

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

28 MAY 2019

DAY 100

20

PROCEEDINGS ON 28 MAY 2019

CHAIRPERSON: Good morning Ms Sello, good morning everybody.

ADV MAHLAPE SELLO: Good morning Chair.

CHAIRPERSON: Thank you. Are you ready?

ADV MAHLAPE SELLO: Yes we are ready Chair except we will be referring to some documents that are in your files and I do not know if the Chair would like to reach out to a file when the time comes. And if that is the case I think the files are rather far from the Chair. I do not know if we can address the...

10 **CHAIRPERSON**: Well that is what I was talking to her about.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: That – well how – how much will we be using them before tea break?

ADV MAHLAPE SELLO: It – If I may just – we just make it to tea break Chair.

CHAIRPERSON: Okay no I think she has managed.

ADV MAHLAPE SELLO: She has managed Chair?

CHAIRPERSON: Yes okay.

20 **ADV MAHLAPE SELLO**: Okay then we will sort them out properly during tea.

CHAIRPERSON: Ja okay.

ADV MAHLAPE SELLO: Thank you Chair. Chair before we proceed may I remind the Chair that two weeks ago we presented reports of investigations undertaken in respect of certain transactions within Transnet. Today we are engaging MNS as one of the investigators on

specifically the investigations they conducted and their reports that they have filed which have now been – which now form part of the record before the Chair. In addressing – in going through these issues Chair we do not want to present the witness and I use that term guardedly as a factual witness. The witness is speaking to what their mandate is, what they did and what is the outcome of the process and he will cross-refer us to the various reports. With that understanding then an interesting question has arisen and we would seek the Chair's guidance in this regard whether it is necessary to swear in the witness

10 – particular witness.

CHAIRPERSON: Ja it will be necessary.

ADV MAHLAPE SELLO: We shall proceed to do so.

CHAIRPERSON: You know he is still a witness.

ADV MAHLAPE SELLO: We shall proceed to do so Chair if the witness may be sworn in?

CHAIRPERSON: Ja thank you.

REGISTRAR: Please state your full names for the record?

MR TSHIAMO MICHAEL SEDUMEDI: It is Tshiamo Michael Sedumedi.

20 **REGISTRAR:** Do you have any objections to taking the prescribed oath?

MR TSHIAMO MICHAEL SEDUMEDI: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR TSHIAMO MICHAEL SEDUMEDI: Yes it does.

REGISTRAR: Do you solemnly swear that all the evidence that you will

give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me God.

MR TSHIAMO MICHAEL SEDUMEDI: So help me God.

REGISTRAR: Thank you.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: I am sorry. Let me just get the full names I did not get them properly.

MR TSHIAMO MICHAEL SEDUMEDI: My name is Tshiamo.

CHAIRPERSON: Sorry?

10 **MR TSHIAMO MICHAEL SEDUMEDI**: Tshiamo, Tsh.

CHAIRPERSON: Th.

MR TSHIAMO MICHAEL SEDUMEDI: No, no. S.

CHAIRPERSON: S yes.

MR TSHIAMO MICHAEL SEDUMEDI: No Tsh.

CHAIRPERSON: H.

MR TSHIAMO MICHAEL SEDUMEDI: I.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Amo. Tshiamo, Tshiamo.

CHAIRPERSON: Oh and you pronounce it Tshiamo?

20 **MR TSHIAMO MICHAEL SEDUMEDI**: Tshiamo correct Chair.

CHAIRPERSON: Okay thank you. Yes.

MR TSHIAMO MICHAEL SEDUMEDI: And the surname is Sedumedi.

CHAIRPERSON: That is Se hey?

MR TSHIAMO MICHAEL SEDUMEDI: Se

CHAIRPERSON: Di

MR TSHIAMO MICHAEL SEDUMEDI: Du

CHAIRPERSON: Du

MR TSHIAMO MICHAEL SEDUMEDI: Me

CHAIRPERSON: Yes

MR TSHIAMO MICHAEL SEDUMEDI: Di.

CHAIRPERSON: Thank you very much.

MR TSHIAMO MICHAEL SEDUMEDI: Thank you Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you Chair. Chair before you you should
10 have a set of slides in a folder with a back backing – a black backing. I
shall not call the folder black Chair.

CHAIRPERSON: You will not call it black?

ADV MAHLAPE SELLO: No Chair I will not.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We have taken the liberty of marking that set
of slides Exhibit BB8[a].

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And for the record Chair we will be presenting
four witnesses in regard to the MNS investigations.

20 **CHAIRPERSON:** Hm.

