Dr Naithani is a scientist. The challenge I had with that was that his CV did not make it readily apparent that he had links with the Indian government, which could be of use to SAA and address the issues I refer to above facing SAA in India. It bothered me that his value to SAA was not readily apparent.
180. Shortly before Dr Naithani's CV came before cabinet, I raised these misgivings separately with the Minister and Rajesh Gupta. I asked for proof from Rajesh Gupta to support the claim that Dr Naithani could deliver favourable terms for SAA in India. That is how I received the emails from Mr Chawla, which elaborated on Dr Naithani's ability to serve SAA in India.
181. I do not remember whether I raised this concern with Rajesh Gupta telephonically or in person. Insofar as the Minister is concerned, it is likely that I raised the concern with him in person. Accordingly, I do not believe that there are

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documents or other supportive means which I can place before the Commission as proof of the concerns I held at the time relating to Dr Naithani's nomination to serve on the SAA board. I do not have any in my possession.

182. I had no, and have no, knowledge that Mr. Chawla modified the document elaborating on Dr Naithani's qualifications and if so, how many times, to what extent he did and why. I furthermore never had any discussions with Mr Chawla about Dr Naithani. I discussed my concerns directly with each of the Minister and Rajesh Gupta. My interaction with Chawla were limited to receiving an email he sent to me on behalf of his principal which contained information that was destined to my principal. I have no knowledge of the details of Chawla's involvement in the modification of the document or communication with Naithani. I did not discuss my query with him. I dealt directly with Rajesh Gupta. I would presume that Chawla was tasked by Mr Gupta to send me the information.

183. One of the reasons for my concern about the absence of the proof of Dr Naithani's ability to deliver for SAA in India is that the list of the proposed SAA board was about to serve before cabinet. I was worried that, if quizzed on Dr Naithani's credentials, the Minister might not have been able to substantiate his rationale for appointing Naithani. I also needed the comfort that Dr Naithani in fact had the political links in India it was claimed that he had. That is the context of the "Chawla emails" referred to in paragraphs 13.11.9 to 13.11.18 of the Fundudzi Report.



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184. In light of these explanations, I deny that I worked closely with Mr Chawla “to ensure that Naithani was appointed to the SAA board”, as alleged in paragraph 13.11.46 of the Fundudzi Report. I had no personal interest in the outcome of Dr Naithani’s nomination or application and simply processed his nomination and application in a manner typical of board appointments. As always, his appointment was considered by others and was deliberated over. Further, and as a matter of course, the authority and decision-making powers to appoint Dr Naithani to the SAA board lay in the hands of the Minister. He decided to appoint Dr Naithani to the SAA board with full knowledge of who had nominated him.

185. If his appointment was to further the state capture project, I was not aware of such nefarious and hidden motives.

The receipt of Naresh Kholsa’s CV

186. I have no independent recollection of the circumstances surrounding my receipt of Mr Naresh Kholsa’s CV, to be considered as a SAA board member. It is possible that I might have received it from Rajesh Gupta.

187. As stated above, I received requests for board appointments in the normal course of my duties. As was typical of all such receipts, exhibit 28 to the Fundudzi Report, proves that I deposited Mr Kholsa’s CV with the Legal and Governance department and played no further role. I do not recall that Mr Kholsa was ever appointed to any board of a SOC.

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188. I had no knowledge that Kholsa's affidavit was ever modified by anyone, including Mr Chawla, as alleged in paragraph 13.12.2 of the Fundudzi Report.
189. In paragraph 13.12.3 of the Fundudzi Report, it is alleged that Chawla and Kholsa had once been directors in the same company. At the time of the receipt and transmission of Kholsa's CV to the Legal and Governance unit, I had no knowledge of the business link between Kholsa and Chawla, and I still do not. The first I came to learn of such a link was in the Fundudzi Report.

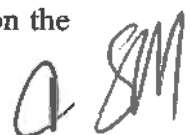
THE REMOVAL OF DIRECTORS FROM THE TRANSNET BOARD

190. In paragraph 13.13.8 of the Fundudzi Report, there is a suggestion made that my recommendation that the Minister remove Ms Thembakazi Mnyaka and Mr Don Mkhwanazi from the Transnet board, was based on an ulterior motive, being to conceal the fraudulent activities that may have been facilitated by Mr Anoj Singh, who has been reported as being a Gupta associate. This suggestion is false and is without merit.
191. The advice I gave to the Minister – set out in my email to him dated 12 December 2011, which is exhibit 30 to the Fundudzi Report – was based on the key concerns raised by Mr Mafika Mkhwanazi, the then chairperson of Transnet. Mr. Mkhwanazi had requested me to meet with him to discuss his unhappiness with the conduct of Ms Mnyaka and Don Mkhwanazi, both members of the Transnet board.



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192. I relayed his concerns to the Minister in my email of 12 December 2011. In essence, Mafika Mkhwanazi had found the behaviour of Ms Myaka and Don Mkhwanazi to be highly disruptive on the board, and that their conduct was likely to result in instability on the board.
193. One of the issues that Mafika Mkhwanazi had raised as a concern with me – which issue is canvassed in my email of 12 December 2011 – was that Ms Mnyaka had, without prior notice to the chairperson (Mafika Mkhwanazi) and the board, sought to introduce a document in a board meeting, which she claimed evidenced wrongdoing on the part of Anoj Singh. The manner in which she had procured the document also seemed to Mafika Mkhwanazi to be questionable and un-procedural. Additional potential breaches by Mnyaka are set out in my email of 12 December 2011.
194. At the board meeting in question, Ms Mnyaka claimed that the document she possessed was an agreement that she contended Anoj Singh had signed without authority. Mafika Mkhwanazi told me that Transnet's auditors were instructed to probe these allegations and found no fault on Singh's part. What appeared to anger Mafika Mkhwanazi was that Ms Mnyaka had had ample opportunity to disclose the document and her suspicions well before the board meeting in question, but she chose not to, opting instead to ambush the board. The chairperson found this disturbing.
195. I had no special affinity to, or relationship with, Anjo Singh. No one influenced my advice to the Minister. I gave the Minister advice honestly and based on the

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facts that were before me at the time. I do not recall the specific allegations that were made against Mr Singh.

196. At the time, the Transnet board was in the process of recruiting and appointing a permanent Group Chief Finance Officer ("GCFO"). Mr Singh had been acting GCFO in this position for a while. He was a contender for the post of GCFO. To the best of my recollection, Mr Mkhwanazi may have informed me that that there was a section of the board that did not want him to be the GCFO but, instead, supported a specific black female candidate for the post.
197. Ms Mnyaka's alleged disruption of the board meeting that I refer to in my email of 12 December 2011 was given as but one example of her disruptive behaviour.
198. Having received a decision memorandum dated 9 March 2012 (annexed as "SM20", on 13 March 2013, regarding the reduction of the board size and the rotation of Ms Mnyaka and Mr Don Mkhwanazi, the Minister annotated in manuscript on the memorandum and commented as follows "*DG's comments noted. Further note that I had personally notified Mr Mkhwanazi and Ms Mnyaka of my intention to remove them from the Board. What are the implications of this and what impact does it have on the draft letter?*" I have no independent recollection whether the department responded to the Minister comments and questions or how they were eventually dealt with.



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199. I expect that following my advice to the Minister, there was a discussion between him and Mafika Mkhwanazi. I have no personal knowledge of this. The Minister exercised his own mind in respect of this matter.
200. It is suggested in paragraph 13.13.22 of the Fundudzi Report that Advocate Melanchton Makobe was not aware of the reasons for the removal of Ms Mnyaka and Mr Don Mkhwanazi from the Transnet board.
201. Although I do not have a clear recollection of my interaction with the Legal and Governance unit on this matter, I remember that members of the Legal and Governance unit – either Makobe, Ms Matsietsi Mokholo or both – were part of the consultation with senior counsel. It is probable that the facts and circumstances surrounding the rotation of the board members in question and the reduction of the board, were discussed during the consultation. I find it strange that Makobe and Mokholo would not have been aware of a matter that the Minister was grappling with and sought their advice on it.
202. The allegation that I bypassed Mokholo and instructed Makobe to seek external legal advice is also not true and is, in any event, inherently improbable. I annex a copy of my email dated 21 February 2012 marked “SM21” and which I addressed to Ms Mokholo requesting her to obtain a legal opinion from senior counsel. This email was then forwarded by Makobe to Ms Mary Mosupye whom I presume is from the state attorney. This refutes the contention that I bypassed Mokholo.



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203. In any event, I presume that it is only Mokholo, as the head of the Legal and Governance unit, that could have authorised Makobe to brief the state attorney on the matter pertaining to the removal of the directors in question.
204. I reiterate that the reduction of the size of the Transnet board was not based on any ulterior motive on my part.
205. In respect of the allegation in paragraph 13.13.24 of the Fundudzi Report to the effect that Ms Mokholo lodged a grievance against me, it is the first time I learn of it. Throughout my time at the DPE, no one complained to me about my conduct in the office or made me aware that someone found my conduct objectionable. I had no way of knowing of Ms Mokholo's disquiet. Had I known of it, I would have attended to it.

THE APPOINTMENT OF ANOJ SINGH AS GCFO

206. In paragraph 13.15.1 of the Fundudzi Report, it is observed that “[I]t is not clear how Mahlangu obtained Singh's CV and what the purpose of the email to Matona was”. The email referred to in this paragraph is dated 16 June 2012.
207. I do not have any independent recollection of the events surrounding this email. However, as explained numerously, it was normal for me to receive CVs in the ordinary discharge of my duties as the Minister's special advisor.



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208. The chronology of events suggests that the CV may have been required in order to prepare a cabinet memorandum to table the appointment of Mr Singh as the executive director at Transnet. He was entitled to be appointed as such by virtue of him having been appointed as Transnet's GCFO.
209. The relevant decision memorandum from the DDG: Transport Enterprises and the DDG: Legal and Governance dated 31 May 2012 (marked "SM22") shows that by this date, the Transnet board had already appointed Mr Singh as GCFO. Furthermore, the memorandum shows that the Minister approved Singh's appointment on 13 June 2012, three days before my email of 16 June 2012.
210. According to the cabinet statement issued on 26 October 2012 (annexure "SM23" hereto), on 24 October 2012, cabinet approved the appointment of Mr Singh as GCFO of Transnet and executive director. I could only have dealt with Mr Singh's CV in the context of the DPE preparing a cabinet memorandum to table his appointment before cabinet. My role in this regard was purely administrative with no discretion.
211. I did not fail to address the allegations pertaining to Singh as alleged in paragraph 13.5.5 of the Fundudzi Report. I declined to discuss any matters relating to my previous employment with Fundudzi without it first furnishing me with a copy of its mandate letter and terms of reference. In this regard, I refer the Commission to a copy of my response to Fundudzi dated 26 February 2019, which is Exhibit 35 to the Fundudzi Report.



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MR VUYISILE KONA'S TESTIMONY MADE BEFORE THE COMMISSION

212. In February 2020, Mr Vuyisile Kona, the former chairperson of SAA, testified before the Commission and made certain allegations against me. These allegations may be summarised as follows:

212.1. In about October 2012 and when he was the chairperson of SAA, I hoodwinked him into attending a meeting with the Gupta family. At the time that he attended the meeting, he did not know that he was going to meet with the Gupta family.

212.2. At the meeting, he was offered a sum of R500 000 and he turned it down.

212.3. Following his refusal to accept the money, he was victimised in relation a certain contract involving SAA.

212.4. I chastised him for telling someone that he had met with the Gupta family. He says that I sent him a text written in isiZulu stating "*Uyangithengisa*", which means "*you are selling me out*".

212.5. He was dismissed as a director and chairperson of SAA because he had refused to cooperate with the Gupta family.



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213. Save to confirm that Mr Kona and I indeed attended a meeting with Rajesh Gupta at his residence, the balance of his allegations are untrue.
214. I did not receive advance notice from the Commission about Kona's written statement, which he later testified to before the Commission. Had I received notice, I would have provided the Commission and its investigators with the facts to rebut Kona's version insofar as it related to me, which contradictory facts could then have been tested against Kona's written statement and oral testimony.

How I know Kona

215. Some time in late 2011 or in early 2012, Mr Barnabas Xulu, a fellow attorney and an acquaintance, introduced Kona to me as an airline and aviation expert. As I said, it was part and parcel of my duties to meet people such as Kona who could potentially add value to SOCs.
216. Kona's knowledge of, and experience in, the airline industry impressed me. I quietly made enquiries about the veracity of his claimed experience and expertise and how his peers regarded him. I received positive feedback. Even those that had reservations about him had only mild protestations. I undertook my background enquiries about Kona over a number of months.
217. Based on my findings, I encouraged Kona to submit his CV for consideration as a board member of SAA. He did so. His credentials were impressive and inspired



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hope that the airline would be directed by people who had intimate knowledge of the business.

How Kona was appointed

218. Kona suggested in his oral testimony that he was *hurriedly* appointed to serve as the chairperson on the board of SAA, because the board of SAA had resigned *en masse*, and that he therefore had to urgently assume his position on the board and attend to the finalization of SAA's financial statements. This much is clear from a reading of pages 80-81 of the transcript of his testimony ("the Kona transcript").

219. These allegations are incorrect. Mr Kona only assumed his position as chairperson having been officially appointed as such at SAA's annual general meeting (AGM) of September 2012. The board of SAA had approved its financial statements on 6 August 2012, a month before Kona's appointment. In support of this allegation, I refer the Commission to the 2012 Audit Committee Report published on page 59 of the SAA 2012 annual report, an extract of which is attached marked SM24

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220. Following the mass resignations of directors on the eve of the AGM, the Minister appointed Ms Dudu Myeni to act as interim chairperson until the date of the AGM. There was no necessity for Kona to take any urgent action as a result of the mass resignations. In this regard, I refer the Commission to page 57 of the 2012 SAA annual report, an extract of which is attached marked SM25 This is

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the signature page of the 2012 directors' report, which depict the signature of Ms Dudu Myeni as acting chairperson of SAA on 28 September 2012.

221. In September 2012, the Minister appointed Kona as chairperson of SAA. I recall that I had primed Kona to the possibility that the Minister may appoint him as chairperson. Thus, it would have come as no surprise to him when cabinet confirmed his appointment. His suggestion that he was caught by surprise at his appointment is confusing.

Board subcommittees

222. Kona's assertion at page 82 of the Kona transcript that I played a role in the constitution of subcommittees is false. Any discussion with Kona about the committees was at his instance. At best, he may have briefed me on how these committees were selected.
223. The membership of these committees was decided by the board members themselves. A record of this should be available at the office of the SAA company secretary.

The meeting at the Gupta residence

224. Kona distorts the purpose of this meeting and what took place at the meeting. His evidence is recorded at pages 82 – 101 of the Kona transcript. He first did so in an article that the Sunday Times newspaper published sometime in March 2013. At



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that time, Kona was motivated by anger at being terminated as the chairperson and director at SAA.

225. Kona's allegations about what transpired at the meeting with Mr Gupta are false for the following reasons.
226. First, Kona's allegation that I did not inform him in advance that we were due to meet with Rajesh Gupta at his home is untrue [Kona transcript, p 84]. I in fact did inform him of that fact. This is evidenced by the fact that, at the meeting, Kona was able to converse fully on the state of the corporate accounts that the companies owned by the Gupta family had with SAA, a topic that Mr Gupta had made clear to me before the meeting that he wanted to discuss with Kona, and which topic I had relayed to Kona before the meeting.
227. Kona was able to converse fully on this issue because he had had the opportunity to consider it, knowing that we were due to discuss it with Mr Gupta.
228. As mentioned earlier, these sorts of discussions with Mr Gupta took place because I had, from the very beginning, been instructed by the Minister to "manage" the Gupta family, as important and politically connected within the ANC, and as important business people. I had always understood that they needed to be treated with care.
229. I may or may not have referred to Rajesh Gupta by name. Whilst I do not recall the exact words that I may have used at the time, I recall having described Rajesh



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Gupta to Kona as an important stakeholder. I recall that I certainly described the business that he and his family had as Sahara Computers and The New Age Newspaper ("TNA"). At the time, I felt that I had sufficiently and fully informed Kona of the interlocutors we were scheduled to meet. If that was unclear to Kona, he did not mention that fact. In any event, I am clear in my mind that he knew precisely who we were scheduled to meet, as he had prepared for the meeting and conversed fully with Rajesh Gupta, as explained above.

230. It is therefore false of Kona to say that I concealed the identity of the Guptas, as he does on p 84 of the Kona transcript. I had no reason or motive to do so. I had a good working relationship with Kona. Further, apart from the fact that, in 2012, it was clear that the Gupta family belonged to a particular faction in the ANC, there was nothing illegal or unlawful about their businesses or conduct that I was aware of.
231. It is also incorrect that I pestered Kona to honour this meeting [Kona transcript, p 83]. When I raised the request for a meeting from Mr Gupta, Kona agreed with no apparent reservations. All that remained was the synchronisation of diaries.
232. I note that Kona testified that he found it strange that we had a meeting scheduled at the Gupta residence. I do not recall any disquiet on the part of Kona about attending a meeting at the Gupta residence, which, at the time, had not attained any infamy whatsoever to my knowledge.



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233. In respect of the business of the day, Mr Gupta prefaced his talk with something along the lines that his family supported the government and that SOCs needed to support black businesses in order to ensure transformation. He proceeded to discuss two subjects, the TNA and the travel requirements of their companies and family. The discussion ended with an agreement between Mr Gupta and Kona that the former would dispatch a person to go to SAA to reconcile their corporate account. Insofar as the TNA was concerned, that matter was left to Mr Kona and Mr Nazeem Howa. I had no further involvement in the discussions between Mr Kona and any of the managers of the companies owned by the Gupta family. I have no knowledge of what then transpired in respect of the issues discussed at this meeting.

Kona's mention of discussions at the meeting relating to the Lufthansa consulting contract

234. The meeting at the Gupta's residence did not involve the Lufthansa consulting contract, as suggested by Kona.
235. Mr Gupta was preoccupied by the desire to increase TNA's subscription.
236. I did not have knowledge of any consulting contract that SAA was discussing with Lufthansa. I also had no knowledge of any telephone call that Kona alleges was made by Mr Gupta to the Director-General. This was not in my presence.



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237. I have no knowledge of the discussions around Kona's engagement of Lufthansa Consulting and of any investigation done by the DPE.

The allegation that Rajesh Gupta offered Kona cash in my presence is untrue

238. I did not witness Mr Kona being offered any money in my presence as he alleges [Kona transcript, pp 96-8]. I did not see any bundles of cash in the room where the meeting was held. It is also incorrect that Kona left the room on his own [Kona transcript, p 102]. When Kona took leave, Mr Gupta walked him out. I am baffled by this allegation from Kona.

239. After this meeting, I continued to interface and correspond with Kona. At no stage has he ever raised with me the issue about him having been offered money by Mr Rajesh Gupta. Our interaction continued as normal.

Kona's assertion that I knew when SAA paid him his monthly salary

240. Kona's assertion that I knew when he got paid as a director of a SOC is also untrue [Kona transcript, p 96]. I doubt that any of the officials of the DPE know of this detail.
241. At best, the DPE approved a framework for the remuneration of directors, not the payment of specific directors' fees.



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242. Mr Kona's remuneration was paid by SAA and not through the DPE; it certainly is not a matter that ever came before me.

The SMS text message I sent to Kona

243. Kona has deliberately removed this SMS from its factual context and weaponised it against me when the Minister removed him as a director at SAA.
244. The SMS is discussed at pages 117-9 of the Kona transcript. The meeting at the Gupta residence happened in October 2012 and I sent the SMS to him in November 2012. The SMS had nothing to do with the meeting at the Gupta residence, which had taken place in October. It had to do with a meeting I had had with Ms Myeni the night before I dispatched the SMS to Kona.
245. At the time I sent the SMS to Kona, Kona had confided in me that he was eager to be considered for the position of Group Chief Executive Officer for SAA. I gave him advice. In a nutshell, my advice was that he should convince his board and the Minister that he was worthy of the posting. I also counseled that he should be open with Ms Myeni, the then acting chairperson of SAA, and seek her counsel about his aspirations.
246. On the day preceding the SMS, I had a meeting with Myeni. I advised Kona on that day to canvass his career aspirations with Ms Myeni ahead of my meeting with her. I said to him that would help me gauge Ms Myeni's feedback and advise him of his prospects.



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247. Instead, Kona, having misconstrued the nature and extent of his relationship with Ms Myeni, disclosed to her the details of the discussions he and I had about his career aspirations, including that I was scheduled to have a meeting with Ms Myeni that evening. Ms Myeni was visibly not pleased about this when I met her. My meeting with her deviated from whatever she had planned to canvass with me and focused on her displeasure at what I had said to Kona. This took me by surprise. I was shocked at Kona's lack of discretion. The meeting also revealed to me that Myeni treated Kona with circumspection. It is against this background that I sent Kona the SMS the next morning. I was upset at his lack of discretion.



248. The "mission" referred to in the SMS was Kona's aspiration to be the GCEO of SAA. He completely sabotaged things for himself and was never awarded the position. In the process, he also compromised me in the eyes of Ms Myeni. This event made it appear as if I was pushing for Kona to become the GCEO. I felt very aggrieved at the whole affair.

The removal of Mr Kona as a director and chairperson of SAA

249. I know of no link between Mr Kona's visit to the Gupta residence and his removal as a director of SAA. Mr Kona's removal as director followed a deterioration of the relationship between him and the board of SAA. I am not certain when exactly this fallout happened.

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250. Through a decision memorandum dated 18 February 2013, the department recommended to the Minister that he be removed. This decision memorandum is attached hereto marked "SM26". 
251. This memorandum would have been triggered by formal communication from the SAA board. The records of the DPE and the company secretary at SAA should shed more light on the reasons behind Mr Kona's removal as a director of SAA.
252. A letter signed by the Minister to Kona dated 26 February 2013 advances misconduct proceedings against Kona as the basis for the Minister's intention to remove him. The Minister invited Kona to make representations. A copy of the Minister's letter in question to Kona is annexed marked "SM27". 
253. I seem to recall that the Minister received written representations from Mr Kona's lawyers. However, I am unable to remember the contents of Kona's submissions. If I am correct in my recollection, Kona's submissions were in the possession of the DPE and might still be in the DPE's possession. Kona did not attend the AGM to present his side of the story to the Minister, despite having been given adequate notice to do so. That is how and why he was removed as a director of SAA.
254. Kona launched an application to review and set aside the Minister's decision to remove him. I do not recall what became of this application. I also do not recall the grounds of the review that he relied on. His founding affidavit should shed light on what he believed to be the reasons behind his removal. I doubt that his



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reasons included anything that related to the meeting he and I had with Mr Gupta. The Gupta reference was part of his retaliation through the media. He knew at the time, 2013, that the Gupta family had started attracting bad press.

Attempts to assist Kona to resolve his issues with the board

255. Upon learning of Kona's difficulties with the board, I tried to assist him. I convened him and one of his fellow board members and former SAA executive, Mr Andile Mabizela. The three of us met at the Holiday Inn in Woodmead. Even at this meeting, Kona never mentioned the Gupta family as a source of his problems. We could not get to the bottom of his problem. I do not remember the date of this meeting.

256. Early in January 2013, I met Kona on a flight back from Durban after the ANC January 8 celebrations. He was visibly distressed. He said to me that he wished to leave SAA on amicable terms. I suggested that he should have this discussion directly with the Minister. I do not recall if I ever tried to facilitate a meeting between him and the Minister. It is possible that I did and failed.

My last encounter with Kona

257. A year or so later, I bumped into Kona in Sandton at the offices of a mutual acquaintance. It appeared to me that he had just finished a meeting at this office. I asked him why he had made damaging and false statements about me to the media. His response was that "what did you expect me to do". He said that he



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was under attack from the DPE and I gauged from this that he believed I had a hand in his axing from the board of SAA. The discussion was tense and short.

258. Should I have missed any material facts in this affidavit in respect of the allegations made by Mr Kona, I will, at the appropriate time and if necessary, seek the leave of the Commission to file a supplementary affidavit.

THE TESTIMONAY OF MS CHERYL CAROLUS

259. On 29 October 2018, Ms Carolus submitted a written statement to the Commission. In certain parts of her statement, Ms Carolus refers to me and the role I played as the Minister's special advisor.
260. On 7 November 2018, the Commission's legal team furnished me with a copy of Carlous's statement and informed me that she was due to give oral testimony before the Commission on 29 November 2018.
261. I read Carolus' statement and took legal advice. I was advised that it did not implicate me in any wrongdoing but contained facts that I needed to address and explain to the Commission.
262. In light of that, on 21 November 2018, I provided the Commission with my written statement responding to Carolus' allegations. A copy of my statement is annexed hereto marked "SM28". For the sake of brevity and to avoid

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unnecessarily burdening this affidavit, I request the Commission to read this statement as part of my affidavit.

MS SIZA MZIMELA'S EVIDENCE

263. Ms Siza Mzimela was, during my dealings with her, the Group CEO of SAA.
264. I did not receive a notice of Ms Mzimela's statement. I have dealt with parts of her testimony in my response to Carolus.
265. At issue were my interactions with Mzimela during a meeting that took place at the DPE between the Minister, SAA and the CEO of Jet Airways. Jet Airways had requested the meeting.
266. Jet Airways and SAA ran flights in the Mumbai-Johannesburg route. Both airlines were making a loss on this route. SAA's route was a Sao Paulo-Mumbai route via Johannesburg. The Mumbai-Johannesburg leg of this route was the cause of the losses for SAA. Jet Airways complained that SAA reneged on certain agreements with it on codeshare. SAA alleged that Jet Airways wanted to muscle it out of the route.
267. On the facts as presented at the meeting, I considered the competition between Jet Airways and SAA destructive. It appeared to me to be a race to the bottom. I was not convinced that SAA had a plan on how to outdo Jet Airways and recover all the losses once it had outmaneuvered Jet Airways. I raised this view pertinently



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with Ms Mzimela. I queried her strategy particularly because she was deploying taxpayers' money in this destructive competition. In my view this money could be appropriately channeled to address the needs of the needy instead of an uncertain commercial strategy.

268. My focus was not Jet Airways more than it was the wastage of national revenue by SAA. My exchange with Ms Mzimela were heated.
269. When I realised that I might have offended Ms Mzimela in my manner of expression and tone during the meeting and in our discussions pertaining to the Sao Paulo-Mumbai route, I reached out to Ms Mzimela and apologised for my discourteous and unprofessional manner of engagement. I noticed that I had offended Ms Mzimela by the expression on her face. She appeared disturbed by what I had said or how I said it. I cannot remember the exact words I used which may have offended Ms Mzimela. My frustration was that I was not convinced that SAA had a clear plan in relation to the Mumbai route,
270. I wish to reiterate that at all times, I acted in the honest discharge of my duties. I was not motivated by any outside interest. I deny Mzimela's evidence that I said I to her that acted on instructions. I received no instructions from anyone. The views I expressed were a response to the discussion as it was unfolding.
271. Time has proven me correct. Media reports have suggested that both SAA and Jet Airways ended up exiting the Johannesburg-Mumbai leg of the route.



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272. I deny, as stated by Mzimela in her evidence, that I had any specific knowledge of the arrival times and modes of travel of the CEO of Jet Airways. Although I do not have an independent recollection of all of the events of the day, I recall that we were all made to wait an inordinate amount time before the meeting could start. I recall having made numerous enquiries about the delay from the administrative staff of the Minister. It is likely that I got to learn about the arrival of the executives from SAA through this enquiry.

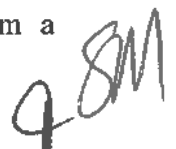
273. Should I have omitted any parts of Mzimela's evidence that requires a response or be required to address it in more detail, I am willing to submit a separate affidavit to deal with it.

MR BRIAN DAMES' MEETING WITH RAJESH GUPTA

274. During his testimony in Parliament, Mr Dames testified that I lured him to a meeting with Rajesh Gupta at the office of Sahara Computers in Midrand. I do not remember the date of this meeting. This statement by Dames is not true.

275. At the time, Dames was the Group Chief Executive of Eskom.

276. Throughout my time as the Minister's special advisor, I facilitated a number of meetings between Dames and business people. I disclosed the identity and purpose of those people that requested meetings with him. For example, I facilitated a meeting between him and a former CEO of Cell C who, at the time, traded in cement. He requested to meet Mr Dames to introduce to him a

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technology that turned ash produced at the power stations into concrete and cement.

277. Another example is that in 2013/14, a group of engineers from Mpumalanga had approached the Minister through the then Executive Mayor of Nkangala district in Mpumalanga. They wished to acquire a coal mine in Mpumalanga which was facing closure. These engineers had a plan about how they could make the mine profitable and save the jobs at the mine. The engineers requested to meet Mr Dames. Apparently, this mine had the potential to supply Eskom with coal and that is how it could have been saved. The Minister asked that I arrange the meeting. I did and accompanied them to their first meeting with Mr Dames.
278. Insofar as the meeting between Mr Dames and Rajesh Gupta is concerned, it arose out of a specific context.
279. One of the companies owned by the Gupta family owned a farm somewhere in Mpumalanga. This farm had coal deposits in it. The Gupta company had rights to mine this coal. There was a swamp or some ecological reality that cut across this farm and the one adjoining it. This raised environmental complications for the mining operations in the area. However, despite these challenges, the mine from the neighbouring farm had been supplying coal to Eskom but when the Gupta mine attempted to supply Eskom with the coal, Eskom demanded certain environmental authorisations or permits. According to Rajesh Gupta, Eskom did not require the same of the neighbouring mine.

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280. Furthermore, the management of the mine owned by the Gupta family had attended at Eskom offices over a protracted period to try to resolve this matter, but without success. It is on this basis that Mr Gupta requested that I organise the meeting between him and Mr Dames.
281. I informed Mr Dames of Gupta's request for the meeting. He agreed but expressed concerns about meeting Mr Gupta at Eskom or at the latter's residence. We agreed that he would meet Mr Gupta at Mr Gupta's office in Midrand. This is the office block that was used by Sahara Computers. A date was set and I accompanied Mr Dames to the meeting.
282. I did not lure Mr Dames to this meeting. He knew of the meeting in advance and agreed to it. This was the first and only time I went with Dames to a meeting. Therefore if he did not know where we were going, he would have asked before we got to the meeting. It is therefore not correct that he was going to meet with Rajesh Gupta at Sahara Computer office. At the meeting, Mr Gupta raised his complaints. Mr Gupta was usually blunt and forward in his manner of expression. This did not sit well with Mr Dames. He understandably found it rude and insulting.
283. During this conversation, Mr Gupta also complained that Eskom discriminated against the TNA and favoured established newspapers. Although the meeting was tense, the tension eased as the meeting progressed. Mr Dames agreed to investigate the allegations Mr Gupta made about the mine. I cannot recall what

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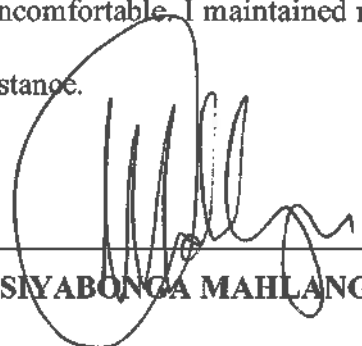
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was said about the newspaper. Neither Mr Gupta nor Mr Dames gave me any feedback about what transpired thereafter.

284. After this meeting, I maintained contact with Mr Dames generally about matters pertaining to Eskom. I held him in high regard and believed that he was doing what he could to address the challenges that Eskom faced.

285. There was a time I sensed that all was not well between him and the board. I went to extraordinary lengths to ensure that he secured an audience with the Minister to address his concerns. I do not recall the specifics of where we were but I recall having to ask the Minister to give Mr Dames a lift in his official car so that they could talk.

286. Even prior to his testimony in Parliament, Mr Dames and I related well whenever we met. I only sensed tension from his side this year at the ANC January 8 celebrations in Kimberley. He was courteous but uncomfortable. I maintained my friendly demeanor towards him but respected his distance.



SIYABONGA MAHLANGU

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at SANDTON..... on this the 9 day of **SEPTEMBER 2020** the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and



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Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

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SM1

From: Khanyisa Khumalo khanyisak@fundudzi.co.za
Subject: Forensic investigations at DPE
Date: 22 Jan 2019 at 17:21:58
To: mahlangusiyabonga@gmail.com
Cc: Ernest Nekhavhambe ernestn@fundudzi.co.za

Dear Mr Mahlangu

The above matter refers.

Please see attached questions for your attentions.

Regards

Khanyisa Khumalo

011 403 2526

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Siyabonga Mahlangu

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Ernest Nekhavhambe

our ref

22 January 2019

Dear Mr Mahlangu

RE: Forensic investigations into various allegations at DPE

Fundudzi Forensic Services was appointed by National Treasury to investigate various allegations of irregularities within DPE. During the course of our investigation, we identified communication between yourself and other DPE officials relating to the appointment of board members at various SOC's.

Please see below questions relating to the above investigation for your attention. We will really appreciate your response by close of business on Monday the 28 January 2019.

1. Transnet - Governance matter

1.1. On 12 December 2011 you sent an email to Gigaba's private email nkanyezi.gigaba@gmail.com with the subject matter: "Transnet government matters", you detailed the outcome of your meeting with the Chairperson of the Board (Mkhwanazi). The email gave a detail of Mkhwanazi's dissatisfaction towards Thembakazi Mnyaka (Member of the board), Mkhwanazi's concern on Don Mkhwanazi's Conflict of Interest and a request by Gigaba to meet with Mkhwanazi at his residence (Annexure SM1).

- 1.1.1. What was your mandate within the Minister's office?
- 1.1.2. Why was the email dated 12 December 2011 sent to the Minister's private email and not an official email?
- 1.1.3. Was Thembakazi Mnyaka given an opportunity to present her case to you or to the Minister?
- 1.1.4. Did you or the Department follow up on Mkhwanazi's allegations against Thembakazi Mnyaka prior to the decision to remove her from the board?

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1.2. On 17 April 2012, Melanchton Makobe sent you an e-mail and attached to the email was "speaker notes – Transnet Reduction of the Board" (Annexure SM2).

1.2.1. Why was the reduction of the board used as a reason for the removal of Thembakazi Mnyaka, Don Mkhwanazi and Iqbal Sharma while it is evident in your e-mail dated 12 December 2011 that, that was not the case?

1.2.2. Were your concerns as outlined in the e-mail to the Minister communicated with Melanchton Makobe; if not why were they not communicated with him?

2. Candidate with sales and marketing experience

2.1. On 27 August 2012, you sent an email titled "Candidate with sales and marketing experience" to Matsietsi Mokholo("Mokholo") requesting her to include Naresh Kholsa ("Kholsa") amongst the list of candidates for sales and marketing. In your email to Mokholo, you stated that "Please include this candidate. He has skills to penetrate the Indian market." Attached to the email was Kholsa's CV (Annexure SM3).

2.1.1. Where did you source Kholsa's CV from?

2.1.2. Were you aware that Kholsa's CV was edited by Ashu Chawla?

2.1.3. Do you have a relationship with Ashu Chawla?

2.1.4. Which SOC was Kholsa earmarked for?

2.1.5. Which position was he earmarked for?

2.1.6. Where was Kholsa ultimately placed?

3. Appointment of Rajesh Naithani

3.1. On 11 September 2012, you sent an email to Minister Gigaba titled "Motivation for Naithani" (Annexure SM4). In your e-mail you wrote:

"Dear Minister

Herewith a very brief note capturing the essence of the argument for the appointment of Naithani.

I have not seen his latest CV, which i presume has been attached to the cab memo. I think we should draw from it. I do think that we should link his appointment with the need to understand India in order to turn the India route profitable. His governmental links, knowledge of Indian environment will stand us in good stead when we plan to maximize the profitability of this route."

Attached to your email was document titled "Rajesh Naithani narrative" explaining a summary narrative on Naithani. According to the narrative document, "SAA has considered India to be a strategic route that requires to be fully exploited. The nomination of Dr

Forensic investigations into various allegations at DPE

Naithani is meant to assist in understanding the Indian market and to open up opportunities for SAA."

3.2. We noted that the document was authored by "Ashu":

3.2.1. Where did you obtain the document?

3.2.2. How was the document presented you?

3.2.3. Who recommended Naithani to you?

3.2.4. Do you have a relationship with Ashu Chawla?

3.3. On 12 September 2012 at 07:28, you sent an email to Minister Gigaba titled "*Further thoughts*" (Annexure SM5). In your email, you indicated that Naithani was working on India specific arguments.

3.4. Attached to your email was a document titled "*Dr.docx*". The said attached document was a 1 page summary of Naithani's work experience. The document further indicated that Naithani "*His passion for building businesses can be best put to use at SA airways to make it world's favorite Airlines*".

3.5. We noted that the document was also authored by Ashu.

3.5.1. Where did you obtain the document?

3.5.2. How was the document presented you?

3.6. Naithani was appointed into the SAA Board and subsequently set in the Procurement and Tender Process Committee and Remuneration and Human Resource Committee;

3.6.1. How was Naithani appointed in the two sub-committees?

3.6.2. Did you play any role in the appointment of Naithani in the two committees?

4. **Objection to Mahlangu's proposed list**

4.1. On 30 August 2012, Phelisa Nkomo ("Nkomo") sent a letter to Minister Gigaba and copied you. In her email, Nkomo raised concerns in the manner in which the proposed SAA Board list was compiled (Annexure SM6).

4.2. In her email to Minister Gigaba, Nkomo indicated that you had missed all the deliberations on SAA diagnostic report. Nkomo further indicated that she does not agree that Mabizela should seat on the SAA Board as it would be interpreted as double dipping by Cabinet.

4.2.1. Were there any consultations relating to the proposed lists of board members for SAA?

4.2.2. Who was part of the consultations?

4.2.3. Why did Nkomo raise objections that there was no consultation?

5. **Appointment SAA Express Board**

5.1. On 10 May 2012, Orcilla Ruthnam sent you an e-mail relating to the SAA Express Board members (Annexure SM7).

5.1.1. What was your role in the compilation of the list of SAA Express Board?

6. Rafique Bagus

6.1. On 19 June 2012, you sent an e-mail to Orcilla Ruthnam and Tshediso Matona. Attached to the e-mail was a document titled "*Notes on Bagus*" (Annexure SM8)

6.1.1. Where did you obtain the document from?

6.1.2. What was the purpose of the document?

6.1.3. Who authored the document?

6.1.4. Were you involved in the appointment of Bagus at Alexkor?

7. Appointment of Salim Essa on the Infraco Board

7.1. On 14 October 2018, Mariam Maroga sent an email to afbm@mweb.co.za (Mthembu) titled "*Infraco Board Letters*". We identified that you were copied on the e-mail to Mthembu (Annexure SM8). Attached to the email were appointment letters for the Infraco Board and a notice of a general meeting.

7.2. According to the notice, a meeting was scheduled to convene on 18 October 2011 at DPE at 12:00. The purpose of the meeting was to pass the ordinary resolution for the appointment of the following Infraco Board members:

7.2.1. Mandla Ngcobo (Chairperson);

7.2.2. Nadia Bulbulia;

7.2.3. Nokuthula Selamolela;

7.2.4. Meta Maponya;

7.2.5. Xoliswa Kakana;

7.2.6. Salim Essa; and

7.2.7. Anthony Githiari.

7.2.7.1. How was Salim Essa identified to be the board member of Infraco?

7.2.7.2. Were you involved in the appointment of Salim Essa on the Infraco Board, if not, who advised the Minister on Essa's appointment?

8. Anoj Singh's CV

8.1. On 16 June 2012, you sent an e-mail to Tshediso Matona titled "*Anoj's revised CV*". Attached to the email was Anoj Singh's CV (Annexure SM9).

8.1.1. When did you obtain Anoj Singh's CV?

8.1.2. Why were you sending Anoj Singh's CV to Tshediso Matona? and

8.1.3. What role did you play in the appointment of Anoj Singh as the CFO of Transnet?

9. Relationship with the Gupta's

- 9.1. Do you have any relationship with the Gupta's?
- 9.2. If the answer to the above question is yes, what was/is the nature of your relationship with the Guptas or their associates?
- 9.3. Did Ashu Chawla, Gupta family and their associates/ Salim Issa have any influence in the appointment of board members at the various SOC Boards?
- 9.4. Did Ashu Chawla, Gupta family and their associates/ Salim Issa benefit in any transactions at the various SOC following the appointment of Board Members recommended by you to the Department?
- 9.5. Did you receive any benefit from the Guptas or their associates following the appointment of board members you recommended to the Department?
- 9.6. Were the following individuals invited at your wedding in 2012?
 - 9.6.1. Mr and Mrs Tony Gupta,
 - 9.6.2. Duduzane Zuma; and
 - 9.6.3. Tshepiso Magashule.
- 9.7. What is the nature of your relationship with the individuals mentioned above?

10. Media Reports

- 10.1. It was reported on 20 June 2014 Mail & Guardian that you bought a house owned by Gupta linked company in Johannesburg, Birdhaven (Annexure SM10).
 - 10.1.1. How did you become aware that the house was for sale?
 - 10.1.2. Who was the previous owner of the house you allegedly purchased in Birdhaven?
 - 10.1.3. How was the sale of the house financed? May you please provide proof of the financing of the house?
 - 10.1.4. Did you buy the house yourself or was it bought for you by someone else, and if so who bought it for you?
 - 10.1.5. The media alluded that the purchase of the house involved Rajesh "Tony" Gupta. Rajesh is one of the directors of Islandsite Investments 180, the Gupta Company that owned the Birdhaven house. Did you have any relationship with the mentioned individual and were they involved in the sale of the house?
- 10.2. It was further reported in the Mail and Guardian that Senior officials at SAA and Eskom also expressed concern to amaBhungane last year that Mahlangu had strong-armed them into increasing their support for the New Age.
- 10.3. It was reported that AmaBhungane also saw evidence that Mahlangu was intimately involved in working out the details of SAA's subscriptions to the New Age, resulting in the airline buying more copies of the paper than before and at a higher price.
 - 10.3.1. Did you engage with SAA officials relating to the contract with New Age?

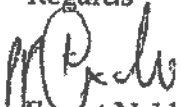
- 10.3.2. Did you play any role in SAA increasing the number of newspapers supplied by New Age?
- 10.4. Times Live reported on 26 June 2017 that in December 2010, less than two months after being appointed special adviser to Gigaba, who was then Public Enterprises Minister, you flew to India with President Jacob Zuma's son Duduzane Zuma, a Gupta associate. You were allegedly accompanied on the 10-day trip by Free State Premier Ace Magashule's son, Tshepiso (Annexure SM11)
- 10.4.1. Who financed the cost of your trip to India?
- 10.4.2. What was the purpose of your trip?
- 10.5. Times Live further reported that the leaked Gupta data shows that at least 11 meetings between "Mr Tony" (Rajesh "Tony" Gupta) and "Siya", were scheduled on the Outlook calendar of Sahara Systems Chief Executive Ashu Chawla between October 2012 and June 2013. The appointments were either at the family's Saxonwold compound or at the Sahara offices, Sahara is a Gupta company.
- 10.5.1. Did you have any relationship with the Guptas'?
- 10.5.2. Did you have any relationship with Ashu Chawla?
- 10.5.3. Have you ever met with Mr Rajesh "Tony" Gupta?
- 10.5.4. Have you ever visited the Gupta's compound in Saxonworld and what was the purpose of your visit?
- 10.5.5. Have you ever visited Sahara offices and what was the purpose of your visit?
- 10.5.6. Did you receive any gratification from the Gupta family or Gupta linked companies?
- 10.6. Time Live further indicated that in March 2013 the Sunday Times reported that Mahlangu was present at a meeting on 29 October 2012, at the Gupta's Saxonworld compound, when then SAA chairman Vuyisile Kona was allegedly offered R500,000 by Tony Gupta.
- 10.6.1. Did you introduce Vuyisile Kona to the Gupta Family?
- 10.6.2. Where you present at a meeting held on 29 October 2012?
- 10.6.3. What was the purpose of the meeting?
- 10.6.4. Did you witness when Tony Gupta offered Vuyisile R500 000?
- 10.6.5. Where you offered any gratification from Tony Gupta or any of the Gupta family?
- 10.7. The citizen reported on the 18 October 2017 that you introduced former Eskom CEO Brian Dames to one of the Gupta brothers; this was reported during Dames parliamentary inquiry. He told a parliamentary inquiry that he was introduced to one of the Gupta brothers by an adviser to Finance Minister Malusi Gigaba. During the meeting, he was pressed to give coal contracts to the Gupta family. (Annexure SM12)

Forensic investigations into various allegations at DPE

- 10.8. The chairperson of the portfolio committee on public enterprises, Zukiswa Rantho, asked him to be more specific and name the minister as well as his adviser.
- 10.9. *"It was an adviser to Minister Gigaba, I think his name was Siyabonga Mahlangu,"* he replied.
- 10.10. Dames said somebody he "assumed was one of the Gupta brothers" made three requests during the meeting, after telling him: "We think we can work with you."
- 10.10.1. Did you arrange the meeting between Brian Dames and the Gupta's as alleged by Brian Dames?
- 10.10.2. If yes, what was the purpose of the meeting?
- 10.10.3. Did you play any role in the awarding of coal contracts to Gupta linked companies?

Should you require clarity relating to the questions above, please do not hesitate to contact Ernest Nekhavhambe on 011 403 2526.

Regards



Ernest Nekhavhambe

Managing Director

Fundudzi Forensic Services (Pty) Ltd

 Page 7

From: Siyabonga Mahlangu mahlangu siyabonga@gmail.com
Subject: Re: Forensic investigations at DPE
Date: 23 Jan 2019 at 08:22:59
To: Khanyisa Khumalo khanyisak@fundudzi.co.za
Cc: Ernest Nekhavhambe ernestn@fundudzi.co.za

SM2

Dear Ernest and Khanyisa

Thank you for your email below. Please provide me with your terms of reference and scope of investigation so that I can locate your questions in their proper context.

I have perused the documentation you have sent. It raises complex legal questions relating legal professional privilege and confidentiality which attach to the communication between me and my erstwhile principal. Thus, I need to obtain legal advice on these legal questions so that I can assist you without breaking any laws, contractual obligations and professional ethics.

In the meantime, I shall await your response to my request above.