ADV MAHLAPE SELLO: Mr Sedumedi's presentation is marked BB8[a]
and the next witness will be marked BB8[b] but MNS will retain the title
BB8.

CHAIRPERSON: Yes this file marked the procurement of 95,100 and
1064 locomotives by Transnet will be marked as Exhibit BB8[a]. I think

when you have got 8 so close to the second B...

ADV MAHLAPE SELLO: It looks like a B.

CHAIRPERSON: It is like it is not double BB8[a] it looks like BBB so I think maybe you create more space between the last B.

ADV MAHLAPE SELLO: We shall Chair.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We will uplift your copy and introduce a space between the last B and the 8.

CHAIRPERSON: Ja.

10 **ADV MAHLAPE SELLO:** To distinguish the 8 from the B.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: You should as well Chair have another folder in red.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Called the Index Transnet Reference bundle.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** The Chair will recall that when we submitted the reports we gave a general bundle. We have updated that bundle insofar as MNS is concerned for ease of reference and page – the first six pages the Chair has already seen they are part of the original bundles. What we have done from page 7 is to unpack the index even further indicating the specific pages where specific exhibits appear. That detail was not – was not set out in the original index. The index just told one where to find exhibits. So they would run let us say over a thousand pages. So we have tried to be more specific and broken it

down further from page – after the first index for the next five pages.

CHAIRPERSON: Well in this index you have got a report at the bottom on the left hand corner – excuse me and you have file volume.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: On the right hand corner of that index.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Now you have got 1,2,3,4,5,6...

ADV MAHLAPE SELLO: There are 19 items.

CHAIRPERSON: Up to 19.

10 **ADV MAHLAPE SELLO**: Yes.

CHAIRPERSON: Does that – do those numbers 1 to 19 reflect the numbers you have given to 19 reports? In other words the report 1, report 2, report 3 up to 19?

ADV MAHLAPE SELLO: It is - yes the numbering on the left indicates there are 19 in all.

CHAIRPERSON: Yes but...

ADV MAHLAPE SELLO: It is just the numbering.

CHAIRPERSON: But also when one goes to them will one find 1,2,3, - are they marked like that?

20 **ADV MAHLAPE SELLO**: Not like that Chair. What – we then used the column on the right which is called File Volume and that tells you which report is listed is in which volume. So in this instance the first 4 reports are to be found in Volume 1.

CHAIRPERSON: Oh okay. So the numbering on the left then is just for the various items on the index?

ADV MAHLAPE SELLO: Just for the various items yes.

CHAIRPERSON: Not about the reports?

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Where the reports are to be found.

CHAIRPERSON: So – so the items are the reports? The items relate to the reports?

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: And then on the column on the extreme right you
10 indicate – you say File Volume?

ADV MAHLAPE SELLO: Yes Chair. If the Chair would just glance at the files they are all marked volume 1 of 17 or volume 7 of 17.

CHAIRPERSON: Yes. So – so those numbers under File Volume tell you in which volume you will find a particular report?

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: And – okay. The file part might just confuse hey?

ADV MAHLAPE SELLO: So we – the Chair suggests we delete the word file?

CHAIRPERSON: Hm.

20 **ADV MAHLAPE SELLO:** And just have Volume.

CHAIRPERSON: Just have Volume.

ADV MAHLAPE SELLO: We could do that Chair.

CHAIRPERSON: And then – then it is – then one knows exactly.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Ja. So when you go to the actual lever arch files you

look for volume.

ADV MAHLAPE SELLO: Volume 1, Volume 5.

CHAIRPERSON: Volume 1, Volume 2, Volume 3.

ADV MAHLAPE SELLO: As the case may be.

CHAIRPERSON: Yes. Okay.

ADV MAHLAPE SELLO: We will do so Chair.

CHAIRPERSON: Ja so let us delete file. And – and the item, the report under item 6

ADV MAHLAPE SELLO: Yes Chair.

10 **CHAIRPERSON:** You have got 2A, 4, 5, 6 and 7 2B 8, 9 and 10.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Those are still volumes? If you go physically to the report you will find written 2A?

ADV MAHLAPE SELLO: Yes. As regards transaction item 6.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: It resulted in two separate reports.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: The heading is the same except the one report is titled 2A the other is titled 2B.

20 **CHAIRPERSON:** Okay.

ADV MAHLAPE SELLO: So when we get to 6 we say insofar as 2A is concerned that shall be found at Volumes 4,5,6 and 7. 2B is at 8,9 and 10.

CHAIRPERSON: 2A and 2B referred to sections of the same report?