Yours faithfully

Siyabonga Mahlangu

Sent from my iPad

On 22 Jan 2019, at 17:21, Khanyisa Khumalo
<khanyisak@fundudzi.co.za> wrote:

Dear Mr Mahlangu

The above matter refers.

Please see attached questions for your attentions.

Regards

Khanyisa Khumalo

011 403 2526

<20190122162406146.pdf>

Q SM

SM3

From: Siyabonga Mahlangu <mahlangusiyabonga@gmail.com>
Sent: Wednesday, 23 January, 2019 6:22 PM
To: Ernest Nekhavhambe <ernestn@fundudzi.co.za>; Khanyisa Khumalo <khanyisak@fundudzi.co.za>
Subject: Fwd: Forensic investigations at DPE

Dear Ernest

I refer to my email below. I have perused your letter dated 22 January 2019 and its attachments. You will appreciate that I left DPE almost five years ago. Some of the events you refer to in your email date back to 2011/12. I would like access to all my official emails for the years covered by your investigation.

In light of the inordinate time lapse since some of the events took place and the legal complexities I have referred you to in my email below, I will not be able to respond to your letter by the 28 of January 2019. I need sufficient time to refresh my memory and to obtain legal advice.

I request an extension of time that may be mutually agreed having due regard to date on which I will be given full access to all my emails for the period under review as well as the terms of reference for your investigation.

I await to hear from you

Yours sincerely

Siyabonga

Sent from my iPhone

Begin forwarded message:

From: Siyabonga Mahlangu <mahlangusiyabonga@gmail.com>
Date: 23 January 2019 at 08:22:56 SAST
To: Khanyisa Khumalo <khanyisak@fundudzi.co.za>
Cc: Ernest Nekhavhambe <ernestn@fundudzi.co.za>
Subject: Re: Forensic investigations at DPE

Dear Ernest and Khanyisa

Thank you for your email below. Please provide me with your terms of reference and scope of investigation so that I can locate your questions in their proper context.

I have perused the documentation you have sent. It raises complex legal questions

Q SM

relating legal professional privilege and confidentiality which attach to the communication between me and my erstwhile principal. Thus, I need to obtain legal advice on these legal questions so that I can assist you without breaking any laws, contractual obligations and professional ethics.

In the meantime, I shall await your response to my request above.

Yours faithfully

Siyabonga Mahlangu

Sent from my iPad

On 22 Jan 2019, at 17:21, Khanyisa Khumalo <khanyisak@fundudzi.co.za> wrote:

Dear Mr Mahlangu

The above matter refers.

Please see attached questions for your attentions.

Regards

Khanyisa Khumalo

011 403 2526

<20190122162406146.pdf>

<Annexures to questions - Siyabonga Mahlangu.pdf>



From: Siyabonga Mahlangu mahlangu siyabonga@gmail.com
Subject: Re: Forensic investigations at DPE
Date: 28 Jan 2019 at 08:04:12
To: Ernest Nekhavhambe ernestn@fundudzi.co.za
Cc: Khanyisa Khumalo khanyisak@fundudzi.co.za

SM4

Dear Ernest

I refer to your email below. Please note that I need a copy of your appointment and terms of reference, access to my emails as requested in my emails below.

I have been working on the material you provided, it is clear from it that I will require board assessments and board submissions made by the department to the Minister in respect of the board rotations mention your letter, and the recommendation regarding the appointment of Anoj Singh as the executive director at Transnet.

Although I have furnished your documentation to my attorneys for advice, I have not yet conferred with them. I have been working on the factual recollection which is proving extremely difficult without access to contemporaneous correspondence.

In the circumstances and in the absence of the requested information and sufficient time to obtain legal advice, it is unfair to expect me to engage meaningfully with the contents of your letter. I am severely hampered and prejudiced by the lack of documentation and the short time within which I am expect to respond.

I request you to reconsider your position.

Yours faithfully

Siyabonga Mahlangu

Sent from my iPhone

On 28 Jan 2019, at 07:45, Ernest Nekhavhambe



<ernestn@fundudzi.co.za> wrote:

Morning Siyabonga

Kindly note that we are in the process of finalizing our investigations with a deadline of 31 January 2019. It will be greatly appreciated if you could provide us with your comments before then.

Regards

Ernest Nekhavhambe ICFP

Managing Director

Fundudzi Forensic Services (Pty) Ltd

12th Floor Hollard City Campus

19 Ameshoff Street

Braamfontein

2017

Tel: +2711 403-2526

Fax: +2786 535-5103

e-mail: ernestn@fundudzi.co.za

www.fundudzi.co.za

Prayer has a mighty power to sustain the soul in every season of its distress and sorrow..... Charles H. Spurgeon

<image001.png>

From: Ernest Nekhavhambe

Sent: Thursday, 24 January, 2019 6:30 AM

To: Siyabonga Mahlangu <mahlangusiyabonga@gmail.com>

Cc: Khanyisa Khumalo <khanyisak@fundudzi.co.za>

Subject: RE: Forensic investigations at DPE

Morning Siyabonga

Your email below is noted. I will consider your request and get back to you during the course of today.

Regards

Ernest Nekhavhambe ICFP

Managing Director

Fundudzi Forensic Services (Pty) Ltd

12th Floor Hollard City Campus

19 Ameshoff Street

Braamfontein

2017

Tel: +2711 403-2526

Fax: +2786 535-5103

e-mail: ernestn@fundudzi.co.za

www.fundudzi.co.za

Prayer has a mighty power to sustain the soul in every season of its distress and sorrow..... Charles H. Spurgeon

<image001.png>

Q SM

From: Siyabonga Mahlangu mahlangu siyabonga@gmail.com

Subject: Re: Forensic investigations at DPE

Date: 29 Jan 2019 at 08:59:12

To: Ernest Nekhavhambe ernestn@fundudzi.co.za

Cc: Khanyisa Khumalo khanyisak@fundudzi.co.za

SM5

Dear Ernest

I refer to your email below.

Your proposition in your email below that I have all the information with me is a source of worry. In my emails to you I have set out why I need access to my official emails and the written submissions that the department made to the Minister in respects of the boards of the SoCs you refer to in your letter. Upon receipt of your appointment letter and terms of reference, I will advise you if I persist in my request for access to this information.

At this point, I reserve all my rights.

Your faithfully

Siyabonga Mahlangu

Sent from my iPhone

On 28 Jan 2019, at 18:49, Ernest Nekhavhambe
<ernestn@fundudzi.co.za> wrote:

Evening Siyabonga

Please note that we have given you all the documentation on which we based our questions to you. There are therefore no outstanding documentation. The only outstanding item is our terms of reference which do not have anything to do with the questions except to inform you of our scope of work.

Regards

α SM

Sent from my iPhone XS

On 28 Jan 2019, at 18:38, Siyabonga Mahlangu
<mahlangusiyabonga@gmail.com> wrote:

Dear Ernest

Apologies for my delayed response.

I will only be able to make a call on the amount of time I will need once I have assessed the information that you will furnish me with.

We can discuss and agree on how much time is reasonable once I have the information.

Best regards

Siyabonga

Sent from my iPhone

On 28 Jan 2019, at 08:08, Ernest Nekhavhambe
<ernestn@fundudzi.co.za> wrote:

Morning Siyabonga

We will provide you with the requested information during the course of the day. In the meantime, kindly let us know what would be a reasonable time for you to provide us with comments to our questions.

Thanks for your cooperation in this regard.

4 SM

SM6

mahtanusiabonga@gmail.com

31 January 2019

Mr Ernest Nekhavhambe
Fundudzi Forensics
ernestn@fundudzi.co.za
by email

Dear Mr Nekhavhambe

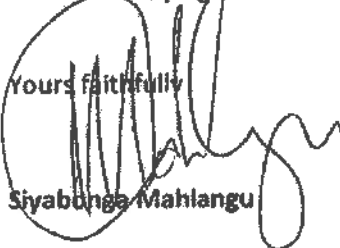
Forensic investigation in various allegations at DPE

1. I refer to your letter dated 22 January 2019 dispatched to me via your electronic mail the same date and the various electronic emails we have exchanged since 22 January 2019 to date.
2. In emails to you, I have indicated to you that your enquiry raises certain matters which are covered by legal professional privilege and confidentiality. Former Minister Gigaba employed me as his Special Advisor because of my expertise as an attorney. In my role, I provided him with legal and strategic advice. For example, please refer to annexure SM1 to your letter. This type of communication between me and the Minister is privileged.
3. In order to enable me to advise him, the then Minister confided in me on various matters. I am contractually bound to keep this communication confidential. This undertaking survives the end of my employment and pertains today. In order for me to engage meaningfully with your enquiry, I need to obtain legal advice on the bounds of legal professional privilege and confidentiality. I have been hampered in doing so by the lack of information that I have requested from you. I need to give my attorneys full and proper instructions in respect of the context and purpose of each of the documents and events that you refer to in your letter.
4. Some of the attachments to your letter raise questions that I need clarity on so that I can obtain legal advice and assess my legal position regarding them. .
5. To date, I have requested you to provide me with your appointment letter, terms of reference or scope work, access to my official emails for the period under review, the written submissions that the department made to the Minister in respect of the appointment of board of directors of SoCs. This information is crucial to assist me to understand the factual context to your enquiry and to assist me to remember some of the events that you refer to which took place almost 7 or 8 years ago. For example, I cannot remember the context or background of SM1-6.
6. I have noted that in your email dated 28 January 2019 sent to me at 07:45am, you advised me that you are in the process of finalizing your investigation and that you have a deadline of 31 January 2019 to do so. Please note that I have not received any information that I have requested from you including a copy of your letter of appointment and terms of reference which you promised to provide. In the time available and in light of the lack of information that I need, I will not be able to comment meaningfully to the questions that you have raised with me.

α SM SM

7. I disagree with your conclusion in your email dated 28 January 2018 sent at 18:49 that you have given me all the documentation on which you based on your questions. What is material is the totality of the information which informs the answer to your questions. The documentation attached to your letter is an incomplete record of the events referred to in your letter and distorts the contexts.
8. For avoidance of any doubt, I record that I discharged my duties as the Minister's Special Advisor lawfully and ethically. This includes my interaction with all of the then Minister's stakeholders including any member of the Gupta family.
9. In light of the above, at this stage, I am unable to assist you, notwithstanding all my intentions to do so. I will await the complete information and documentation from yourself as requested, and will then revert to you.

10. All my rights are reserved.

Yours faithfully

Siyabonga Mahlangu

Q SM

SM7

Tel: +2711 403-2526

Fax: +2786 535-5103

e-mail: ernestn@fundudzi.co.zawww.fundudzi.co.za

Prayer has a mighty power to sustain the soul in every season of its distress and sorrow..... Charles H. Spurgeon

<image001.png>

From: Siyabonga Mahlangu <mahlangusiyabonga@gmail.com>**Sent:** Friday, 1 February, 2019 2:25 PM**To:** Khanyisa Khumalo <khanyisak@fundudzi.co.za>; Ernest Nekhavhambe <ernestn@fundudzi.co.za>**Subject:** Response to your letter dated 31 January 2019

Dear Mr. Nekhavhambe

Your letter dated 31 January 2019

I refer to your above-mentioned letter and your telephone call to me of the same date.

I confirm that during the above telephone discussion you advised me that you will make information that I have requested available to me on Monday, 4 February 2019. Further, you promised to grant me a reasonable opportunity to go through the information and respond.

Despite the foregoing, I have noted that in your aforementioned letter you have restricted the information that you will provide to my official emails and not to the rest of the information that I have detailed in my letter to you dated 31 January 2019. This information is material to my response to your questions under cover of your letter dated 22 January 2019. In order to assist you to locate this information, below I try to identify it.

First, it is the report on the vetting and background checks that the department commissioned on the relevant board members. Secondly, it is the written submissions that the department made to the Minister in respect of the appointment of these board members. Thirdly, cabinet submissions made by the then Minister in respect of the

A SM

appointment and rotation of these board members. Fourthly, the files containing the preparations for the AGMs of the relevant SoCs where the named board members were appointed or where their tenure was not renewed. Please supply all briefings to the Minister including board assessments that may have been commissioned by the department at the time in preparation of the said AGMs.

In respect of Mr. Vuyisile Kona, the file relating to his removal as a board member.

I have noted that despite your undertaking during our telephone discussion above to afford me a reasonable time to respond, in your letter you have already determined 8 February 2019 as the date on which I must respond. In my view, this is unfair. It disregards the fact that I have to go through the information that you are still to provide to me, analyze it, obtain legal advice and formulate a response. Based on my request to you, the volume of information that I anticipate you will provide to me is not small. I implore you to reconsider your position regarding the due date for my response. Let us assess what is a reasonable time based on the assessment of the information that you will make available when you make it available.

Please be informed that next week I will be out of town on a business trip from Wednesday returning on Friday, 8 January 2019. It will thus be impossible for me to engage meaningfully with information, consult with my lawyers and respond by Friday. I undertake to you to work as expeditiously as possible and revert to you.

Please alert me once the information is ready for collection.

Your faithfully

Siyabonga Mahlangu



Sent from my iPhone

pdf

letter to S...2019.pdf
332 KB

Q SM

SM8

From: Ernest Nekhavhambe ernestn@fundudzi.co.za
Subject: RE: Response to your letter dated 31 January 2019
Date: 04 Feb 2019 at 16:54:16
To: Siyabonga Mahlangu mahlangusiyabonga@gmail.com
Cc: Khanyisa Khumalo khanyisak@fundudzi.co.za

Afternoon Siyabonga
Please find herewith a letter for your attention.

Regards

Ernest Nekhavhambe ICFP

Managing Director
Fundudzi Forensic Services (Pty) Ltd
Fundudzi House
51 Empire Road
Parktown
2193

Tel: +2711 403-2526

Fax: +2786 535-5103

e-mail: ernestn@fundudzi.co.za

www.fundudzi.co.za

Prayer has a mighty power to sustain the soul in every season of its distress and sorrow..... Charles H. Spurgeon



Institute of Commercial
Forensic Practitioners
Recognised, Registered, Regulated

From: Siyabonga Mahlangu <mahlangusiyabonga@gmail.com>
Sent: Monday, 4 February, 2019 7:30 AM
To: Ernest Nekhavhambe <ernestn@fundudzi.co.za>
Cc: Khanyisa Khumalo <khanyisak@fundudzi.co.za>
Subject: Re: Response to your letter dated 31 January 2019

Much appreciated

Sent from my iPhone

On 04 Feb 2019, at 07:13, Ernest Nekhavhambe <ernestn@fundudzi.co.za> wrote:

Morning Siyabonga

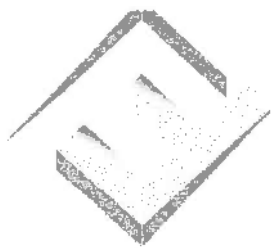
We are in the process of preparing a response top your letter which you should receive during the course of the day.

Regards

Ernest Nekhavhambe ICFP

Managing Director
Fundudzi Forensic Services (Pty) Ltd
12th Floor Hollard City Campus
19 Ameshoff Street
Braamfontein
2017



**FUNDUDZI****Fundudzi Forensic Services (Pty) Limited**

Fundudzi House

51 Empire Road

Parktown, 2193

PO Box 30780

Braamfontein, 2017

Tel: (011) 403-2526

Fax: (011) 403-2135

Registration No: 2009/010757/07

info@fundudzi.co.za

Siyabonga MahlanguThe Hub Main Building
61 Oak Avenue, Highveld Park
Centurion
0186**Ernest Nekhavhambe**

our ref

4 February 2019

Dear Mr Mahlangu

RE: Forensic investigations into various allegations at DPE

Your e-mail dated 1 February 2019 is acknowledged and the contents thereof noted.

We confirm that as per our letter of 31 January 2019, you were required to collect the data on which we based our questions to you as per our letter of 22 January 2019. Kindly note that the said data containing your e-mails is available for collection. Should you not be able to collect the data please let us know so we can arrange the delivery thereof to you.

As per your email of 1 February 2019, we confirm that the information in our possession relates to the various e-mail communication with attached documentation. We further confirm that the questions posed to you as per our letter of 22 January 2019 are based solely on the information at our disposal which information we are offering to make available to you.

We have noted from your e-mail of 1 February 2019 that you are referring to the following documents:

- Report on the vetting and background checks that the department commissioned on the relevant board members;
- Written submissions that the department made to the Minister in respect of the appointment of the board members;
- Cabinet submissions made by the then Minister in respect of the appointment and rotation of the board members;
- Files containing the preparations for the AGMs of the relevant SoCs where the named board members were appointed or where their tenure was not renewed; and

Forensic investigations into various allegations at DPE

- all briefings to the Minister including board assessments that may have been commissioned by the department at the time in preparation of the said AGMs;
- In respect of Mr. Vuyisile Kona, the file relating to his removal as a board member.

We further noted that you requested us to provide us with the documentation referred to above.

Kindly be informed that we did not use the said documentation for purposes of this investigation and further that we did not have access to them.

Should you believe that this documentation will assist you in responding to our questions, kindly liaise with Thuto Shomang, the current acting DG of the Department.

We will from our side endeavour to source the said documents; however this should not preclude you from sourcing the documents yourself.

We noted that you indicated in your letter that you are not available from Wednesday, 6 February 2019 to Friday, 8 February 2019. Kindly take note that we will extend your period for the submission of your response to Wednesday, 13 February 2019.

Kindly note that should we not receive your response by the said date we will have no option but to submit our report without your comments as we believe that we have afforded you reasonable time to respond.

Should you require clarity relating to the request above, please do not hesitate to contact Ernest Nekhavhambe on 011 403 2526.

Regards



Ernest Nekhavhambe

Managing Director

Fundudzi Forensic Services (Pty) Ltd

 Page 2

From: Siyabonga Mahlangu mahlangu siyabonga@gmail.com
Subject: Re: Response to your letter dated 31 January 2019
Date: 04 Feb 2019 at 07:30:11
To: Ernest Nekhavhambe ernestn@fundudzi.co.za
Cc: Khanyisa Khumalo khanyisak@fundudzi.co.za

Much appreciated

Sent from my iPhone

On 04 Feb 2019, at 07:13, Ernest Nekhavhambe
<ernestn@fundudzi.co.za> wrote:

Morning Siyabonga

We are in the process of preparing a response top your letter which you should receive during the course of the day.

Regards

Ernest Nekhavhambe ICFP

Managing Director

Fundudzi Forensic Services (Pty) Ltd

12th Floor Hollard City Campus

19 Ameshoff Street

Braamfontein

2017

Tel: +2711 403-2526

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www.fundudzi.co.za

Prayer has a mighty power to sustain the soul in every season of its distress and sorrow..... Charles H. Spurgeon

<image001.png>

From: Siyabonga Mahlangu <mahlangu siyabonga@gmail.com>

Sent: Friday, 1 February, 2019 2:25 PM

To: Khanyisa Khumalo <khanyisak@fundudzi.co.za>; Ernest Nekhavhambe
<ernestn@fundudzi.co.za>

Subject: Response to your letter dated 31 January 2019

Dear Mr. Nekhavhambe

Your letter dated 31 January 2019

I refer to your above-mentioned letter and your telephone call to me of the same date.

I confirm that during the above telephone discussion you advised me that you will make



SM9

From: Siyabonga Mahlangu mahlangu siyabonga@gmail.com
Subject: SKMBT_C652D19021316080.pdf
Date: 13 Feb 2019 at 17:07:19
To: khanyisak@fundudzi.co.za, ernestn@fundudzi.co.za

Dear Me. Nekhavhambe

Herewith, please find my letter dated 13 February 2019.

Yours faithfully

Siyabonga Mahlangu

pdf

SKMBT_C_6080.pdf
50 KB

Sent from my iPhone

SM

mahlangusiyabonga@gmail.com

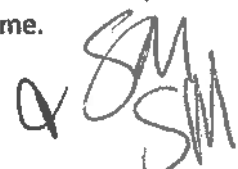
13 February 2019

Mr. Ernest Nekhavhambe
Fundudzi Forensic Services
By email – ernestn@fundudzi.co.za

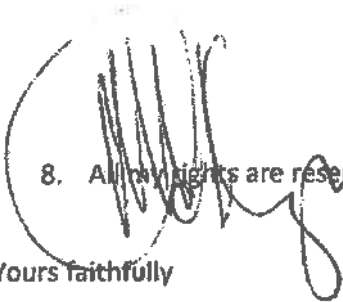
Dear Mr. Nekhavhambe

Forensic investigation into various allegations at DPE

1. I refer to your letters dated 22 January 2019 and 4 February 2019, my letter dated 31 January 2019 and the various email correspondence that we have exchanged since 22 January 2019 to date.
2. In your letter dated 22 January 2019, you raise a number of interrelated questions which relate to events that took place between 2011 and 2012 whilst I was the Special Advisor to the then Minister of Public Enterprises, about 7 to 8 years ago. I have pointed out in my letter of 31 January 2019 that I need the information I listed in order to place these events in their proper context, refresh my memory and obtain legal advice. Further, I requested you to provide me with a copy of your letter of appointment and terms of reference so that I can be appraised of the object and purport of your investigation. Throughout our electronic mail correspondence, I have stressed the materiality of the information I seek and its relevance to your enquiry.
3. On 4 February 2019, you advised me by letter that certain information was available at your office for collection. This information is restricted to soft copies of certain Microsoft Word documents and my official emails contained in a computer flash disk. For the balance of the information that I have requested, you referred me to the Director-General of the Department of Public.
4. Upon receipt of the flash disk containing the information, I began poring over it in search of your letter of appointment and terms of reference. After a diligent search, I have been unable to locate them. I have begun reading and analysing information contained in the flash disk. I am yet to complete this exercise.
5. On 7 February 2019, I wrote to the Director-General of the DPE as per your advice. I have copied you in my email to him. I have requested him to assist me to access the information and documentation that I require. Save for the acknowledgement of receipt, I have not heard from the Director-General.
6. In light of the above, I am not in a position to comply with your due date of 13 February 2019. I have noted that your caution in your letter of 4 February 2019 that you intend to finalise your report without my comments if you do not receive them by 13 February 2019. In this regard, I wish to record that my inability to meet your deadline is through no fault of my own. I have been severely prejudiced by the incomplete information provided to me.
7. I reiterate paragraph 8 of my letter to you dated 31 January 2019.



8. All my rights are reserved.



Yours faithfully

SIYABONGA MAHLANGU



SMIO

Siyabonga Mahlangu

Sent from my iPhone

On 14 Feb 2019, at 12:38, Ernest Nekhavhambe

<ernestn@fundudzi.co.za> wrote:

Afternoon Siyabonga

DPE informed me that they sent an email to you two days ago informing you that your documents were ready for collection. Please arrange for collection if you have not already done so.

Regards

Ernest Nekhavhambe ICFP

Managing Director

Fundudzi Forensic Services (Pty) Ltd

Fundudzi House

51 Empire Road

Parktown

2193

Tel: +2711 403-2526

Fax: +2786 535-5103

e-mail:ernestn@fundudzi.co.zawww.fundudzi.co.za

Prayer has a mighty power to sustain the soul in every season of its distress and sorrow..... Charles H. Spurgeon

<image001.png>

From: Ernest Nekhavhambe

Sent: Thursday, 14 February, 2019 8:42 AM

To: 'Siyabonga Mahlangu' <mahlangusiyabonga@gmail.com>; Khanyisa Khumalo<khanyisak@fundudzi.co.za>Cc: 'thuto.shomang@dpe.gov.za' <thuto.shomang@dpe.gov.za>

Subject: RE: SKMST_0652D19021016080.pdf

Morning Siyabonga

We acknowledge receipt of your email and the attached letter.

Regards

Ernest Nekhavhambe ICFP

A SM

Managing Director
Fundudzi Forensic Services (Pty) Ltd
Fundudzi House
51 Empire Road
Parktown
2193

Tel: +2711 403-2526

Fax: +2786 535-5103

e-mail: ernestn@fundudzi.co.za www.fundudzi.co.za

Prayer has a mighty power to sustain the soul in every season of its distress and sorrow..... Charles H. Spurgeon

<image001.png>

From: Siyabonga Mahlangu <mahlangusiyabonga@gmail.com>

Sent: Wednesday, 13 February, 2019 5:07 PM

To: Khanyisa Khumiso <khanyisak@fundudzi.co.za>; Ernest Nekhavhambe

<ernestn@fundudzi.co.za>

Subject: SKMBT_C852D49621316080.pdf

Dear Mr. Nekhavhambe

Herewith, please find my letter dated 13 February 2019.

Yours faithfully

Siyabonga Mahlangu

Sent from my iPhone

AKSM

SM11

From: Siyabonga Mahlangu mahlangu siyabonga@gmail.com
Subject: Re: SKMBT_C652D19021316080.pdf
Date: 14 Feb 2019 at 13:46:00
To: Ernest Nekhavhambe ernestn@fundudzi.co.za
Cc: Khanyisa Khumalo khanyisak@fundudzi.co.za,
thuto.shomang@dpe.gov.za, Ben.Theron@dpe.gov.za

Dear Ben

Please provide me with your telephone numbers so that I can arrange to collect the documentation referred to below.

Best regards

Siyabonga

Sent from my iPhone

On 14 Feb 2019, at 13:25, Ernest Nekhavhambe
<ernestn@fundudzi.co.za> wrote:

Hi Siyabonga
Please liaise with Ben, copied herein.

Sent from my iPhone XS

On 14 Feb 2019, at 12:54, Siyabonga Mahlangu
<mahlangu siyabonga@gmail.com> wrote:

Dear Mr. Nekhavhambe

I have received any email from the DPE. Kindly advise me on who I should liaise with at the DPE.

Yours faithfully

a SM

SM12

From: Siyabonga Mahlangu mahlangu siyabonga@gmail.com
Subject: Documents from DPE
Date: 18 Feb 2019 at 13:06:46
To: khanyisak@fundudzi.co.za, ernestn@fundudzi.co.za

Dear Mr. Nekhavhambe

Kindly be informed that on Friday, 15 February 2019, I collected 17 files from the department. I am currently working through them. I will revert to you in due course.

Yours faithfully

Siyabonga Mahlangu

Sent from my iPhone

SM

SM13

From: Siyabonga Mahlangu mahlangu siyabonga@gmail.com
Subject: Re: Documents from DPE
Date: 20 Feb 2019 at 10:09:32
To: Khanyisa Khumalo khanyisak@fundudzi.co.za
Cc: Ernest Nekhavhambe ernestn@fundudzi.co.za

Dear Mr Nekhavhambe

I refer to an email from Ms Khumalo below.

Please be advised that it is not possible for me to complete my analysis of the information you provided to me in a flash disk and the 17 arc lever files that I received from the department last Friday (15 February 2019), obtain legal advice and respond to your questions by Friday, 22 February 2019, as stated in Ms Khumalo's email below. I do not have the infrastructure to do so.

Yours faithfully

Siyabonga Mahlangu

Sent from my iPhone

On 18 Feb 2019, at 17:47, Khanyisa Khumalo
<khanyisak@fundudzi.co.za> wrote:

Dear Mr Mahlangu

Thank you for the e-mail below.

We kindly request that you please submit your response to the questions sent to you on 22 January 2019 by close of business on Friday 22 February 2019.

Regards
Khanyisa Khumalo



Tel: 011 403 2526

Fax: 011 403 2135

Fundudzi Forensic Services

-----Original Message-----

From: Siyabonga Mahlangu

[mailto:mahlangusiyabonga@gmail.com]

Sent: Monday, 18 February 2019 13:07

To: Khanyisa Khumalo; Ernest Nekhavhambe

Subject: Documents from DPE

Dear Mr. Nekhavhambe

Kindly be informed that on Friday, 15 February 2019, I collected 17 files from the department. I am currently working through them. I will revert to you in due course.

Yours faithfully

Siyabonga Mahlangu

Sent from my iPhone



SM14

From: Siyabonga Mahlangu mahlengusiyabonga@gmail.com
Subject: Lt to Nekhavhambe 26 February 2019.pdf
Date: 26 Feb 2019 at 15:58:25
To: khanyisak@fundudzi.co.za, ernestn@fundudzi.co.za

Dear Mr. Nekhavhambe

Herewith, please find my response.

Yours faithfully

Siyabonga Mahlangu

pdf

Lt to Nek...2019.pdf
394 KB

Sent from my iPhone

SM

mahlangusiyabonga@gmail.com

26 February 2019

Mr. Ernest Nekhvhambé
Fundudzi Forensic Services
ernestn@fundudzi.co.za

Dear Mr. Nekhvhambé

INVESTIGATION INTO IRREGULARITIES AT THE DPE

Introduction

1. I refer to your letter dated 22 January 2019 and various emails and correspondence that we have exchanged since then including your email of Sunday, 24 February 2019. I confirm that in your email of 24 February 2019, you have given me a deadline of Tuesday, 26 February 2019, to respond to questions contained in your 22 January 2019 letter.
2. I am yet to complete reading the computer soft copies of files and the physical copies (17 arch lever files) that you and the DPE have made available to me, respectively. In light of that, I have been able to update my instructions to my lawyers and obtain advice in respect of some of the questions and specific documents referred to in your letter. I do not have the infrastructure and resources required to act as fast as your correspondence has always demanded. I contest the correctness of your assertion that you have given me sufficient time to respond to your questions. In the circumstances, I contend that the different deadlines that you have so far given me have been unfair and not sensitive to the time I need to peruse and analyse the documentation and to obtain advice.
3. It is also worthy to record that despite my repeated requests to you, I still have not received a copy of your letter of appointment containing your terms of reference and scope of work. As a result of this, I do not have the appreciation of the legal status and parameters of your enquiry and are unable to assess my legal position.
4. In light of the above, I do not wish to deal individually with each and every question or issue raised in your letter of 22 January 2019 but to provide as much assistance as possible within my legal and practical constraints. My omission to address any aspect of your queries should not be construed as an admission of any allegation inherent therein or form basis of any adverse inference. I reserve my right to address these questions fully at a later stage and at an appropriate forum, should it be necessary. I further reserve my right to supplement the preliminary responses that I provide herein, should the need arise.

My relationship with members of the Gupta family

5. Although I do not have the benefit of the purpose and scope of your investigation, the textual context of your letter seeks clarity whether I was influenced in any way by the Gupta family in the discharge of my responsibilities as the Special Advisor to the then Minister of Public Enterprises, Minister Gigaba. The answer to this question is no.



6. At all times, I carried out my duties as Special Advisor ethically and legally. I dealt with Messrs Duduzane Zuma, Tshepiso Magashule, Ajay, Atul and Rajesh Gupta as part of the businesspersons and stakeholders of the Minister that I had to interface with. I had no special relationship with any of them outside of my duties as Special Advisor. Prior to assuming this role, I had not had any specific relationship with them.
7. During the course of my interface with the aforesaid members of the Gupta family, I came to know Mr Ashu Chawla as their cousin and senior executive at Sahara. I had minimal interactions with him. I have no knowledge of the details relating to Mr. Chawla which are stated in your letter of 22 January 2019.
8. In the first quarter of 2011, barely 3 months into my position as Special Advisor, the Gupta family invited me to a wedding in India. They covered the expenses of this trip. I disclosed the trip to my principal. At that time, having disclosed this trip as aforesaid, I saw no further ethical concern. As the Minister's Special Advisor, I was not part of the DPE's employee establishment. I was not responsible for any line functions within the DPE and had no decision-making powers. At that time, there was also nothing of concern about the Gupta family in the public domain. On the contrary, my sense at the time was that the Gupta family enjoyed proximity to the ANC leadership and that the ANC leadership was favourably disposed towards them.
9. I purchased the house from Islandsite Investment 180 (Pty) Ltd at market value for R5 million. It is financed through the proceeds from a property that my wife sold and a structured facility from First National Bank. The bank has passed a mortgage bond on the property as security for the structured facility. I disclosed my intention to purchase this house to my erstwhile principal. I conducted the negotiations for the purchase of the house with the management of Islandsite and not directly with any of its shareholders or directors.

The nature of my job as a Special Advisor

10. I am an attorney. Minister Gigaba employed me as his Special Advisor on the basis of my qualifications, skills and expertise as attorney with a public law and corporate commercial law background. He appointed me in terms of section 12A of the Public Service Act, 1994 (Proclamation 103 of 1994). This section enables a Minister to appoint a person as a public servant on the grounds of policy to advise him in the discharge of his duties. In line with s 12A of the Public Service Act, I received my mandate directly from, and accounted, to the then Minister. I was not part of the department's establishment.
11. My job as Special Advisor entailed, amongst other things, the following:
 - 11.1. providing legal advice to the Minister on any aspect of his job as shareholder representative, cabinet officer and public representative;
 - 11.2. preparing notes for him on topical matters;
 - 11.3. assisting the Minister to consider legal options proposed by the department to him;



- 11.4. attending meetings with the Minister or Deputy Minister on issues within the remit of the department;
- 11.5. contributing to the Minister's speeches;
- 11.6. attending meetings between the department and the Minister;
- 11.7. attending meetings between the Minister and the boards of SOCs or their representatives;
- 11.8. attending meetings with members of the public who wished to make representations to the Minister on a variety of subjects;
- 11.9. attending meetings and interfacing with business leaders and associations on matters that they wished to raise with the Minister and advise the Minister accordingly; and,
- 11.10. referring queries from the public to the department or SOCs.

The appointment of board members

- 12. The Minister appointed board members from the names that he had and proposals that received from candidates themselves, individual members of the public, individual business people, business organizations, organized labour, civil society, the DPE and his Special Advisors.
- 13. The proposal of candidates for board appointments reached the Minister through the DPE, the Special Advisors or directly. All these names would be processed formally by the DPE.
- 14. The process involved serious deliberations between the then Minister, his advisors and the DPE before he formed his final view.
- 15. In addition to the names that I passed on to the DPE from various constituencies, I have recommended names to the Minister for his consideration. None of the names that I personally recommended are the ones which are listed in your query. I processed the names listed in your letter of 22 January 2019 during the course and scope of my employment.
- 16. I am unable to respond to deal with the details of your questions on the specific board appointments or rotations stated in your letter. In my view, these board appointments or rotations are confidential and legally privileged. The same applies to the legal advice or notes that I prepared for the then Minister during my time as his Special Advisor.

The media reports

- 17. I have previously dealt with the allegations in the newspapers regarding the TNA newspaper, Messrs Kona and Dames. I have indicated to the press repeatedly that I did not cajole or lean on anyone in the SOCs to purchase the TNA. There was no need for me to do so.



18. I reiterate that there was a legitimate business reason why Mr. Kona and I visited the Gupta family. I have no knowledge of the allegations that he made about any of the members of the Gupta family. He never complained to me, the DG, any of the officials from the DPE or his board on the allegations that he made to the press. He only made these allegations later when he knew that he was going to be removed as Acting CEO, chairperson and board member of SAA.
19. In respect of Mr. Dames, I deny that I lured him to a meeting with the Guptas as he alleged. He attended the meeting with the Gupta family knowingly and voluntarily. The main object of the meeting was to address an allegation by the Gupta family that Eskom was unfairly discriminating against one of their mining companies.
20. I attended the meetings with Messrs Kona and the members of the Gupta family as part of my duties as the Minister's Special Advisor.

Conclusion

21. I reiterate that I carried out my duties as Special Advisor to Minister Gigaba ethically, lawfully and to the best of my ability. I trust that the above addresses your questions.
22. Should you require further information, please do not hesitate to contact me.

Yours faithfully



SIYABONGA MAHLANGU



SM15

1



First National Bank - a division of FirstRand Bank Limited
An Authorised Financial Services and Credit Provider
Registered Bank Reg. No. 1929/001225/06
NCA Registration No. NCRCP20

2 June 2014

Siyabonga Mahlangu

23 Woodlands Estate
Smuts Drive
Halfway House
1685

Fax: (011) 805 4679

E-mail: mahlangusiyabonga@gmail.com

Dear Siyabonga

CREDIT FACILITY AS PRESCRIBED BY THE NATIONAL CREDIT ACT

We, First National Bank a division of FirstRand Bank Limited ("the Bank"), are pleased to forward this facility letter to you in respect of your application for a FNB STRUCTURED FACILITY ("the Facility").

FACILITY TERMS	
Facility Type	FNB Structured Facility (4B) - Term
Maximum Facility Sum	R3 600 000.00 (Three Million Six Hundred Thousand Rand)
Repayment Period	240 months
Instalment Due Date	4th day of the month
CHARGES	
Initiation Fee	As per Annexure A (if applicable)
Monthly Subscription Fee (Service Fee)	R57.00 (VAT inclusive)
INTEREST	
Current FNB Private Clients Facility Rate (As publicly quoted from time to time)	8.5%
Annual Interest Rate applicable to your Facility	FNB Private Clients Facility Rate minus 0.2%
REPAYMENT	
Indicative Minimum Monthly Amount Payable (Monthly Instalment)	R30 844.44 (Thirty Thousand Eight Hundred And Forty Four Rand And Forty Four Cents)
Indicative Total Amount Of Interest Repayable	R3 788 985.60 (Three Million Seven Hundred And Eighty Eight Thousand Nine Hundred And Eighty Five Rand And Sixty Cents)
Indicative Total Amount Repayable, inclusive of Facility Sum, Charges and Interest (Total cost of credit)	R7 402 665.60 (Seven Million Four Hundred And Two Thousand Six Hundred And Sixty Five Rand And Sixty Cents), inclusive of interest

The Indicative Total Amount Payable (if indicated) and the Indicative Minimum Monthly Amount Payable (if indicated) are stated above to assist you to determine whether you are able to afford the credit. These amounts will change with the fluctuations of the FNB Private Clients Facility Rate of interest. If no minimum monthly amount is indicated, the Bank does not require a minimum monthly payment.

Notwithstanding the provisions of this document and should you require a pre-advance on your Facility, we may agree to make a portion of the Facility Sum available for advance once you have properly signed your Facility Letter together with all documents to effect the securities required for your Facility and provided that all covering Mortgage Bonds, if any is required in terms of this Facility, have been lodged. The interest rate applicable to the utilisation of this portion of the Facility Sum will be the FNB Private Clients Facility Rate plus 0.75% per annum, which rate will be effective until date of registration of the Mortgage Bond/s referred to in this document, whereafter the interest rate shall be the annual interest rate as stated above.

It is important to note that the charges and fees set out above do not include non credit related charges or fees such as, bond registration costs, credit card fees, taxes, short term insurance premiums and other duties.

The Bank may apply a discretionary tiered Facility Sum policy which can reduce the effective annual interest rate as set out in the attached Facility graph, if applicable.

An Authorised Financial Services Provider
Registration No. 1929/001225/06
NCA Reg. No. NCRCP20

5 Merchant Place, 9 Fredman Drive, Sandton, Gauteng, PO Box 782027, Sandton, 2146: SA: South Africa Tel: +27 11 245 5000; Fax: +27 11 301 4392

Service Suite: 087 730 6000 Website: www.fnb.co.za/privateclients

Directors: L.E. Dippenaar (Chairman) S.B. Mxasana (CEO) V.W. Hartler J.H. Ooster JP Burger MS Roux P Cooper (Alternate) L. Coorssen J. Durand G.G. Gelink P.M. Goss N.N. Gwagwa P.K. Harris W.R. Jardine H.S. Kellan E.G. Marange-Subesbo A.T. Nkomo D. Pretorius (India) K.B. Schremer R.J. van der Riet J.H. van Gerssinge Company Secretary: C. Law

SECURITIES REQUIRED

1 Mortgage Bonds:
Registration of a covering mortgage bond in favour of First National Bank:

Property description	Mortgagor	Bond Ranking	Amount
Erf 12 Birdhaven Township	Siyabonga Mahlangu	first	R3 600 000.00

2 Cession and Pledge in favour of First National Bank:

Security Description	Cedent	Amount
Homeowners insurance and SASRIA policy to be effected	By registered owner	For not less than First National Bank's assessed replacement value of the improvements on any property mortgaged to First National Bank

3 Sureties:

Surety name	Amount
Pygma Consulting (pty)ltd	limited to all sums due or to become due to the Bank arising out of the facility
Mand'esilo Lambase Bavumile Msimang	limited to all sums due or to become due to the Bank arising out of the facility

4 Special Conditions:

- 4.1 We require the following documents before registration :
Approved Building Plans;
Occupancy Certificate
- 4.2 The interest rate applicable to your facility is the published FNB Private Clients Facility Rate minus 0.2%. There is no facility graph applicable to your facility.

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Proposed Distribution of Facility Sum - (to be completed by the client in the event of the client and/or surety purchasing a property or transferring a bond from another financial institution)

Property 1	Details	Amount
Client	_____	R _____
Seller	_____	R _____
Financial Institution	_____	R _____

Property 2	Details	Amount
Client	_____	R _____
Seller	_____	R _____
Financial Institution	_____	R _____

Property 3	Details	Amount
Client	_____	R _____
Seller	_____	R _____
Financial Institution	_____	R _____

Proposed Distribution of Facility Sum - (to be completed by the client in the event of the client consolidating debt)

Details	Amount	Details	Amount
Creditors _____	_____	Creditors _____	_____
Creditors _____	_____	Creditors _____	_____
Creditors _____	_____	Creditors _____	_____
Creditors _____	_____	Creditors _____	_____
Creditors _____	_____	Creditors _____	_____

Kindly note that should you utilise the Facility to consolidate various debts that you may have, it is solely your duty to settle such debts with the Facility Sum and the Bank does not accept any responsibility for doing so.

SM
K
SM

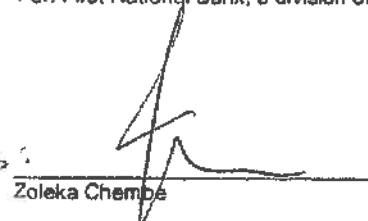
COST OF CREDIT EXPLANATION

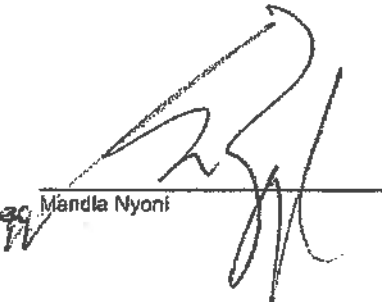
1. The Bank is obliged by the National Credit Act, 34 of 2005 ("the Act") to assess whether you are able to afford the repayment of the total Credit Facility applied for. To do so, the Bank is reliant upon information requested from you and furnished by you.
2. The Initiation Fee stated has not been included in the Maximum Facility Sum, Indicative Minimum Monthly Amount Payable (if indicated) and the Indicative Total Amount Payable (if indicated).
On your request, the Bank will consider including the Initiation Fee in the Facility, in which event all amounts expressed in Rand terms will change accordingly.
3. The Annual Interest Rate is expressed as an annual percentage of the total outstanding amount under the Facility. The interest is calculated daily and compounded monthly in arrears.
4. 'Term Facility' means a Facility in terms whereof there is a definitive repayment period (as set out in page 1 of this document) for the settlement of the Facility.
5. The Indicative Minimum Monthly Amount Payable (if indicated) and the Indicative Total Amount Payable (if indicated) as well as the indicative Total Amount of Interest Payable (if indicated) are stated above to assist you to determine whether you are able to afford the credit. These amounts will change with the fluctuations of the Bank's rate of interest.
Kindly further note that should you not utilise the Facility according to these assumptions, the indicative Minimum Monthly Amount Payable, as well as the Indicative Total Amount Payable, will change.
6. This document contains some of the more pertinent features of your Facility set out above. The Facility remains subject to your acceptance of the following enclosed documentation:
 - 6.1 the cost of credit set out above;
 - 6.2 the Bank's standard terms and conditions;
 - 6.3 the Bank's terms and conditions of use (if applicable);
 - 6.4 any security required (as set out above); as well as
 - 6.5 any further documentation mentioned hereafter;that forms an integral part of the Facility. This document is not intended to cover all aspects of your Credit Agreement with us and should this explanation contradict any of the terms and conditions that form the Credit Agreement between us, the latter terms and conditions will prevail.
7. If the Facility offered to you is a FNB Private Clients Credit Card then notwithstanding the Indicative Minimum Monthly Amount Payable referred to on page one of this document, you are required to make a minimum monthly payment of not less than 5% of the outstanding debt balance.
8. If you are married in community of property, your spouse must consent to the conclusion of the Facility. The Bank cannot conclude the Facility with you without such consent.

We thank you for selecting First National Bank and look forward to a mutually beneficial relationship with you.

Yours sincerely

For: First National Bank, a division of FirstRand Bank Limited


Zoleka Chembe


Mandla Nyoni


SM

CLIENT ACCEPTANCE

5

I, the undersigned, hereby confirm that:

- 1. I accept the special conditions as well as all other terms and conditions mentioned in this document;
- 2. I accept the Bank's standard terms and conditions, the Bank's terms and conditions of use, if applicable, as well as those applicable to any security required by the Bank;
- 3. I acknowledge that First National Bank may in its discretion amend the Terms and Conditions as well as the Terms and Conditions of Use applicable from time to time, subject to adequate notification being given as required by the Code of Banking Practice and any other legislation;
- 4. The features and benefits of the recommended products and services have been explained to me, including how the Facility will operate and the charges and interest that will apply;
- 5. To the best of my knowledge and belief, the information provided to the Bank is true, accurate and complete;
- 6. I acknowledge that the Bank reserves the right to immediately withdraw all facilities or offers should any adverse financial information or facts come to the Bank's attention at any time either before or after conclusion of the Facility;
- 7. I am able to afford the repayments as set out herein; and
- 8. I agree that should it be necessary to amend any of the terms, security, and/or conditions of this Facility, I may be required to enter into a new legal agreement with the Bank and the Bank may, furthermore, review and/or amend the interest rate applicable to this Facility. I accept that should I be dissatisfied with the provisions of any new legal agreement and/or quotation, then I have the right to terminate this Facility in accordance with the Terms and Conditions of the Facility and by notifying the Bank in writing.

Signed at Randburg on this 19 day of August 2014. 8:10 am

As witnesses:


STEPHANUS IGNATIUS VAN ZYL

Name in full

5006175062084

ID No

Signature


Sivabonga Mahlangu
ID No. 740923 5515 08 3
("the client")

Enclosed documentation:

- 1. The Bank's standard terms and conditions, version number FSF 1 2013; and
- 2. The Bank's terms and conditions of use, if applicable; and
- 3. Annexure A relating to the Bank's credit related charges (if applicable).