ADV MAHLAPE SELLO: Of the same report. Except that they are –

MNS filed them separately. They address different issues but all the issues emanate from the same transaction.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: So 2A is to be found in Volumes 4,5,6 and 7?

ADV MAHLAPE SELLO: And 7 Chair.

CHAIRPERSON: Those are the numbers you will find when you go physically to the...

ADV MAHLAPE SELLO: To the volumes.

10 **CHAIRPERSON**: To the report – to the lever arch files.

ADV MAHLAPE SELLO: To the lever arch files.

CHAIRPERSON: Okay. Then I think that 2A should not be there. I think it should be on the item side and 2B because it confuses – it may cause confusion. You see the principle is as you have confirmed to me what comes under that column, under volume tells the reader what the volume number is for that particular report.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: And the report that it relates to is the one mentioned in the middle column of the index?

20 **ADV MAHLAPE SELLO**: Yes Chair.

CHAIRPERSON: So I think the 2A and 2B parts should be on this side so that – because otherwise I think if it is like this I think when I go to the lever arch file I must look for 2A and I will not find 2A or 2B.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Am I right?

ADV MAHLAPE SELLO: No you are – you are correct. You – the Chair will find on the spine 2A or 2B.

CHAIRPERSON: It is marked 2A?

ADV MAHLAPE SELLO: It is marked.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: If I may say?

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Originally the index read as regards that report.

10 **CHAIRPERSON:** Ja.

ADV MAHLAPE SELLO: Into 1064.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Volumes 4 to 10.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: But there was no way of indicating which report specifically is in which volumes.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** And that is when we came up with the idea that we should put 2A underlined to indicate that insofar as 2A is concerned that is to be found at 4, 5, 6, 7 and 2B of the 1067 transaction is to be found at 8, 9 and 10. That was the purpose of marking it that way.

CHAIRPERSON: Well if –

ADV MAHLAPE SELLO: But if there is a better way of doing it Chair we are happy to change it.

CHAIRPERSON: Well if I will find 2A on the...

ADV MAHLAPE SELLO: On the spine.

CHAIRPERSON: On the file – the lever arch file.

ADV MAHLAPE SELLO: Yes Chair you will.

CHAIRPERSON: That is fine.

ADV MAHLAPE SELLO: Yes Chair you will.

CHAIRPERSON: That is fine so – so there will be 1 written 2A and then 4, 5, 6 and 7.

ADV MAHLAPE SELLO: Yes Chair if I may just.

10 **CHAIRPERSON**: Ja.

ADV MAHLAPE SELLO: Glance at my – yes Chair I have volume 4 with a name and then it says Volume 2A then Volume 5 again says 2A 6 and 7 and then when you get to volume 8 it says 2B which is 8, 9 10. They will – they will be 2B.

CHAIRPERSON: The – that is fine. So I think if we are going to retain 2A where it is in the index and they are under 2A four lever arch files.

ADV MAHLAPE SELLO: Correct Chair.

CHAIRPERSON: Each one of – they should all reflect that 2A, 4 2A, 5 2A, 6 2A, 7.

20 **ADV MAHLAPE SELLO**: They do currently.

CHAIRPERSON: Because then if I look at the index I go and look for 2A 5.

ADV MAHLAPE SELLO: That is...

CHAIRPERSON: I must find 2A 5 written. If I find 5 only.

ADV MAHLAPE SELLO: No.

CHAIRPERSON: I will think it is not the one.

ADV MAHLAPE SELLO: No it will be...

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: It will give you the name of the report.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: 2A Volume 5.

CHAIRPERSON: Okay that is fine. Same with 2B?

ADV MAHLAPE SELLO: Same with 2B.

CHAIRPERSON: Okay no that is fine. Okay. No I think the – the rest
10 appear to be – there is 12 – 12 3 – 12 and 13 what is the story there?

ADV MAHLAPE SELLO: It is two volumes. It is the relocation of two
OEM's to Durban. It is in two volumes.

CHAIRPERSON: Oh so it is volumes 12 and 13.

ADV MAHLAPE SELLO: It is volumes 12 and 13.

CHAIRPERSON: Okay that is fine.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: That is fine. Thank you.

ADV MAHLAPE SELLO: Then if I may go overleaf the Chair will recall
this index. Chair will recall that when we submitted the reports we
20 indicated that we had printed only the reports in hard copy. The
annexures to the reports were in soft copies. In order to assist with
navigation we indicated in that index on which pages the actual report
runs and which pages the annexures run. That is the purpose of the
second index. Four pages forward

CHAIRPERSON: Okay I am sorry you are talking about page 3?