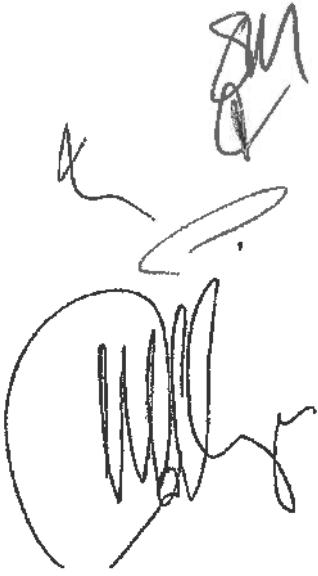




Initial Costs for FNB Structured Facility (4B)
Facility in the name of : Siyabonga Mahlangu
For an amount of : R 3 600 000.00

Description of Costs	Cost Payable by Client
Initiation Fee	R 5 700.00
Total	R 5 700.00

Subscription fee per month R57.00
All amounts are estimated amounts which may vary on registration.
Full details of all fees applicable to your facility are available on request from our Service Centre.
In all instances where VAT is applicable, Vat is included in the amount.
NCA Reg.No. NCRCP20

A large, stylized handwritten signature is written over a circular official stamp. Above the signature, there is a smaller, less legible handwritten mark or signature.



SM/6

NOTIFICATION OF PAYMENT

To Whom It May Concern:

First National Bank hereby confirms that the following payment has been made :

Date actioned : 01 Jul 2015
Time actioned : 11:32:27
Trace ID : VODSZBTHMWMC
Payer Details
Payment From : MS MANDLESILO L B MSIMANG - 55851124997
Amount : 1,400,000.00
Payee Details
Recipient/Account No : . . 042001
Name : Aw Jaffer & Co Trust
Bank : FNB/RMB
Branch Code : 250655
Reference : 36 Venus/birdhaven
Channel : BBANK18B

END OF NOTIFICATION

To authenticate this Payment Notification, please visit the First National Bank website at <https://www.fnb.co.za>, select the "Verify Payment Notification" link and follow the on-screen instructions.

Our customer (the payer) has requested FirstRand Bank Limited to send this notification of payment to you. Should you have any queries regarding the contents of this notice, please contact the payer. FirstRand Bank Limited does not guarantee or warrant the accuracy and integrity of the information and data transmitted electronically and we accept no liability what soever for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from the transmission of the information and data.

SM
Q

FirstRand Bank Directors: LL Dippenaar (Chairman), SE Nxasana (CEO), VW Bartlett, JJH Bester, JP Burger (Deputy CEO), MS Bornela, P Cooper (Alternate), L Crouse, JJ Durand, GG Gelink, PM Goss, NN Gwagwa, PK Harris, WR Jardine, HS Keilan, RM Loubser, EG Matenge-Sebesho, AT Nzimande, D Premnarayan (India), KB Schoeman, B.J van der Ross, JH van Greunling Company Secretary: C Low

SM17

From: Siyabonga Mahlangu mahlangusiyabonga@gmail.com
Subject: Heads up
Date: 18 Jan 2011 at 19:22:42
To: nkanyezi.gigaba@gmail.com

Dear Minister

- I have been invited on a trip to India on 24 January-1 Feb 2010. Although this a private excursion, it promises to be of great political value. I therefore suggest that we take full advantage of it. I therefore request leave to undertake this sojourn.
- I understand that Transnet may be nearing a settlement with Gama. I will obtain the details of the settlement and brief you accordingly. I suggest that you socialise the President and his key aides (formal & informal) on the proposed settlement. It is intended that the forthcoming board should consider and authorise it.
- Manyi may be nominated by certain quarters in the board for the position of Transnet GCE. I had a meeting with him (at his instance) . I expressed my reservations. It seems to me that there may be attempts to divide the board on this point. I will obtain an update from the Chair on the latest developments.
- Ayanda and I have identified a public speaking and media coach. We have socialised the DG on this issue. A formal submission is being prepared. I suggest that this programme be factored in the diary partly in preparation of your maiden Budget Vote;
- Meetings with senior editors have been organised subject to your confirmation. I suggest that these one on ones be placed in your diary and be held in a relaxed environment;
- I have reviewed the media and publicity campaign for Feb until March 2010. It is a bit more robust and near completion. I seem to agree with the latest draft. Upon completion, Ayanda will share it with the rest of the political team. It will then be recommended to you for authority to implement.

SM
A. SM

SM18

From: mahlangusiyabonga@gmail.com
Subject: Fw: Recommendation for SAA board
Date: 23 May 2013 at 11:38:45
To: tshediso.matona@dpe.gov.za, tmatona@gmail.com

As discussed.

Sent via my BlackBerry from Vodacom - let your email find you!

From: nkanyezi.gigaba@gmail.com
Date: Thu, 23 May 2013 01:08:51 -0700 (PDT)
To: <Mahlangusiyabonga@gmail.com>
Subject: Re: Recommendation for SAA board

I want Chichi, Zanele, Amb. Mthembu and then Msololi or Msoholi

Sent from my BlackBerry 10 smartphone.

From: Mahlangusiyabonga@gmail.com
Sent: Thursday 23 May 2013 10:04 AM
To: Minister Malusi Gigaba; nkanyezi.gigaba
Subject: Recommendation for SAA board

Dear Minister

In your effort to strengthen the SAA board, you may also consider Mr. Thabo Msololi. He is a very astute CA and very schooled strategy and business operations. I had an informal chat with him. He indicated that he would be willing to serve. He understands the agenda of government fully well.

His brief bio is below:

Mr. Thabo Felix Mosololi, BCom (Hons), UWC, CA(SA) served as Operations Director of Tsogo Sun Gaming (Pty) Ltd. Mr. Mosololi joined Tsogo Sun Gaming in 2002 as Finance Director. He serves as the Treasurer of the Johannesburg branch of the Black Management Forum. Mr. Mosololi's expertise includes management consulting, financial re-engineering and strategy development. He served as Senior Consultant and Audit Manager of KPMG. He formed TSI Financial & Investment Services through which he provided management consulting services. Mr. Mosololi served as the Chief Operating Officer at Gobodo Incorporated Chartered Accountants from 1996 to 2000 and was responsible for its day-to-day operations, where he served as Group Chief Executive Officer and was involved in new business development, strategy, risk

SM
Q

management and client relations. He joined KPMG (Johannesburg office) for his articles. He serves as Chairman of the Education Foundation and a Member of the Gauteng province's Financial and Fiscal Commission. He has been a Director of Edcon Holdings (Proprietary) Limited and Edcon (Pty) Limited since January 1, 2013. He serves as a Member of the Black Management Forum. He serves as a Member of the Transformation Board at KPMG. He serves as a Independent Non Executive Director of Evraz Highveld Steel & Vanadium Ltd. He served as Director of First Uranium Corporation from June 8, 2011 to August 3, 2012. He served as a Non-executive Director of Matodzi Resources Ltd. (now Goliath Gold Mining Limited) from March 17, 2003 to February 5, 2007. Mr. Mosololi served as a Non-executive Director of Telkom SA Ltd from October 15, 2004 to September 2007. He served as a Director of Telkom SA SOC Limited since October 15, 2004. Mr. Mosololi was a Member of the Financial Services Board's Insider Trading Directorate from 1999 to 2003. From 2001 to 2003, he was a Commissioner on the Fiscal & Financial Commission. He is a Member of SAICA (South African Institute of Chartered Accountants), PAAB (Public Accountants and Auditors Board) and ABASA (Association for the Advancement of Black Chartered Accountants in South Africa). He has been a Chartered Accountant since 1994. He completed his Honours (Accounting) degree in 1990. Mr. Mosololi holds a Bachelor of Commerce from the University of the Western Cape in 1991, a Diploma in Project Management from Damelin College in 1997 and completed the Management Advancement Programme in 1999 and Executive Development Programme in 2004 at the Wits Business School.

He is now running a private equity/investment outfit with Jabu Mabuza.

Regards

Siya

Sent from my iPad

A handwritten signature in black ink, appearing to be the letters 'SM' with a stylized flourish underneath.

SM19

From: mahlangusiyabonga@gmail.com
Subject: Re: Fwd: For consideration for the Board or Executive position
Date: 21 Aug 2012 at 11:24:54
To: nkanyezi gigaba nkanyezi.gigaba@gmail.com

Strong on tourism. We need to look at her in context of whole board.
Sent via my BlackBerry from Vodacom - let your email find you!

From: nkanyezi gigaba <nkanyezi.gigaba@gmail.com>
Date: Tue, 21 Aug 2012 11:03:59 +0200
To: Siyabonga Mahlangu<Siyabonga.Mahlangu@dpe.gov.za>; Siyabonga Mahlangu<mahlangusiyabonga@gmail.com>
Subject: Fwd: For consideration for the Board or Executive position

Mabhoko!

Please consider this.

Regards
Minister

Sent from my iPad

Begin forwarded message:

From: "Phelisa Nkomo" <Phelisa.Nkomo@dpe.gov.za>
Date: 21 August 2012 8:46:53 AM SAST
To: <nkanyezi.gigaba@gmail.com>
Subject: For consideration for the Board or Executive position

Dear Minister,

I would like us to Consider Ms Kubeka, she has a strong background on Business Tourism (Travel) & leisure and I have asked her to share the strategy with me. One of the key drivers of growth in the airline industry is linked to South Africa hosting international conferences and positioning itself a incentive destination for incentives. This will allow SAA to develop packages for conference travelers and SAA has never been amenable to this approach and they are losing business to Emirates and other airlines because they are conservative and refuse to consider package for conference like World Conference on Diabetes which attracted 12,000 delegates to South Africa, World Psychologist Conference which attracts 20,000 delegates to South Africa (Prof Sath Cooper is the International President).

SM

She is open to consider the executive position as well, she has an MBA and wealth of knowledge on Business Tourism , Finance.

She will add a lot of value to SAA and its positioning.

See the attached.

Ms Phelisa Nkomo

Policy Advisor to the Minister

DEPARTMENT OF PUBLIC ENTERPRISES

+27 (0)76 981 5481 | +27 (0)12 431 1186 | +27 (0)86 501 2624 | phelisa.nkomo@dpe.gov.za
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 431 1000

Click on the following link to view DPE website & email disclaimer <http://www.dpe.gov.za/home.asp?id=10>
Click on the following link to view directions to DPE <http://www.dpe.gov.za/home.asp?id=1053>

From: Nonnie Kubeka [<mailto:nonniekubeka@gmail.com>]

Sent: Thursday, August 16, 2012 7:53 PM

To: Phelisa Nkomo; phelsnkomo@gmail.com

Subject: CV

Dear

SM
4



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

SM20

16/1/3/1



TO : MR. MALUSI GIGABA

MINISTER

FROM : MS. MATSIETSI MOKHOLO

DEPUTY DIRECTOR-GENERAL: LEGAL AND GOVERNANCE

FILE REF : 16/1/1

IDMS REF : 142362

**SUBJECT : REDUCTION OF THE SIZE OF THE BOARD OF DIRECTORS OF
TRANSNET SOC LTD ("TRANSNET")**

DATE : 09 MARCH 2012

1. PURPOSE

- 1.1 To brief the Minister about a legal opinion received from Advocate Sesi Baloyi and Advocate Tshepo Sibeko (SC) ("Counsels") regarding the reduction of Transnet Board ("attached as Annexure "A").
- 1.2 To request the Minister to sign a letter to the Chairman of the Transnet Board informing him that the Minister has decided to amend the Memorandum of Incorporation of Transnet to reduce the size of Transnet's Board from 18 members to 14 members and to remove 4 Board members (attached as Annexure "B").

2. SUMMARY

- 2.1 The Department was requested to source a legal opinion from Counsels on the reduction of the Transnet Board from 18 Board members to 14 Board members. Counsels advised that the Department may amend the Memorandum of Incorporation to reduce the size of the Board. However, in accordance with the provisions of section 71 of the Companies Act, the Minister needs to give adequate notice of the Shareholders Meeting and the resolution to

15.03.2012

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REDUCTION OF THE SIZE OF THE BOARD OF DIRECTORS OF TRANSNET SOC LTD

the Directors that will be removed and also give them an opportunity to make presentations.

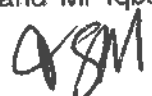
- 2.2 The Department advises that the Minister signs a letter to the Chairman of the Transnet Board, informing him that the Minister intends to amend the Memorandum of Incorporation to reduce the Board of Transnet to 14 Board members and to remove 4 current Board members. The Department has prepared the draft notice, the draft proposed resolutions and the draft letter to the affected Board members informing them of their removal.

3. ANALYSIS AND FINDINGS

- 3.1. The Department received a request from the Special Counsel to the Minister that a legal opinion be sought from Counsels on the following issues ("attached as Annexure "C"):

- Whether in addition to what is stated in the Memorandum of Incorporation, there is any other legal prescript or instrument that the Minister must consider in order to reduce the size of a Board?
- If so, what is required of the Minister in terms of such legal prescripts or instruments?
- Can the Minister adopt resolutions retiring specific members of the Board at the same meeting where he adopts a resolution reducing the size of the Board?
- Assuming that the reduction of the Board size precedes the retirement of Board members, is the Minister required to evoke the provisions of section 71 of the Companies Act? If so, what is the nature of the representations completed in this section? In other words, does the right to make representations equate to the right to be heard in terms of PAJA?
- Is the commercial decision to reduce the size of the Board justifiable? If so, on what grounds can it be challenged in law? Do the reasons referred to above survive legal scrutiny? If not, what would the reasons be that a court would uphold in the circumstance such as the present?
- How can the Minister implement the reduction of the size of the Board in a manner that would survive a legal challenge?

- 3.2. The Memorandum of Incorporation of Transnet provides that the Board of Transnet must have a maximum number of 18 Board members. The Special Advisor advised that the Minister intends to reduce the size of the Board of Transnet to 14 Board members by removing Mr Peter Malungani, Ms Thembekazi Mnyaka, Mr Don Mkwanaazi and Mr Iqbal Sharma.



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REDUCTION OF THE SIZE OF THE BOARD OF DIRECTORS OF TRANSNET SOC LTD

3.3. The Department duly briefed the Counsels and they provided a legal opinion to the Department on 7 March 2012. The Counsels advised as follows:

- The reduction of the size of a Board is a prerogative of the Shareholder and that the Minister can amend the Memorandum of Incorporation of Transnet to reduce the size of the Board. The reason for amending the Memorandum of Incorporation is not required to be reasonable.
- Article 25 of the Memorandum of Incorporation of Transnet provides that subject to the Companies Act, the Company shall be entitled to alter the provisions of its Memorandum. Article 88.5 provides that a Director shall cease to hold office if given notice of termination of his appointment by the member of the company. Counsels advise that Transnet should invoke Article 25 to amend the memorandum and Article 88.5 to remove the Directors who will be in excess after the amendment of the Memorandum.
- Section 71 (1) of the Companies Act provides that a Director may be removed by an ordinary resolution adopted at a Shareholders meeting. Section 71 (2) provides that before the Shareholder may consider a resolution, the Directors to be removed must be given notice of the meeting and the resolution and be afforded a reasonable opportunity to make a presentation in person or through a representative to the meeting before a resolution is put to a vote. Counsels advised that the reason provided in the notification must be stipulated as the amendment of the Memorandum of Incorporation and consequent reduction of the Board. Counsels further advised that in the reasons the Department must avoid imputing incapacity or wrongdoing to any of the Directors to be removed to avoid potential liability, should the Directors claim damages.
- Counsel further advised that the representations must be required to be made in writing. The notice must afford a reasonable time to make submissions, which may be a period of between 14 and 21 days. Therefore, the date of the meeting must take into account the period given to the Directors to make representations.

3.4. The Department agrees with Counsels opinion that Section 71 of the Companies Act entitles the Minister to remove the 4 Board members of Transnet subject to giving adequate notice of the meeting and the resolution, and the opportunity to make presentations. Such presentations may take the form of an exit report presented verbally or in writing to the Minister as Shareholder representative of Transnet. The Department further agrees that the



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REDUCTION OF THE SIZE OF THE BOARD OF DIRECTORS OF TRANSNET SOC LTD

Memorandum of Incorporation of Transnet be amended to reduce the maximum number of Directors to 14.

3.5. With this reduction, the Board will be a complement of 8 Africans, 2 Whites, 1 Coloured and 3 Asians. The gender balance will be 8 males and 6 females. The schedule of the new proposed Board is attached as Annexure "D". The skills of the Board members that will be removed are as follows:

- (a) Mr Peter Malungani's skills are entrepreneurship, business strategy, corporate governance and investment banking.
- (b) Ms Thembekazi Mnyaka's skills are economic planning and development, international trade and business consulting.
- (c) Mr Don Mkwana's skills are business, finance, strategy, human resource development and corporate governance.
- (d) Mr Iqbal Sharma's skills are strategy, business, international trade, management and global economy.

3.6. The Department is of the view that the Board has enough experience to fill any gap that it may identify as a result of the removal of the above-mentioned 4 directors. However, the risk is that the reduction of the size of the Board comes at a time when Transnet is embarking on a massive infrastructure build and when appropriate skills will be required to ensure successful achievement of the projects.

3.7. The Department advises that the Minister signs a letter to the Chairman of the Transnet Board informing him of the intention to amend the Memorandum of Incorporation to reduce the number of Directors to 14. The Department has prepared the draft notice, proposed resolutions of the Shareholder Meeting and the draft letter which will be sent to the four directors whose terms will be terminated (attached as Annexure "E").

4. FINANCIAL IMPLICATIONS

There are no financial implications emanating from this memorandum.

5. CONSULTATION/PROJECT TEAM

Siyabonga Mahlangu and Orcilla Ruthnam.



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REDUCTION OF THE SIZE OF THE BOARD OF DIRECTORS OF TRANSNET SOC LTD**RECOMMENDATION**

It is recommended that the Minister:

- 6.1 notes the contents of this memorandum; and
- 6.2 signs the attached letter to the Chairperson of the Transnet Board.

QSM

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REDUCTION OF THE SIZE OF THE BOARD OF DIRECTORS OF TRANSNET SOC LTD

Memorandum prepared by:

ADVIMELANCHTON MAKOBE

CD: LEGAL COUNSEL

DATE: 09/03/2012

ORCILLA RUTHMAM

CD: GOVERNANCE

DATE: 09/03/2012

REVIEWED AND SUPPORTED:

RAISIBE LEPULE

DDG: TRANSPORT

ENTERPRISE

DATE: 9/3/2012

M.A. MOKHOLO

DDG: LEGAL AND

GOVERNANCE

DATE: 13/03/2012

MR TSHEDISO MATONA

DIRECTOR GENERAL

DATE: 19/03/2013

MR. MALUSI GIGABA, MP

MINISTER

DATE: 2012/05/13

Communication plan

This must be accompanied by a risk assessment /
RECOMMENDED / NOT RECOMMENDED / COMMENTS
 (of possible legal / personal and communication / reputation
 management issues). Mkhwanazi was in the
 last attempt to rotate some board members, and we
 need to be prepared to deal with the risk that someone
 including the concerned individuals will cry foul and claim
 a purge under the guise of amending MoT to reduce board;
 alternatively raise the point made in Para 3.6, or ask why not
 rotate at next AGM? These and more need to be anticipated and
 prepared for

APPROVED / NOT APPROVED / COMMENTS

DG's comments noted. Further note that
 I had personally notified Mr Mkhwanazi
 and Ms Mnyaka of my intention to remove
 them from the Board. What are the implications
 this and what impact does it have on the draft
 letter?

MR.

DEP

DAT

QSM

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SM21

Mary Mosupyoe

From: Melanchton Makobe
Sent: Friday, March 09, 2012 2:47 PM
To: Mary Mosupyoe
Subject: FW: urgent legal opinion sought (Annexure C)

-----Original Message-----

From: Siyabonga Mahlangu
Sent: 21 February 2012 11:59 PM
To: Matsietsi Mokholo; Melanchton Makobe; Raisibe Lepule
Subject: urgent legal opinion sought

Dear Matsi

Would you kindly instruct State Attorney to brief Advocates Tshepo Sibeko SC and Sesi Baloyi on the following questions:

In the continuous engagements between the chairperson and the Minister, it became apparent that the board of Transnet was bloated and not effective because of its sheer size. The Minister desires to reduce the board to ensure that it is more focused and streamlined so that it can be more effective particularly in light of the increase in the Capex of the company.

1. In addition to what is stated in the memorandum of incorporation, is there any other legal prescript or instrument that the Minister must consider in order to reduce the size of the board?
2. If so, what is required of the Minister in terms of such legal prescripts or instruments?
3. Can the Minister adopt resolutions retiring specific members of the board to bring the number to 12 non executive directors and 2 executive directors at the same meeting where he adopts a resolution reducing the size of the board?
4. Assuming that the reduction of the board size precedes the retirement of board members, is the Minister required to evoke the provisions of section 71 of the Companies Act? If so, what is the nature of the representations completed in this section? In other words, does the right to make representations equate to the right to be heard in terms of PAJA?
5. Is the commercial decision to reduce the size of the board justiciable? If so, on what grounds can it be challenged in law? Do the reasons referred to above survive legal scrutiny? If not, what would be reasons that a court would uphold in the circumstance such as the present?
6. How can the Minister implement the reduction of the size of the board in a manner that would survive a legal challenge?

Please feel free to add such questions as you may consider to arise as a result of the contemplated reduction of the board size.

I request that you dispatch instructions urgently and ensure that Counsel is briefed urgently. We should consult with counsel in the early parts of next week.

Kind regards

Siya

Q SM



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

16/1/31

SM22

TO : MR. MALUSI GIGABA

MINISTER

FROM : MS. MATSIETSI MOKHOLO

DDG: LEGAL AND GOVERNANCE

DEPARTMENT OF PUBLIC ENTERPRISES
PRIVATE BAG/PRIVAATSAK X15
2012-06-07
HATFIELD 0028
DEPARTEMENT VAN OPENBARE ONDERNEMINGS

FILE REF : 16/1/1

IDMS REF : 145351

SUBJECT : APPOINTMENT OF THE CHIEF FINANCIAL OFFICER - TRANSNET

DATE : 31 MAY 2012

1. PURPOSE

- 1.1 To advise the Minister on the contents of the letter (attached hereto as **Annexure "A"**) from the Chairperson of the board of directors of Transnet SOC Ltd ("Transnet Board"), Mr Mafika Mkwanazi, pertaining to the appointment of Mr Anoj Singh as the Chief Financial Officer of Transnet; and
- 1.2 To request the Minister to sign the letter (attached hereto as **Annexure "B"**) to Mr Mafika Mkwanazi, if in agreement with the contents thereof.

2. SUMMARY

- 2.1 The Transnet Board has appointed Mr Anoj Singh ("Mr Singh") as the Chief Financial Officer ("CFO") of Transnet and requests the Minister to concur with the appointment, in accordance with the provisions of article 69(c) of the memorandum of incorporation of Transnet.
- 2.2 The Transnet Board proposes that Mr A Singh be paid in the range of R 3,95 million to

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6/6

APPOINTMENT OF THE CHIEF FINANCIAL OFFICER - TRANSNET

R4,16 million per annum. The Department advises that the package suggested by the Transnet Board is not in line with the Remuneration Guidelines.

- 2.3 The Department recommends that the Minister deviates from the Remuneration Guidelines and approves the appointment of Mr Singh as the CFO of Transnet with the remuneration package of R 3,95 million as he possesses the appropriate skills and experience required for the position of CFO. The Department is of the view that Transnet Board's appointment of Mr Singh as the CFO of Transnet subsequent to him having acted in that position for a considerable period of time, is an indication of the Transnet Board's confidence in Mr Singh's ability to successfully serve as the CFO of Transnet. Furthermore, the Transnet Board was satisfied with his performance as acting CFO of Transnet.

3. ANALYSIS AND FINDINGS

- 3.1. The Department received a letter from the Chairperson of Transnet, Mr Mafika Mkwanazi, informing the Minister of the Transnet Board's resolution to appoint Mr Anoj Singh to the position of Chief Financial Officer.
- 3.2. In March 2009, the Transnet Board appointed the former CFO of Transnet, Mr CF Wells, as the Acting Group Chief Executive of Transnet. This necessitated that the position of the CFO be filled in an acting capacity until such time that the GCE position is filled. Mr Anoj Singh filled the position of CFO in an acting capacity since 09 March 2009.
- 3.3. The Transnet Board has now appointed Mr Singh as the CFO of Transnet and requests the Minister to concur with the appointment of Mr Singh in accordance with the provisions of article 69(c) of the memorandum of incorporation of Transnet. Article 69(c) of the memorandum of incorporation of Transnet provides that the Board of Directors shall appoint the CFO in consultation with the Minister.
- 3.4. Mr Mkwanazi's letter (attached hereto as **Annexure "A"**) indicated that the Transnet Board suggests a guaranteed remuneration package offer of between R 3,95 million and R 4,16 million for Mr Singh.
- 3.5. Paragraph 4.3 of the Remuneration Guidelines provides that Chief Executive Officers' (CEOs) and Executive Directors' annual total guaranteed packages should not exceed the median amount of the remuneration model developed by the Department.
- 3.6. According to the remuneration model developed by the Department as detailed in Schedule 3 of the Remuneration Guidelines the scales for Executive Directors are as follows:

APPOINTMENT OF THE CHIEF FINANCIAL OFFICER - TRANSNET

Company Size	Lower Quartile	Median	Upper Quartile	90th Percentile
A	1,190,086	1,917,324	2,587,987	3,442,023
B	733,006	1,296,670	1,580,221	2,101,693
C	535,539	862,796	1,164,594	1,548,910
D	395,143	717,852	962,079	1,279,565

- 3.7. Transnet falls under category A companies due to its sizing. This entails that the appropriate guaranteed remuneration package for a Transnet CFO who is an executive director would, in terms of the model developed by the Department as detailed in Schedule 3 of the Remuneration Guidelines, have been a guaranteed remuneration package of R1,917,324.00 (the median). The guaranteed remuneration package offer suggested by the Transnet Board, for Mr Singh, far exceeds the median of the remuneration model developed by the Department and even the 90th percentile.
- 3.8. We therefore request the Minister to deviate from the Remuneration Guidelines and approve the appointment of Mr Singh with a package of R 3,95 million for the following reasons:
- Mr Singh has been in Transnet since 2003 and has the institutional memory.
 - The position of CFO has been vacant since 2009 and Mr Singh has been acting in that position since 09 March 2009. If the Board has to start a new process for the appointment of a CFO, the process will take long and the position has been vacant for a long time.
 - Mr Singh possesses the appropriate skills and experience required for the position of CFO.
 - Transnet will be embarking on a build programme and appointing a new CFO may destabilise the company. Mr Singh enjoys the confidence of the stakeholders at Transnet.
 - Mr Singh is already being paid R 3,95 million in an acting capacity which consists of R 2,265 million as General Manager: Group Finance and R 1,688,136 as an acting allowance.
- 3.10 Mr Singh's appointment as the CFO of Transnet will entitle him to be an *ex officio* director of the Transnet Board. This is because Article 68 of the memorandum of incorporation of Transnet requires that the Board comprises of not less than eight (8) non-executive



APPOINTMENT OF THE CHIEF FINANCIAL OFFICER - TRANSNET

directors and not less than two (2) executive directors whom shall include the CEO and the CFO of Transnet respectively.

- 3.20 It is therefore recommended that the Minister appoints Mr Singh as an *ex officio* member of the Transnet Board. The letter of appointment is attached hereto as an annexure to the letter (attached hereto as **Annexure "B"**) to Mr Mafika Mkwanazi. The Department shall at a later stage, notify Cabinet of Mr Singh's appointment as an *ex officio* member of the Transnet Board.

4. FINANCIAL IMPLICATIONS

There are no financial implications for the Department. The remuneration of the CFO shall be borne by Transnet.

5. CONSULTATION/PROJECT TEAM

None

6. RECOMMENDATION

It is recommended that the Minister:

- 6.1 notes the contents of this memorandum;
- 6.2 deviates from the Remuneration Guidelines and concurs with the appointment of Mr Singh as CFO of Transnet and approves the guaranteed remuneration package offer of R 3,95 million as recommended by the Transnet Board;
- 6.3 appoints Mr Singh as an *ex officio* member of the Transnet Board;
- 6.4 signs the letter (attached hereto as **Annexure "B"**) to the Chairperson of Transnet, if the contents thereof are acceptable.

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APPOINTMENT OF THE CHIEF FINANCIAL OFFICER - TRANSNET

Memorandum prepared by:


ADV. MELANCHTON

MAKOBE

CD: LEGAL COUNSEL

DATE: 31/05/2012

REVIEWED AND SUPPORTED:


RAISIBE LEPULE

DDG: TRANSPORT

DATE: 31/5/2012


M.A. MATSIETSI MOKHOLODDG: LEGAL &
GOVERNANCE

DATE: 04/06/2012


MR. TSHEDISO MATONA

DIRECTOR GENERAL

DATE: 7/6/2012

RECOMMENDED / NOT RECOMMENDED / COMMENTS

The Minister's Legal Counsel
informs me that Minister
would like to have another
discussion of this.


MR. MALUSI GIGABA, MP

MINISTER

DATE: 2012/06/13

APPROVED / NOT APPROVED / COMMENTS

A SM

Mr. Alvin Karpman, Chairman

Dear Sir,

The benchmarking results were validated with market information from 21st Century Pay Solutions and Remchannel.

28M

8/88

Mphahlele Mphahlele, Chairman

TRANSNET

Context of Transnet

Transnet continuously strives to become an employer of choice and regards its employees as the most valued asset of the business.

Remuneration plays a significant role in the retention strategy. The reward strategy remains focused on entrenching a performance driven culture. Remuneration policies are aligned to the business strategy and the achievement of set performance objectives, rewarding employees for their contribution to the success of Transnet.

The Transnet Market Demand Strategy requires sustained effort and energy of the Executive leadership to ensure high performance as well as a sustainable and profitable long term growth path in line with the National Growth Plan initiatives of the South African Government.

The remuneration levels of the executives are largely determined by the market. Large publicly listed and state-owned companies require people with exceptional skills to lead them competently and create employment for tens of thousands of people. They are also responsible for generating returns on large sums of investor money, including pension funds and savings of workers.

State-owned companies often manage businesses of the same magnitude as, or larger than, public listed companies. They also have the added responsibility of managing key national resources.

Role of the Chief Financial Officer of Transnet SOC Ltd

Transnet is a public company, wholly owned by the Government of the Republic of South Africa (shareholder). As the owner and operator of South Africa's major transport infrastructure, Transnet is responsible for ensuring that the country's freight transportation system operates according to world class standards and enabling economic growth as an integral part of the overall economy.

Transnet generates annual revenue of approximately R 38 billion, total asset value of R 167 billion and has to deliver on a capital investment plan of R 110 billion over the next five years.

As Chief Financial Officer for the Transnet Group, this role has to ensure that the financial objectives as per the approved Corporate Plan and Shareholder Compact are achieved, that there is full compliance with all accounting and regulatory standards; and that the financial governance and risk management practices are developed and implemented across the Transnet Group.

The incumbent in this position will be a member of the Transnet Board and Group Executive Committee, thus, forms an integral part of the core group responsible for Transnet Group Strategy formulation.

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Mr. Peter Mkhondisi, Chairman

The key accountabilities involve the following:

- Business and Financial Strategy Development & Implementation
- Management of the Group Finances
- Management of Strategic Funding
- Management of Audit & Internal control
- Management of Corporate Governance
- Management of Group Tax

External Market Comparison

Transnet, on an annual basis, benchmark the remuneration of Group Exco and Extended Exco members against the market.

Transnet utilises the Deloitte Remuneration Survey for Executive Management to, on an annual basis, benchmark the remuneration of these executives.

This market benchmark exercise was recently completed and the findings presented to the Committee during the meeting that took place on 1 November 2011.

For the purpose of benchmarking the guaranteed remuneration of the Chief Financial Officer, the Deloitte information was used as well as benchmark information from Remchannel and 21st Century Pay Solutions.

The information is valid as at November 2011 and summarised in the table below.

Table 1 – Market information as per the respective survey results

Market Percentile	Guaranteed Total Cost to Company (Rand per Annum)		
	Deloitte	21 st Centu.	Remchannel
Market Lower (25 th percentile)	3,748,185	3,391,211	3,594,110
Market Median (50 th percentile)	4,164,650	3,930,100	3,993,456
Market Upper (75 th percentile)	4,591,115	4,468,989	4,392,802

The table above indicates that there is alignment between the results from the respective survey houses that were used to benchmark the guaranteed remuneration for the Chief Financial Officer of Transnet SOC Ltd.

Transnet remuneration philosophy determines that guaranteed remuneration should be aligned with the market median.

This is used as guideline when an offer of employment is made to a successful candidate, but several other factors are considered in conjunction with the market information. These factors include

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M. Mkwana, Chairman

amongst other, specific skills and experience, current remuneration and the remuneration expectation of the successful candidate. It should also create opportunity for growth into the role.

Remuneration of Previous Incumbents

The remuneration of the previous as well as the current acting incumbent is depicted in the table below.

Table 2 -- Remuneration of Previous and Current Acting Incumbents

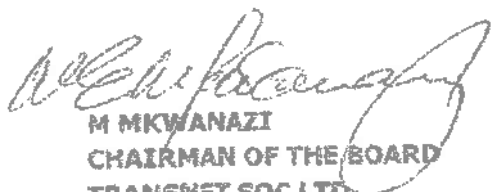
Name	Total Cost to Company (R- <u>pa</u>)	Acting Allowance (R- <u>pa</u>)	Comments
CF Wells	4,460,184		Guaranteed pay as at 31 March 2011
A Singh	2,265,000	1,688,136	Total earnings amount to R3.95m pa

Recommendation

It is therefore recommended that, based on the content as set out in this letter, the Department of Public Enterprises takes note of this submission and specifically:

That the new Chief Financial Officer of Transnet SOC Ltd. be made a remuneration offer taking into account current earnings, skills and experience, remuneration expectation and growth into the role; and

That the offer will range between a minimum of R3.95m total cost to company per annum (the actual earnings of the current acting incumbent) and R4.16m (market median as per Deloitte) as depicted in table 1 above.


M MKWANAZI
CHAIRMAN OF THE BOARD
TRANSNET SOC LTD

98M



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: (012) 431 1116/1159 Fax: (012) 431 1033
Private Bag X9079, CAPE TOWN, 8000 Tel: (021) 461 6376/71469 6760 Fax: (021) 465 2361/461 1741

Mr Mafika Mkwanazi
Chairperson
Transnet Board
P O Box 72501
Parkview
2122

Tel: 011 308 2235
Fax: 011 308 2315

Dear Mr Mkwanazi

Appointment of the Chief Financial Officer - Transnet

The above matter refers.

I note Transnet's request for me to concur with Mr Anoj Singh's appointment as Chief Financial Officer ("CFO") of Transnet.

I also note that the Transnet Board requests that the offer range between R3, 95 million and R 4,16 million. The suggested remuneration far exceeds the remuneration package for executive directors as stipulated in the Remuneration Guidelines developed by the Department.

Notwithstanding the above, I concur with the appointment of Mr Singh as CFO of Transnet on the basis that he possesses the appropriate skills and experience required for the position of CFO. In this regard I will deviate from the Remuneration Guidelines by approving the remuneration package of R 3, 95 million.

I note that consequent to his appointment as CFO of Transnet, Mr Singh will be appointed as an *ex officio* member to the Transnet Board. In this regard, please find a letter (attached hereto as **Annexure A**) appointing Mr Singh as an *ex officio* to the Transnet Board. The letter is to be handed to Mr Singh once the appointment process has been finalised. As the Chairperson of the Transnet Board, please ensure that the letter and contract of appointment are aligned to the following stipulations:


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- Mr Singh's appointment as *ex officio* to the Board shall, irrespective of any other term stipulated in any letter or contract of employment, terminate with immediate effect upon the date of notice of termination or employment or notice of resignation;
- As *ex officio*, Mr Singh shall not be entitled to any additional remuneration, other than that provided for in the contract of employment;
- All Board activities Mr Singh performs, including but not limited to preparation for Board meetings, travelling time to and from Board meetings, and participation in Board activities/responsibilities, whether within or outside normal working hours are regarded as official duties and do not require the official to take leave to attend to them.

I hope that you will find the above in order.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2012/06/13

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Statement on the Cabinet meeting of 24 October 2012

26 Oct 2012

Cabinet held its ordinary meeting in Cape Town on 24 October 2012.

1. CURRENT AFFAIRS

1.1 Eighth Session of the Republic of South Africa - Democratic Republic of Congo Bi-National Commission (BNC), held in Pretoria

Cabinet noted that at the invitation of President Jacob Zuma, His Excellency, Mr Joseph Kabila Kabange, President of the Democratic Republic of Congo, visited South Africa from 22 to 24 October 2012 on the occasion of the Eighth Session of the Bi-National Commission between South Africa and the DRC.

During their official talks, the two Presidents reviewed a wide range of bilateral, regional and international issues. They expressed great satisfaction at the warm and special relations that exist between their two countries and committed themselves to further enhance these relations for the mutual benefit of their respective countries and peoples.

1.2 Public protests and politically motivated killings

Cabinet condemns the alleged politically motivated killings in KwaZulu-Natal and calls on all South Africans to demonstrate political tolerance and act responsibly.

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Political differences are no cause for violence.

Cabinet also calls on communities to participate actively in Community Policing Forums and Community Safety Forums and partner with the SA Police Service in contributing towards better functioning communities as well as ensuring that South Africans are and feel safe.

1.3 Education

Cabinet joins the nation in wishing the Class of 2012 well in their National Senior Certificate examinations, especially since this is the first critical mass of matriculants born in a democratic South Africa.

The success of the interventionist catch-up programme to assist pupils writing the senior certificate examination in Northern Cape has also sparked renewed hope and optimism.

On this note, Cabinet calls on all South Africans to continue providing full support to pupils across the country, including those in correctional facilities, as they write their exams.

Whilst Cabinet wishes all matriculants well in their exams, Cabinet commended Remember Mashabela of GaSelale, Burgersfort who wrote the first paper of the matric exams in hospital.

1.4 Disaster management

The recent spate of floods across the country has resulted in loss of life, damaged homes and public infrastructure. Cabinet express condolences and sympathy to those who have lost loved ones and those impacted on by the damage to property.

1.5 Congratulatory note

Cabinet congratulates Minister Trevor Manuel on his appointment to head up a panel set up by the World Bank to review its Doing Business project.

His appointment confirms, once again, the confidence that world institutions and the international community in general have in South Africa and its people.

1.6 Condolences



Cabinet expresses its deepest sympathies and conveys its condolences to the families and friends of Bafana Bafana assistant coach Thomas Madigage, as well as the families and friends of acclaimed photographer Alfred Khumalo, who covered the 1976 student uprising, the State of Emergency during the 1980s, the unbanning of the liberation movements and the inauguration of South Africa's first democratic government among a host of other events.

2 CABINET DECISIONS

2.1 Package of issues to respond to the economic challenges

Cabinet welcomed the key elements of the package agreed with the NEDLAC constituencies to respond to the economic challenges facing the country.

The package aims to instil confidence in the economy and to indicate to the nation that social-partners will, on their own and together, act decisively to promote inclusive growth, job creation and social stability. The package also seeks to normalise the industrial relations environment, end violence, support law and order and bring about greater equality.

To demonstrate the National Executive's commitment to diminishing salary inequalities, Cabinet endorsed that salary increases of the National Executive be frozen for the next 12 months. Cabinet also agreed that other measures that have financial implications for the administration will be effected through the normal Budget processes.

Cabinet calls on all the parties and South Africans at large to embrace all elements of the package – material and symbolic – and to assess what it is all of us could do to help ease the current situation.

2.2 Report on the implementation of the Section 100 (1) (B) interventions

Cabinet noted progress made on the implementation of Section 100 (b) intervention in the Eastern Cape and Limpopo provincial education departments.

The Cabinet's intervention in this regard is beginning to yield positive results especially in the provision of systemic solutions to:

- reduce the huge Compensation of Employees budget;



- strategically manage the high vacancy rates at schools and circuit levels;
- create accountable and sustainable procurement and delivery processes for learning and teaching support materials for 2013 and beyond;
- improve provision of cost effective and accountable scholar transport, school nutrition and infrastructure development programmes; and
- develop and maintain credible and reliable datasets, both learners and employees.

Cabinet also noted progress made in terms of the Department's Catch Up Plan in the Eastern Cape, Limpopo and Northern Cape which includes; newspaper supplements for students; community radio stations receiving transmissions from Mindset studios in Randburg and Study guides for Spring Schools also available on websites.

2.3 Ratification of the Labour Inspection Convention, 1947 (No.81)

Cabinet approved the submission of the Labour Inspection Convention of 1947 No 81 to Parliament for ratification. This convention will provide useful guidance for designing and monitoring of an efficient labour inspection systems. Labour inspection is a key pillar of the labour administration system, ensuring the supervision and implementation of labour legislation and policies in the workplace.

2.4 Executive protocol for the recruitment and filling of advertised posts of Heads of Department (HODs)

Cabinet approved the Executive Protocol: Principles and Procedures for the Employment of Deputy Directors-General (DDGs) and HODs nationally.

The Executive Protocol will ensure that the employment of HODs and DDGs are aligned to the basic values and principles enshrined in section 195 of the Constitution, in particular that of ensuring employment practices are based on ability, objectivity and fairness.

2.5 South Africa's position paper for the 24th Meeting of Parties to the Montreal Protocol on Substances that deplete the Ozone Layer

Cabinet noted South Africa's position for the 24th Meeting of Parties (MOP24) to Montreal Protocol on Ozone Depleting Substances (ODS) and supports the



amendment to the Montreal Protocol on condition that:

- South Africa works towards a comprehensive amendment to deal with other none Ozone Depleting Substances (ODS);
- South Africa retains its relations with Brazil, Russia, India, China, South Africa (BRICS) Countries on a sound footing; and
- South Africa's national interests are not compromised.

The meeting will be held from 12 to 16 November 2012 in Geneva, Switzerland.

2.6 Preparation for the BRICS Summit

Cabinet received progress report from the Inter Ministerial Committee (IMC) on the preparations for the imminent 5th Brazil, Russian federation, India, China, and South Africa (BRICS) on the preparations for the BRICS Summit to be hosted in South Africa in March 2013.

The IMC presented the four key summit outcomes and deliverables envisaged. They are the launch of the new Development Bank; BRICS leaders- Africa Dialogue Forum; launch of the BRICS Business Council and the BRICA Think Tank.

2.7 First International Conference of the African Society for Laboratory Medicine

Cabinet approved the hosting of the 1st International Conference of the African Society for Laboratory Medicine, to be held in Cape Town from 1 to 7 December 2012.

South Africa was chosen as the host country for this historic conference in view of its advanced laboratory systems and resources which could be engaged to make this conference a technical success.

The objective of the conference is to convene healthcare professionals and policy makers from Africa and around the world to present and discuss the latest developments in diagnostics, strategies for strengthening national laboratory systems and networks and their impact on healthcare delivery as well as disease surveillance.

2.8 International Planned Parenthood Federation (IPPF) 60th Anniversary

Conference

Cabinet noted that South Africa will participate in the IPPF which will be held at the Pan African Parliament in South Africa from 28 to 29 November 2012. President Jacob Zuma has been invited to host the ceremony on 29 November 2012.

This conference aims to celebrate the achievements of the IPPF and its Member Associations and set out a new agenda for the sexual and reproductive health and rights (SRHR) for the Post International Conference on Population Development (ICDP) era. This conference will contribute to mass mobilisation for better reproductive health in South Africa thus creating a better South Africa and a better and safer Africa.

2.9 Overview of the Child Support Grant (CSG) beneficiaries and the economic situation of their caregivers

Cabinet noted a presentation on the overview of children receiving the Child Support Grant including the employment and economic status of their caregivers. Cabinet also noted the findings of the Child Support Grant (CSG) Impact Evaluation Study and supported the CSG as one of Government's successful developmental programmes.

Cabinet approved that an Inter-Ministerial Committee constituting the Ministers of Social Development, Home Affairs, Health and Basic Education develop a proposal for the efficient registration of children.

2.10 Outcome of the South African Early Childhood Development (ECD) Conference

Cabinet noted the outcome of the South African Early Childhood Development (ECD) Conference held in East London from 27 to 30 March 2012. Cabinet also noted the National Action Plan as work in progress.

Cabinet approved that the Ministers of Social Development and of Basic Education further consult on the possible recruitment of retired ECD experts and/or academics to assist at existing ECD centres while a standardised curriculum is being developed for ECD practitioners.

2.11 The African Charter on Values and Principles of Public Service and

Administration

Cabinet approved the submission of the African Charter on Values and Principles of Public Service and Administration to Parliament for ratification.

The purpose of the Charter is to define the principles and general rules governing the transformation of African public service administration. The Charter also serves as a policy framework for Africa's public service administrations and source of inspiration for developing, strengthening or updating national codes of conduct with respect to transparency, professionalism and ethical standards.

3 BILL APPROVED

3.1 Human Rights Commission Bill

Cabinet approved the South African Human Rights Commission Bill, 2012 for submission to Parliament.

Since the commencement of the Human Rights Commission Act, 1994 and the establishment of the Human Rights Commission, numerous amendments to the Act, dealing with a variety of matters, were proposed. The South African Human Rights Commission Bill seeks to give effect to those proposals by repealing the Act and replacing it with a new South African Human Rights Commission Act.

4. APPOINTMENTS

4.1 Mr Mmboneni Muofhe was appointed Deputy Director-General: International Cooperation and Resources in the Department of Science and Technology.

4.2 Cabinet approved the appointment of the following as members of the South African Nuclear Energy Corporation (NECSA) Board: Adv Medi Moira Mokuena, Dr Nazreen Shaik-Peremanov, Mr Mogwera Khoathane, Prof Thokozani Majozi, Mr Zizamele Smodeni Mbambo, Mr Phumlani Zwelithini Raphael Zwane and Ms Elsie Monale as the alternate member.

4.3 The following were appointed as members of the PETROSA Board: Adv Brenda Madumise, Mr George Smith, Mr Athol Graham Rhoda and Mr S Mokoena.

4.4 Cabinet approved the appointment of Ms Nomavuso Mnxasana as a new Non-Executive Director of the Transnet Board for a term of three years and noted the

appointment of Mr Anoj Singh, the Chief Financial Officer (CFO) of the Transnet Board, as an Executive Director of the Board.

Cabinet congratulates the appointees and wishes them well in their new responsibilities.

Enquiries:

Phumla Williams (Acting Cabinet Spokesperson)

Cell: 083 501 0139



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and update of compliance policies and operating procedures coupled with broad-based training initiatives, most notably in the areas of PFMA, Consumer Protection, Competition Law and Aviation Safety compliance, the review, update and implementation of the SAA Group's ISO 3100 compliant Enterprise Risk Management Framework as well as its fraud prevention policy and whistleblowing mechanism coupled with institutional reforms. Furthermore, the Committee is satisfied that contingent liabilities related to legacy litigation has been drastically reduced and resolved.

Improvements in compliance is an ongoing initiative through regular awareness training and electronic monitoring and reporting. Where irregular and fruitless and wasteful expenditure has occurred this has been mostly due to administrative delays and situations beyond the Company's control and the Committee is satisfied that all irregular spend was required for business continuity. Since none of the individual breaches resulted in expenditure greater than the materiality threshold agreed with the Shareholder, the Committee is confident that areas of non-compliance will be progressively eliminated towards full compliance. The Committee continues with its resolve to ensure expeditious and comprehensive implementation of reforms in the combined assurance and control environment.

The Committee is satisfied that following its inability in the previous year to fully comply with Section 51(1)(a)(i) of the PFMA, SAA has now fully implemented a Critical Financial Reporting Controls project designed to address key financial control deficiencies in core financial processes. SAA is now fully compliant with these sections of the PFMA.

Significant improvement has been made in improving the internal control environment to prevent, collate, detect and report on irregular and fruitless and wasteful expenditure. Procedures and systems are under constant improvement and preventive measures are given special attention through the comprehensive implementation of the Procure-to-Pay system.

The Committee has concern about the fact that SAA is undercapitalised and recognises that a permanent and appropriate capital structure is required for the airline in order for it to fulfil its mandate.

The Committee is satisfied that it has complied with section 58 of the PFMA and the Preferential Procurement Act in the appointment of new external auditors for the SAA Group through a competitive tender process.

The Committee is satisfied that the annual financial statements are based on appropriate accounting policies, and are supported by reasonable and prudent judgements and estimates.

The Committee evaluated the SAA's Group annual financial statements for the year ended 31 March 2012 and, based on the information provided therein, believes that the financial statements comply, in all material respects, with the relevant provisions of the PFMA and International Financial Reporting Standards.

Members of the Audit Committee and attendance at meetings

The Committee met eight times during the year. Details of members' attendance can be found on page 56 of this report.

Audit committee members

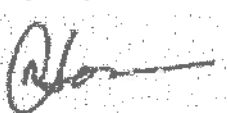
Mr ZJ Sithole
Mr BF Mohale
Adv L Nkosi-Thomas
Mr RM Loubser
Ms Y Kwinana
Mr LJ Rabbets
Prof DH Lewis

Discharge of responsibilities

The Committee agrees that the adoption of the going-concern premise is appropriate in preparing the annual financial statements, with the consideration of the factors highlighted on page 57 of the Directors' Report. The Audit Committee has therefore recommended the adoption of the annual financial statements by the Board of Directors on 6 August 2012.

On behalf of the Audit Committee

Signed by:



Yakhe Kwinana
Director and member of Audit Committee

28 September 2012



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Directors' interests in contracts

Directors' and employees' declarations of interests is a standing item at all meetings of the Board and its committees. Directors and employees are obliged to submit updated declarations once a year.

Approval of the annual financial statements

The directors confirm that the annual financial statements present fairly the financial position of the Company and the Group at 31 March 2012, and the results of their operations and cash flows for the year then ended. In preparing these annual financial statements, the directors are required to:

- Select suitable accounting policies and apply them consistently;
- Make judgements and estimates that are reasonable and prudent;
- State whether applicable accounting standards have been followed; and
- Prepare the annual financial statements on the going-concern basis unless it is inappropriate to presume that the Group and/or the Company will continue in business for the foreseeable future.

The directors are of the opinion that they have discharged their responsibility for keeping proper accounting records that disclose the financial position of the Group and the Company, with the exception of matters disclosed elsewhere in this report with respect to PFMA compliance.

The directors have every reason to believe that the Company and the Group have adequate access to resources to continue its operations for the foreseeable future, subject to the comments noted above.

The directors have continued to adopt the going-concern concept in preparing the annual financial statements. (Refer to going concern paragraph on page 52 of the Directors' report and note 44 to the Annual Financial Statements).

The joint external auditors, PricewaterhouseCoopers Inc. and Nkonki Inc., are responsible for independently auditing and reporting on the annual financial statements in conformity with International Standards on Auditing. Their report on the annual financial statements is in accordance with the terms of the Companies Act and the PFMA, and appears on page 60.

In preparing the Company and Group annual financial statements set out on pages 62 to 124, unless otherwise disclosed, the Company and Group have complied with International Financial Reporting Standards, the Companies Act and the reporting requirements of the PFMA, and have used the appropriate accounting policies supported by reasonable and prudent judgements and estimates. The directors confirm that these annual financial statements present fairly the financial position of the Company and the Group at 31 March 2012, and the results of their operations and cash flows for the year then ended.

Approved by the Board of Directors and signed on its behalf by:



Duduzile Myeni
Acting Chairperson

28 September 2012



Siza Mzimela
Chief Executive Officer

28 September 2012





public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

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DEPARTMENT OF PUBLIC ENTERPRISES
PRIVATE BSAI/PRIVAATSAK X16
2013 -02- 25
HAATFEELD 0028
afdeling van openbare ondernemings

TO : MR. MALUSI GIGABA, MP
MINISTER

FROM : MS. MATSIETSI MOKHOLO

DEPUTY DIRECTOR-GENERAL: LEGAL AND GOVERNANCE

FILE REF : 16/1/1

IDMS REF : 155063

SUBJECT : SUSPENSION OF THE ACTING CHIEF EXECUTIVE OFFICER OF SAA

DATE : 18 FEBRUARY 2013

1. PURPOSE

- 1.1 To brief the Minister about a letter received from SAA addressed to the Acting CEO and a letter from Ngeno and Mteto Attorneys relating to the suspension of the Acting Chief Executive Officer ("CEO") of SAA (attached as Annexure "A").
- 1.2 To request the Minister to sign a letter to the Acting Chairperson of SAA informing her of the Minister's decision to remove Mr Vuyisile Kona as the Non-Executive director and Chairperson of the SAA Board (attached as Annexure "B").
- 1.3 To request the Minister to sign a letter to Mr Vuyisile Kona giving him notice and the proposed resolution for a shareholders meeting for his removal as Non-Executive director and Chairperson of SAA (attached as Annexure "C").

2. SUMMARY

- 2.1 The Department received a letter that was addressed to the Acting CEO by the Board of SAA informing him that he was suspended due to allegations of gross misconduct and gross negligence that may have amounted to breaches of the Public Finance Management

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16/02/13

SUSPENSION OF THE ACTING CHIEF EXECUTIVE OFFICER OF SAA

Act No. 1 of 1999 ("PFMA"), Treasury Regulations and SAA's Rules and Regulations. The Acting CEO responded through his lawyers that he does not accept the lawfulness and validity of his suspension and that the suspension only affects his position as Acting CEO and not as Chairperson of the Board. Thus, he will assume his position as the Non-Executive director and Chairperson of the Board.

- 2.2 The Department advises that the Minister removes Mr Vuyisile Kona as the Non-Executive director and Chairperson of the SAA Board. The Department recommends that the Minister follows the provisions of section 71 of the Companies Act No. 71 of 2008 ("Companies Act") in removing Mr Kona. Section 71 provides that the shareholder may take an ordinary resolution to remove a director in a shareholders meeting. The shareholder must give notice of the meeting and the resolution to the director and give the director an opportunity to make a presentation at the meeting. The Department proposes that a shareholders meeting be convened to remove Mr Kona as the Non-Executive director and Chairperson of the SAA Board in accordance with the provisions of section 71 of the Companies Act. The Department has prepared the draft notice of the shareholders meeting, the draft proposed resolutions, the draft letter to Mr Vuyisile Kona and the draft letter to the Acting Chairperson of the SAA Board.

3. ANALYSIS AND FINDINGS

- 3.1. The Department received a letter from SAA addressed to the Acting CEO by the Acting Chairperson of SAA stating that there was a meeting in which the Acting CEO was advised of the intention to suspend him and that he was afforded an opportunity to state the reasons why he should not be suspended. Apparently the Acting CEO walked out of the meeting before it was concluded. He was subsequently served with a letter of suspension.
- 3.2. The Board was concerned about allegations of gross misconduct and gross negligence by the Acting CEO which may have amounted to breaches of the PFMA, Treasury Regulations and SAA's Rules, Regulations and Policies. The allegations include the following:
- Failure to adhere to due process in recommending the appointment of Lufthansa Consulting to the Board of SAA.
 - Appointment of consultants without following recruitment process and procedures.
 - Conducting a meeting with the members of the National Transport Union without the participation of a representative from Human Resources.
 - Travelling to Dubai on business without the required authorisation.

SUSPENSION OF THE ACTING CHIEF EXECUTIVE OFFICER OF SAA

- 3.3. According to the letter, the Board of Directors afforded the Acting CEO an opportunity to make representations and after considering the representations, SAA decided to suspend the Acting CEO with full pay without any loss to benefits. SAA will then investigate the allegations and advise the Acting CEO of the outcome of the investigation, including whether disciplinary action will be taken against him.
- 3.4. On 12 February 2013, the Board of SAA received a letter from Ngeno and Mteto Attorneys advising that they are representing the suspended Acting CEO of SAA. According to the Attorneys, the Acting CEO does not accept the lawfulness and validity of his suspension. They further state that the suspension only affects him as the Acting CEO and that he remains the Chairperson and member of the SAA Board. The Attorneys further indicate that as the Chairperson of the Board, Mr V Kona will carry on his duties and attend the meetings of the Board and participate in the deliberations. They also requested that Mr Kona be informed in writing of all future meetings of the Board.
- 3.5. Mr Kona was appointed as a Non-Executive Director and Chairperson of the SAA Board with effect from 28 September 2012, for a period of three years subject to annual review. On 12 October 2012, the Board of SAA made a decision to appoint Mr Kona as the Acting CEO of SAA until a permanent CEO is appointed. Ms Duduzile Myeni was then appointed as the Acting Chairperson of SAA.
- 3.6. It is important to note that Mr Kona is still the Chairperson of the Board of SAA as he was not suspended or removed in his position as Chairperson. Thus, he is well within his rights to execute his duties as Non-Executive Director and Chairperson of the Board. Section 26.1 of SAA's Memorandum of Incorporation provides that a director shall cease office if he is prohibited from being or is removed from acting as a Director in terms of the Companies Act or Applicable SOE legislation. Section 26.6 provides that the shareholder can give notice to the director informing him of the termination of his appointment.
- 3.7. Section 71 of the Companies Act deals with the removal of directors. It states that despite anything to the contrary in the Memorandum of Incorporation or any agreement between the company and director, a director may be removed by an ordinary resolution adopted at a shareholders meeting. Before considering the resolution, the shareholder must do the following:
- give the director a notice of the meeting and the proposed resolution. The notice and the resolution must be equivalent to that which a shareholder is entitled to receive; and
 - afford the director an opportunity to make a presentation in person or through a representative, to the meeting before the resolution is voted upon.

SUSPENSION OF THE ACTING CHIEF EXECUTIVE OFFICER OF SAA

3.8 The Department advises that irrespective of what is contained in the Memorandum of Incorporation of SAA or any agreement between SAA and Mr Kona, section 71 of the Companies Act must be followed in removing Mr Kona as the Chairperson of SAA. It is important to note that the Memorandum of Incorporation and the Companies Act do not have provisions relating to a suspension of a director of the Board.

3.9 The Department advises that the following process be followed:

- The Minister, as shareholder representative of Government, convenes a shareholders meeting to remove Mr Kona as the Non-Executive director and Chairperson of the Board.
- The Minister gives Mr Kona a notice of the meeting and the proposed resolution to remove him as the Non-Executive director and Chairperson.
- In the same notice, inform Mr Kona that he will be afforded an opportunity to make presentations in the meeting.
- At the shareholders meeting, the Minister affords Mr Kona an opportunity to make representations and then advise him of the final resolution taken by the shareholder.

3.10 The Department has prepared the draft notice and resolution for the shareholders meeting, a letter to Mr Kona and a draft letter to the Acting Chairperson of the Board.

3.11 It is important to note that section 71 (9) of the Companies Act provides that nothing in section 71 deprives a director removed from office in terms of that section of any right that such person may have at common law or otherwise to claim damages or other compensation for:

- loss of office as a director; or
- loss of any other office as a consequence of being removed as a director.

3.12 Accordingly, to succeed in a claim for damages or compensation as contemplated in section 71(9), a director aggrieved by the decision to remove him from office must show that:

- he was removed in terms of section 71;
- that his removal from office was wrongful; and
- that he suffered damages or stands to be compensated for the wrongful removal.

SUSPENSION OF THE ACTING CHIEF EXECUTIVE OFFICER OF SAA

3.13 Thus, Mr Kona is entitled in law to claim damages or compensation if he is removed as a director and is of the view that the removal was unlawful and he has suffered damages. The court will decide whether he has a valid case or not but the Department is of the view that his prospects for success are not good. Although section 71 of the Companies Act does not require that the shareholder gives reason for the removal, the fact that Mr Kona's relationship with the Board is irretrievably broken down to the extent that they suspended him is a good reason for removing him as the Non-Executive director and Chairperson of the Board of SAA. It will also be inappropriate for him to continue to serve as a Non-Executive Director and Chairperson of a Board that has initiated an investigation against him.

3.14 The Department advises that the Acting CEO may raise a technical point that the Acting Chairperson is conflicted if she chairs the Shareholders meeting because she is part of the Board that has instituted an investigation against him. The Acting CEO may allege that he may not be able to make a proper presentation as required in section 71 of the Companies Act because any information he discloses may be used against him in the investigation. The Department is in the process of seeking a legal opinion from Counsel on how to address that point if it arises.

4. FINANCIAL IMPLICATIONS

There are no financial implications emanating from this memorandum.

5. CONSULTATION/PROJECT TEAM

None

6. RECOMMENDATION

It is recommended that the Minister:

- 6.1 notes the contents of this memorandum;
- 6.2 signs the attached letter to the Acting Chairperson of the SAA Board; and
- 6.3 signs the attached letter to Mr Vuyisile Kona.



SUSPENSION OF THE ACTING CHIEF EXECUTIVE OFFICER OF SAA

Memorandum prepared by:


 ADV. MELANCHTON MAKOBE

CD: LEGAL COUNSEL

DATE: 20/02/2013

REVIEWED AND SUPPORTED:


 MATSIETSI MOKHOLO

DDG: LEGAL AND

GOVERNANCE

DATE: 20/02/2013


 KGOMOTSO MODISE

DDG: TRANSPORT

DATE: 21/02/2013


 RECOMMENDED / NOT RECOMMENDED / COMMENTS

MR TSHEDISO MATONA

DIRECTOR GENERAL

DATE: 25/02/2013


 APPROVED / NOT APPROVED / COMMENTS

MR. MALUSI GIGABA, MP

MINISTER

DATE: 2013/02/26


 NOTED / COMMENTS

MR. BULELAMI GRATITUDE

MAGWANISHE, MP

DEPUTY MINISTER

DATE: 2013/02/26



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

SM27

Private Bag 412, Halfway, 2028 Tel: 012 481 1100/1150 Fax: 012 481 1000
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Mr Vuyisile Kona
354 Brooklyn Road
Menlo Park
Pretoria
0001

Tel: 012 346 3072
E-mail: vuyisilek@nwweb.com

Dear Mr Kona

Removal as Non-Executive Director and Chairperson of the SAA Board

The above matter bears reference.

I note that the Board of SAA took a decision to put you on precautionary suspension because of the allegations of gross misconduct and gross negligence against you. These acts may have amounted to breaches of the Public Finance Management Act No.1 of 1999, Treasury Regulations and SAA's Rules and Regulations. The Board indicated that they will investigate the allegations and advise you of the outcome of the investigation, including whether disciplinary action will be taken against you.

I advise that it will be inappropriate for you to continue to serve as a Non-Executive Director and Chairperson of a Board that has initiated an investigation against you. As a result, I am left with no option but to remove you as a Non-Executive Director and Chairperson of the SAA Board.

As you may be aware, section 71 of the Companies Act, 2008 requires that for a director to be removed it should be given notice of the shareholders meeting and the proposed resolution and be afforded a reasonable opportunity to make presentations to the meeting before the resolution is put to a vote.

Handwritten signature

Please find attached the notice of the shareholders meeting and the proposed resolutions to remove you as Non-Executive director and Chairperson.

I advise that I will afford you or your representative an opportunity to make presentations in the shareholders meeting as contemplated in section 71 (2) of the Companies Act.

I wish to express my most sincere thanks and appreciation for the contribution you have made during your term of office as Non-Executive Director and Chairperson on the Board of SAA.

I wish you all the best in your future endeavors.

Yours sincerely



MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES

DATE: 2013/03/26

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Context

My role as the Minister's Special Advisor

9. I am an attorney. I was admitted as such in 2001. Prior to my appointment as Special Advisor, I was a director in the litigation department of Edward Nathan Sonnenbergs ("ENS").
10. In November 2010, certain senior colleagues in the profession alerted me to the fact that then Minister of Public Enterprises Malusi Gigaba ("Gigaba") was recruiting for a Special Advisor with legal training. I submitted my CV to his then Chief of Staff, Mr. Thami Msomi. Gigaba then interviewed me. During the interview, he outlined his expectations. In a nutshell, he was looking for a lawyer with a skills set that blended corporate and public law. The candidate also had to have a working knowledge of South African politics.
11. I qualified for the position. At that time, my practical legal experience included corporate commercial law, competition law, ICT regulation and administrative law. I had also advised the African National Congress on a number of matters since early 1999. During my university days, I had also been active in student politics and had political studies as my major in my undergraduate degree. Although I had not been active in politics, I followed the developments keenly and had plans to join the public service at some point in my life.
12. Towards the end of November 2010, Gigaba offered me the position, and I accepted it. On 1 December 2010, I joined his ministerial staff. December being a slow period in my area of legal practice, I was able to wrap up and hand over my practice whilst at the same time getting acquainted with my new assignment.
13. During December 2010, I had an opportunity to discuss the finer details of my assignment with Gigaba to enable me to understand his expectations and to gain insight into his leadership style. I also had to familiarise myself with the inner workings of the public service.
14. The then Minister appointed me in terms of section 12A of the Public Service Act, 1994 (Proclamation 103 of 1994). This section enables a Minister to appoint a person as a public servant on the grounds of policy to advise him in the discharge of his duties. In line with s 12A of the Public Service Act, I received my mandate directly from, and accounted, to the then Minister. I was not part of the department's establishment.
15. Practically, my job entailed:
 - 15.1. providing legal advice to the Minister on any aspect of his job as shareholder representative, cabinet officer and public representative;
 - 15.2. preparing notes for him on matters referred to me by him;
 - 15.3. assisting the Minister to consider legal options proposed by the department to him;
 - 15.4. attend meetings with the Minister or Deputy Minister on issues within the remit of the department
 - 15.5. contributing to the Minister's speeches;
 - 15.6. attending meetings between the department and the Minister;
 - 15.7. attending meetings between the Minister and the boards of SOCs or their representatives;

- 15.8. attending meetings with members of the public who wished to make representations to the Minister on a variety of subjects;
- 15.9. attending meetings with business leaders and associations on matters that they wished to raise with the Minister and advise the Minister accordingly; and,
- 15.10. referring queries from the public to the department or SOCs.
16. In a nutshell, at all material times, I was the Minister's in-house legal advisor. The nature of our professional relationship created an obligation on my part to keep our communication and my advice to him confidential. I am also advised that legal privilege also attaches to this communication. My confidentiality obligation and legal privilege persist. I will endeavour to respond to the details of the allegations raised by Carolus within these constraints. I will limit my response to allegations that seek to impugn my character and question how I discharged my duties as the Minister's Special Advisor.
17. The events that Carolus refers to in her statement took place around 2011 and 2012. I have not had an opportunity to reacquaint myself with documentation or correspondence between SAA and the department or Minister which dealt with the matters under discussion. In my response to Carolus' statement, I rely solely on my recollection.

The structure of the department

18. The Minister provided overall leadership and oversight of the department and its entities. He oversaw eight SOCs: namely, SAA, Transnet, Eskom, Alexkor, SA Express Airways, Broadband Infraco (BBI), Denel and SAFCOL. In the discharge of his oversight responsibilities, the then Minister relied on advice and formal recommendation from the department.
19. The department had sections that were each led by a Deputy-Director General (DDG). These were transport (for SAA, SAX and Transnet), energy and broadband (Eskom and BBI), manufacturing (Denel, Alexkor and SAFCOL). Each DDG had a financial analyst and a sector specific subject-matter expert in their team. In respect of the oversight of SAA, the department had a DDG: Transport, Chief Director and Director for aviation and a financial analyst. The transport team also utilised the commonly shared expertise of the Legal and Governance team.
20. The departmental team would prepare a submission to the Minister. This submission would be considered and moderated by the DG before submission to the Minister for approval. I played no formal role in this regard. I would advise the Minister on any matter to which I had knowledge or insight or which he would raise with me.
21. I was not part of the management core of the department. I did not attend meetings of departmental officials unless by invitation. I only interacted with the departmental officials informally through personal interactions or formally when they reported to the Minister in meetings.
22. In respect of SOCs, I rarely interacted with many board members. In cases where I had any relations, it would be with a chairperson, CEO or a person tasked to work with the Minister's office on a particular issue.

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23. I would engage with the CEOs or chairperson of an SOC when they saw fit to raise matters with me or where I was required to refer a member of the public or business to a particular SOC for further attention and processing.

24. The Minister and the department held monthly meetings, known as Senior Management Committee (SMC). These meetings were attended by the DG and his team of senior executives on the one hand, the Minister, Deputy Minister and their team of advisors on the other. There were also ad hoc meetings dealing with specific topical matters. It was common practice for the Deputy Minister to preside over meetings to allow the Minister to absorb the discussions and engage. The meeting with Jet Airways was one such meeting.

The approval of routes

25. The aviation routes flown by SAA are governed by a number of bilateral agreements between South Africa and the destination countries. Further, because these routes are a significant business activity on their own, SAA is obliged to obtain prior approval of the Minister in terms of s 54 of the Public Finance Management Act 1 of 1999 (PFMA), before commencing a new route. The consideration and approval of a route by the Minister would follow the submission process that I have outlined above.

26. Generally, I did not participate in the approval of the SAA routes. The Minister received expert advice from the department and acted on it. These applications rarely attracted debate unless brought to the fore in some way or other.

My relationship with Carolus

27. I took part in a number of meetings between the then Minister and Carolus. I have never had any unpleasant or discourteous exchange with her. On the contrary, I got to learn from the casual and cordial exchanges I have had with her (in the presence of others) that she is an athlete and enjoys the Soweto marathon. I conducted myself courteously and professionally towards her at all times.

28. I must mention that throughout 2011, a year in which the Minister considered the Mumbai route, there was no issue between me and Carolus. In particular:

28.1. I was part of the delegation that accompanied the Minister and Carolus to take delivery of an aircraft from Airbus in Toulouse, France. It would have been impossible not to exchange pleasantries with her;

28.2. Carolus invited the Minister to a cocktail reception at the London offices of Investec whilst the Minister was in London. I accompanied him to this event. Again, it would have been odd for me not to exchange greetings with her at this event; and,

28.3. Even at the meeting which she had with then Deputy Minister Ben Martins and the former Director-General Tshediso Matona, Carolus never questioned my presence or displayed any discomfort about it. We were cordial, courteous and professional towards each other.

29. I have never had any one-on-one meeting with Carolus.

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30. The allegations that I exerted any pressure on the board or management of SAA then led by Carolus should be viewed against the background that Ms Carolus is a senior figure political figure. She was the Deputy Secretary-General of the ANC, acted as Secretary-General of the ANC for some time and is a veteran of the United Democratic Front. She had ample recourse and active agency to deal with allegations of impropriety on my part or that of the then Minister.

My relationship with the then CEO and management of SAA

31. Sometime in 2011, I learned that Ms Siza Mzimela, then CEO of SAA, had some form of relationship with my soon-to-be in-laws. This added familiarity in our interactions. In my view, I had a pleasant and professional relationship with her. In August 2012, when I got married, she bought my wife and I a wedding present.
32. On the one occasion when we had a robust exchange in a meeting between SAA and the Minister, which would happen from time to time, I phoned her and asked for a meeting. At the meeting, I apologized to her and took responsibility for my possible overreach. Our relations normalized after our meeting.
33. At all times, I strived to act in the best interests of the Minister as a shareholder representative. I was not personally invested in the issues that I dealt with. The exchange between Ms Mzimela and I focused on the implications of the loss-making Mumbai route and on the strained financial position of the airline and the fiscus.
34. I have met Ms Mzimela since the end of our respective tenures as CEO of SAA and Special Advisor. On the occasion that we saw each other, we exchanged hugs and pleasant small talk. There exists no animus between us stemming from our previous positions.

The allegations relating to Mr Jabu Ndlovu

35. I had not directly encountered Mr Ndlovu ("Ndlovu") prior to our dinner with Carolus and the then Minister and outside of formal meetings. I have learnt since then that he is either an acquaintance or friend of Mr George Sabelo ("Sabelo"). They both are from the Midlands in KwaZulu Natal and share common social circles.
36. The meeting referred to by Carolus at paragraph 29 of her statement, was a dinner. The atmosphere sought to be painted in the statement is not correct. The dinner was cordial.
37. After Carolus told all present about the statements allegedly made by Sabelo to Ndlovu, I denied that I ever discussed confidential matters between the Minister and the department with Sabelo.
38. I confirmed to all present that I knew Sabelo as a colleague in the legal profession and that I may have shared my opinion of SAA with Sabelo in the context of us having shared opinions on matters that we faced as attorneys and did so within the context of us being colleagues in the profession. Importantly, even then, I could not recall the specific instance when I would have had a discussion with Sabelo and the context of such discussion.
39. I have known Sabelo since around 2002. At that time (2002- March 2008), I was a partner at Mahlangu Nkomo Mabandla Ratshimbilani Attorneys. Sabelo was a friend of one of my partners at the firm, Mr Ndumiso Nkomo. We got acquainted with one another through his many visits to our office. We exchanged collegial courtesies such as commissioning affidavits for each other and

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debated points of law. At all times, we never shared our respective clients' confidential information.

40. I deny that I was ever scolded, chided or admonished by the Minister as alleged by Carolus in her statement or as may be reasonably inferred from it. I would recall such important detail. I also had no further discussion with the Minister and/or Sabelo on the allegations made by Ndlovu.

41. I reiterate that I did not ask Sabelo to convey any message on my behalf to Ndlovu.

The Johannesburg-Mumbai route

42. Carolus alleges that I pressured SAA to abandon this route in favour of Jet Airways. This is not correct. Jet Airways had complained to the Minister that SAA reneged from a code-share arrangement or Memorandum of Understanding. At the time when the matter was brought before the Minister, both companies had been engaged in destructive competition on the route.

43. Further, SAA landed at awkward times in Mumbai and did not have suitable arrangements to ensure that its travellers could seamlessly travel beyond Mumbai. If I recall well, in airline parlance, SAA was said not to enjoy beyond point connections in Mumbai. This significantly prejudiced SAA.

44. The Mumbai route was a Sao Paulo-Mumbai via Johannesburg route. The economics of this route perplexed me when I got to understand the issue. SAA made healthy revenue from the Sao Paulo-Johannesburg leg but lost all of it and generated a loss on the Johannesburg-Mumbai leg. The question was how revenues could be trapped and losses avoided. The search for a solution went far beyond the Jet Airways representations to the Minister.

45. The discussions on the loss from the Mumbai route took place against a particular background. In 2009/10, SAA had a cash balance of over R3bn. In 2010/11, the cash position had deteriorated to R2.2bn. In 2011/12, this amount was depleted and a loss of R33m was incurred. What compounded the situation is that for SAA to maintain its going concern position regularly it needed to convert government guarantees to equity. This concerned me. I raised this worrisome phenomenon with the department's experts. I confirmed the regularity of the conversion of guarantees to equity and the worsening of the cash position. It is against this background that I engaged with the discourse on the Mumbai route and tested the validity of SAA's propositions, as a Special Advisor to the then Minister.

46. At the meeting between Jet Airways, SAA, the department and the Minister, the CEO of Jet Airways conducted himself discourteously and in a rude manner. The then Deputy Minister Martins, who presided over the meeting, called him to order. We were all horrified by this strange behaviour. However, this did not detract from the fact that there was revenue loss on this route and that this loss had now been brought to the attention of the Minister. The Minister instructed SAA to find a solution to avoid or minimize this loss. To my recollection, he did not instruct SAA to conclude any agreement with Jet Airways.

47. The Minister requested SAA to find a sustainable solution to this loss making route. He was never prescriptive. The matter evolved from being about Jet Airways to being about what had to be done about the loss-making route. The contention that the losses from this route were compensated

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or absorbed by revenues from other routes would have been dealt with by the department. I did not actively engage with the matter on that score. My concern was that this trade-off seemed troubling in the context of the overall deteriorating cash position and the continuous need for so-called bailouts from the fiscus.

48. I do not know how this matter was eventually resolved by SAA, either by guidance of the Carolus board or its successor.
49. What was key at the time was that SAA appeared to me to be burning cash and depended on equity injections and bailouts to remain a going concern. I understood that a private enterprise such as Jet Airways was free to engage in destructive competition if its shareholders approved. However, in my view, the same could not be said of an entity owned by the state.

The deteriorating state of SAA

50. Towards the 2012 AGM, SAA was not a going concern. It required equity injection. The Minister and the department engaged the National Treasury ("Treasury") frantically to obtain the necessary bailout for SAA. A failure to secure a bailout would have resulted in SAA defaulting on some of its loan covenants. A number of meetings were held between the department's officials and Treasury. The Minister and the DG also weighed in. I was not party to these meetings but I do recall frantic activity to save SAA.
51. Eventually, the Treasury granted a bailout of approximately R5bn with conditions. One of those conditions was that SAA had to come up with a long-term turnaround strategy addressing its sustainability. I shared the views held by Treasury that SAA had to be calibrated to stand on its own and not be dependent on the fiscus.
52. At some point, I do not recall exactly when, Carolus shared with the Minister or department a paper on the economic role of SAA. The effect of this note is that it suggested a perspective that SAA should not be viewed from its profitability position only but also as a contributor to other sectors such as tourism. I left this debate to the Minister's economic advisors and the department.

The New Age newspaper

53. The fact that the government at the time supported and promoted the TNA is well known. It is also no secret that the TNA in turn supported the government agenda. It provided various government departments with a platform to tell their stories. The newspaper added to the diversity of opinion. Although I do not recall a specific written policy in this regard, this was a commonly-held view within government.
54. The meeting between Carolus, the SAA CEO, the then Director-General and the Ministers attests to this support. This meeting discussed and agreed that SAA would support the TNA subject to its own procurement and governance processes. Thus, there was no need for me to exert pressure on anyone. Neither did I have any such powers.
55. The meeting was cordial and reflected nothing more than the public policy position to promote media diversity and the government's self-serving agenda to send its messages through this

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medium. The discussion on the TNA had less to do with the newspaper as a business but as one of the media instruments that the government used to disseminate its messages.

Response to the specific allegations

I now turn to address the specific allegations raised by Carolus.

Ad para 31

56. The attempt to place emphasis that I met SAA without the Minister is misleading. In this regard, Carolus refers to a meeting I attended with her, the then CEO, the Deputy Minister and the Director-General. It was part of my daily duties to attend meetings of this nature. There was nothing untoward about my attendance.

57. I have not had any meetings with the CEO, executive management or board members of SAA to discuss the TNA newspaper other than as stated in this document.

58. I have not engaged with the CEO, executive management or board member to discuss the Sao Paulo-Mumbai route via Johannesburg outside of official parameters and as stated above.

59. I had no personal interest in either SAA procuring the newspaper or exiting the route under discussion.

Ad para 33

60. In this paragraph, Carolus alleges that I had undue interest, interfered or bullied SAA management. This is not correct. And I, accordingly, deny it.

61. As stated, the matter of the profitability was squarely raised within the Jet Airways complaint. It couldn't be ignored. The thrust of the engagement was the state of SAA and the losses made on the route. The emphasis was not on Jet Airways.

62. On interference, this allegation is not borne by the facts. I maintained a notable distance with the operations of the SOCs. I engaged with SAA issues when they were tabled before the Minister. Many more oversight meetings took place between the officials of the department and the management of SAA. I did not play a part in these meetings.

Ad para 48

63. The allegations made by Carolus in this paragraph are hearsay. I was part of the meeting. I asked questions. I was dispassionate in my line of questioning. I needed to understand the strategic trade-offs that SAA made in this loss-making route. The route was approved in terms of section 54 of the Public Finance Management Act (PFMA) based on certain representations about its profitability or sustainability. I reiterate that the concerns I raised were in the best interest of the department as the shareholder representative and of the fiscus. They had very little to do with the commercial discussions between SAA and the Jet Airways. At that time, the route continued to bleed cash from SAA.

The block contains two handwritten signatures. The one on the left is a stylized signature that appears to be 'J SM'. The one on the right is a signature that appears to be 'SM' with a small '8' written below it.

Ad para 57

64. Carolus takes a narrow view of what my role was. It was in the normal course of my duties to attend a meeting of such a nature when invited. Depending on whether such matter needed elevation, I would escalate it to the Minister.

65. There was nothing untoward about my attendance.

Ad para 79

66. A conclusion made in this paragraph is not justified by the facts. I engaged with the Sao Paolo-Mumbai route dispassionately, honestly and independently. I acted within the usual course and scope of my duties as the Special Advisor to the then Minister guided by the PFMA and the ethics of my profession.

Thus done and signed on this 21st day of November 2018.



SIYABONGA MAHLANGU



**IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT PARKTOWN NORTH,
JOHANNESBURG (“the Commission”)**

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

**APPLICATION IN TERMS OF RULE 3.3.6 (INCORPORATING A
STATEMENT OF RESPONSE)**

KINDLY TAKE NOTICE that the applicant hereby files his statement of response to the affidavit of Mr. Siyabonga Mahlangu dated 9 September 2020 (“Mr. Mahlangu’s affidavit”) and simultaneously applies to the Commission on date and at the time determined by the Chairperson of the Commission, for Directions in the following terms:

1. That the statement of response annexed hereto marked “**G1**” be admitted to the Commission as a response to Mr. Mahlangu’s affidavit in so far as it relates to the applicant; and
2. That the applicant be granted such further and alternative relief as the Chairperson of the Commission may deem fit.

DATED at Sandton, Johannesburg on Tuesday, 6 October 2020.

Reginald Tshabalala

**TSHABALALA ATTORNEYS, NOTARIES
AND CONVEYANCERS**

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Ref: Mr TR Tshabalala/Miss K
Slaffa/jp/G01437

TO:

THE SECRETARY OF THE COMMISSION

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Parktown, Johannesburg

Tel: (010) 214 0651

E-mail: secretary@commissionsc.org.za

Ref: Ms KB Shabalala

Filed with the Secretary of the Commission by e-mail
secretary@commissionsc.org.za
on Tuesday, 6 October 2020

"G1"

IN THE JUDICIAL COMMISSION OF INQUIRY INTO THE ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE, HELD AT BRAAMFONTEIN, JOHANNESBURG
("the Commission")

GIGABA, MALUSI KNOWLEDGE NKANYEZI

Applicant

APPLICATION IN TERMS OF RULE 3.3.6 (INCORPORATING A
STATEMENT OF REPONSE BY MR MALUSI KNOWLEDGE NKANYEZI
GIGABA)

I, the undersigned,

MALUSI KNOWLEDGE NKANYEZI GIGABA

do hereby make oath and say:

THE DEPONENT

1. I am:
- 1.1 an adult male; and

1.2 the Former Minister of *inter alia*, the Department of Public Enterprises
("the department").

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2. The contents of this statement are within my personal knowledge and belief, save where the context indicates otherwise and are both true and correct.

PURPOSE OF THIS STATEMENT

3. On Tuesday, 29 September 2020, my attorneys received a notice in terms of Rule 3.3 from the Commission. The said notice contained paragraphs 1 – 3, 56 – 75, 92 – 113, 178 – 187 and 284 – 286 of the affidavit of Mr. Siyabonga Mahlangu (“Mr. Mahlangu”) dated 9 September 2020, together with annexures SM17 – SM19 submitted by him to the Commission (“Mr. Mahlangu’s statement”).
4. The purpose of this statement is two-fold, namely to serve as:-
 - 3.1 a response to the allegations made by Mr. Mahlangu in Mr. Mahlangu’s statement; and
 - 3.2 a basis for an application in terms of Rule 3.3.6 for the Chairperson to admit this statement in response and rebuttal of Mr. Mahlangu’s statement in so far as Mr. Mahlangu seeks to implicate me.

INTRODUCTION

5. I was appointed as the Minister of Public Enterprises from 1 November 2010 and remained in such position until May 2014.
6. During or about December 2010, Mr. Mahlangu was appointed in terms of Section 12A of Public Service Act 103 of 1994 as my special advisor. As my



special advisor, Mr. Mahlangu's responsibility was to advise me on matters relating to my duties as a Minister of Public Enterprises, in particular from a law perspective as he had a legal background. Mr. Mahlangu ceased to be my special advisor in May 2014 when I was appointed as the Minister of Home Affairs.

7. I have endeavoured as much as possible to identify the specific allegations in Mr. Mahlangu's statement which I place in issue and to the extent that I may have omitted to deal with any specific allegation contained therein, such should not be construed as being admitted. I have also at the same time, set out my version in response to a specific allegation being responded to.

RESPONSE TO MR. MAHLANGU'S STATEMENT

8. I will respond to Mr. Mahlangu's statement *seriatim* to the paragraphs in which he seeks to implicate me, as set out below:-

8.1 AD PARAGRAPHS 58 TO 63

- 8.1.1 The briefing that I had with Mr. Mahlangu was to inform him about my expectations of him as my special advisor as he was new at the time. I needed him to advise me on my duties and responsibilities as a Minister of Public Enterprises with a particular focus on the laws that applied to my portfolio.

8.1.2 During the said briefing, I must have mentioned a number of persons or entities who were supportive of the African National Congress (not just the Gupta family) and instructed him to manage these persons and entities for me. The reason for this is that as a Minister I used to be approached daily by different people with different requests and I was not in a position to assist with some of the requests, hence I requested Mr. Mahlangu to attend to some of these and assist, where possible.

8.1.3 The foregoing was not uncommon and Mr. Mahlangu has given examples in paragraphs 61 to 63 of instances where I requested him to assist.

8.2 **AD PARAGRAPH 64**

Mr. Mahlangu gave me updates on the interactions he had with the different persons in this context and the purpose was to ensure that I would be updated on what may have been discussed.

8.3 AD PARAGRAPHS 74 TO 75

8.3.1 I cannot recall whether Mr. Mahlangu updated me on the said meeting and its purpose. I also cannot recall the context in which my spokesperson responded to the relevant media enquiry in the manner alleged by Mr. Mahlangu.

8.3.2 Although I do not believe that my relationship with Mr. Mahlangu deteriorated, it is apposite to mention that at some point there was tension between some of my support staff about different issues, such as that some of the staff members perceived others to have more influence and proximity to me, which included Mr. Mahlangu. My office, just like any other employment environment was not immune to these types of tensions amongst employees. My relationship with Mr. Mahlangu only ended when I was appointed as the Minister of Home Affairs in 2014. I explained to Mr. Mahlangu and Ms. Phelisa Nkomo (my other special advisor on Economic Affairs at the time) that I would require advisors with a different skills set required for the new portfolio. My relationship with Mr. Mahlangu remains professional and cordial.

8.4 **AD PARAGRAPHS 95 TO 96**

Mr. Mahlangu disclosed the invitation to attend the wedding and I did not have an objection to it. In hindsight, I do not see any purpose which was to be served by him attending a private wedding.

8.5 **AD PARAGRAPH 103**

8.5.1 Although legally, as a Minister I exercised my discretion in board appointments, there was a detailed process during my tenure as the Minister of Public Enterprises.

8.5.2 As far as I can recall, during my tenure, the following was the procedure in the appointment of board directors:-

8.5.2.1 The department had a template for the SOC's which needed to be carried into the SOC's memorandum of incorporation. There was a distinction drawn between the appointment of non-executive board directors and that of executive board directors;

8.5.2.2 Generally, leading up to the annual general meetings of the SOC's, the department would conduct a skills gap analysis in respect of non-executive board directors, with the purpose of strengthening the relevant boards' capacities and if necessary the recommendation of a candidate(s) with the requisite skills, experience and relevant expertise to:-

8.5.2.1 address the challenges faced by the SOC's and align it with Government's strategic objectives; and

8.5.2.2 enhance representation to meet the country's demographics and Government's equity objectives.

8.5.2.3 The departments' analysis/audit would be conducted in cases relating to the appointments, re-appointments, rotations and/or retirements of non-executive board directors. The department would use a list of candidates that it had on its database and attend to the process of vetting the candidate(s);

- 8.5.2.4 In certain instances, my special advisors would suggest names of prospective board directors for consideration in instances where there was a prospective candidate whom they believed qualified and was fit for purpose but may not have been on the departmental database;
- 8.5.2.5 All the recommended prospective board directors, including those that may be recommended by my special advisors undergo a vetting process by the department;
- 8.5.2.6 Having conducted the aforesaid analysis/audit, the department would then recommend candidate(s) for appointment or retirement or rotation to me. Should I concur with the recommendations of the department, I would sign a cabinet memorandum relating to such recommendations for cabinet approval;
- 8.5.2.7 Cabinet reserves the right to reject the nominated candidates in *toto*, or in part;
- 8.5.2.8 Once Cabinet has approved, I would then appoint the new approved non-executive director(s) to the board

for a fixed term of three years, subject to annual review;

8.5.2.9 I would communicate the appointment of the new non-executive director (s) to the existing board, the new nominee(s) and other relevant stake holders after obtaining cabinet approval;

8.5.2.10 Generally the appointment(s) would become effective at the annual general meeting of the relevant company;

8.5.3 In respect of executive directors (these being executives who also serve on the board, viz CEOs and CFOs), the procedure known to me was as follows:

8.5.3.1 when a vacancy occurs or a need arises, the board would resolve on whether to appoint a candidate to serve in the executive position of the company;

8.5.3.2 the board would then decide on the method of searching for a suitable candidate(s) for the executive position(s). This process may take different forms

and would be in terms of the SOC's internal policies, which may include:

8.5.3.2.1 advertisement of the vacancy and/or appointment of an executive entity to assist with the search for a suitable candidate(s); and/or

8.5.3.2.2 internal and external searches.

8.5.4 In addition to the procedure described in paragraphs 8.5.3.1 to 8.5.3.2 above, the board would also be entitled to nominate possible suitable candidates for the executive position;

8.5.5 The board or a committee nominated by it would shortlist possible suitable candidates for interviews. Following the interviews, the possible shortlisted and interviewed candidates would complete a number of assessments to be conducted by an independent psychologist who would compile a comprehensive report on each candidate. Based on the interviews, the assessment results and accumulated scoring, the board or committee or panel would agree on the order of preference of these candidates;

- 8.5.6 Once the board has identified, nominated and evaluated a candidate, it would then present the successful candidate(s) to me for my approval and endorsement;
- 8.5.7 Once I have approved a successful candidate, I would refer my approval to Cabinet;
- 8.5.8 Cabinet reserves the right to reject the nominated candidate(s) in *toto*, or in part;
- 8.5.9 Following notification to Cabinet and its approval, I would proceed with the appointment of the successful candidate(s);
- 8.5.10 One of the things that we did as a department during my tenure was to come up with rules to apply internally within the department. The purpose of the said rules was amongst others to ensure that:-
- 8.5.10.1 a prospective board director is not appointed to too many boards;
- 8.5.10.2 a board director does not serve more than two terms;

8.5.10.3 collectively the board fulfills the skills matrix required in order to take the company forward.

8.5.11 I do not have a copy of the said rules, the department should have a copy.

8.6 AD PARAGRAPHS 107, 110 TO 111

8.6.1 I have had regard to **SM18** and believe that it is important to explain its context. **SM18** was correspondence exchanged between myself and Mr. Mahlangu as part of our deliberations in me considering his advice about the appointment of prospective candidates to the board of SAA. Similarly **SM19** was part of the correspondence exchanged for the similar purpose.


8.6.2 In my e-mail of Tuesday, 23 May 2013, I had suggested that Ms. Chichi Maponya, Prof. Zanele Mngadi, Ambassador. Mthembu and Mr. Thabo Mosololi be considered. Their consideration was still going to be subject to the department's internal processes and was not an imposition of these candidates.

8.7 AD PARAGRAPHS 180 TO 184

I do not recall Mr. Mahlangu discussing his concerns about Dr. Naithani or his resume with me. What I do recall is that I was briefed by the department and the board of SAA through a board assessment report that Dr. Naithani was not fulfilling his duties as a director of SAA including but not limited to not attending board meetings. I initiated a process of his removal from the board of SAA, albeit that his actual removal occurred after I had been appointed as the Minister of Home Affairs.

CONCLUSION

9. In the premises, I submit that there was no wrongdoing on my part as the Minister, representing the shareholder in executing my duties on behalf of the State.
10. I therefore humbly apply for leave that this statement be admitted in rebuttal of Mr. Mahlangu's statement in so far as the evidence of Mr. Mahlangu seeks to implicate me.
11. Should the Commission require me to attend at its hearings and give evidence *viva voce*, I hereby tender to do so.


DEPONENT

THUS SIGNED AND SWORN TO before me at Sandton on this the 6TH day of October 2020 by the deponent who acknowledges that the deponent knows and understands the contents of this affidavit; that it is the truth to the best of the deponent's knowledge and belief and that the deponent has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


COMMISSIONER OF OATHS

EX OFFICIO:
FULL NAMES:
PHYSICAL ADDRESS:
DESIGNATION:

KEVIN RICHARD BAARD
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KRW