ADV MAHLAPE SELLO: I was page – talking about page 3.

CHAIRPERSON: So – so does that take care of each of the reports?

ADV MAHLAPE SELLO: Each of the reports. So for...

CHAIRPERSON: And that is page 3 and page 4?

ADV MAHLAPE SELLO: Page 4, page 5 Chair.

CHAIRPERSON: And page 5.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: So ...

ADV MAHLAPE SELLO: So if we take...

10 **CHAIRPERSON:** What – okay so I think where the middle column
where it says File volume we delete file.

ADV MAHLAPE SELLO: It will just be volume.

CHAIRPERSON: As – again.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: For consistency. So that tells me which volume deals
with which report

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: If I read – look at the first column and the second.

20 **ADV MAHLAPE SELLO:** The second column – yes the first and the
second.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: As we did in the first index.

CHAIRPERSON: Yes and then...

ADV MAHLAPE SELLO: Except this index is broader.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: It then introduces a column report pages.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: And it tells you the report is to be found ...

CHAIRPERSON: Exhibit.

ADV MAHLAPE SELLO: And lastly it indicates what – over what pages the exhibits run.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: So we would have let us say on item 4 they run from page 174 to page 4222 that is just exhibits.

10 **CHAIRPERSON:** That is – those are the annexures?

ADV MAHLAPE SELLO: Those are the annexures to the report.

CHAIRPERSON: Yes to the report.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay. And item 5 they run from 4307 to 5274?

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: But those are page numbers as opposed to the number of actual annexures, is that right?

ADV MAHLAPE SELLO: No it is page numbering.

CHAIRPERSON: Ja it is page numbers ja.

20 **ADV MAHLAPE SELLO:** Yes, yes Chair.

CHAIRPERSON: Ja. Okay and if you go to item 6 they start from...

ADV MAHLAPE SELLO: There is that 2A / 2B split.

CHAIRPERSON: Ja and under A you have got 533326 825.. Ja I think this is a good – this a good way to make sure. It is easy to locate any particular annexure.

ADV MAHLAPE SELLO: Now if I may add then to your exhibit file?

CHAIRPERSON: Oh well maybe – maybe

ADV VERUSCHKA SEPTEMBER: Your index file.

CHAIRPERSON: It does not – it does not help me with how to locate any particular annexure.

ADV MAHLAPE SELLO: Now that is...

CHAIRPERSON: It just tells me where...

ADV MAHLAPE SELLO: We are updating...

CHAIRPERSON: Where I will find all the annexures for that report.

10 **ADV MAHLAPE SELLO:** We are updating your index file.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Now.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Your Registrar is about to hand you a document.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Which should go at the back.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Which seeks to address precisely that point.

20 **CHAIRPERSON:** Yes.

ADV MAHLAPE SELLO: So on what – on MNS reports.

CHAIRPERSON: Oh she has decided to take...

ADV MAHLAPE SELLO: It has been – you have been dispossessed
Chair yes.

CHAIRPERSON: She has decided to take everything from me.

ADV MAHLAPE SELLO: Now where we?

CHAIRPERSON: She promises me what she is giving me is better than what I had before.

ADV MAHLAPE SELLO: We will accept that Chair.

CHAIRPERSON: Okay Yes.

ADV MAHLAPE SELLO: So then after the landscaped index we have just introduced a few more pages.

CHAIRPERSON: I am not sure from where she – oh she must have – the new document must be the one coming after page 5?

10 **ADV MAHLAPE SELLO:** After page 5 Chair yes.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We will insert a proper description page for that.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Now that document she just inserted seeks to address the very point that the Chair has raised which is where do I go if I am looking for exhibit 22 of this particular report?

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** And we identify the exhibit number and we provide in the last column the exact pages where that exhibit is to be found.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: In that report.

CHAIRPERSON: Yes. So you have a column under the heading Reports.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: And you have got A, B, C, D, E, F and F.

ADV MAHLAPE SELLO: Let me – if I may address myself first to the numbering 4,5,6 report.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: That 4,5,6 corresponds with item number in the main index. Your index will show you item number 4 is that acquisition of 1064 locomotives.

CHAIRPERSON: Yes but then – then you should not have the word
10 “report” above for that should you? You see in the previous...

ADV MAHLAPE SELLO: Well – Item.

CHAIRPERSON: In the previous pages report is above the items as opposed to the numbers on the extreme left.

ADV MAHLAPE SELLO: We will change that to item.

CHAIRPERSON: Yes item yes.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: So then we are dealing with item 4.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** And ...

CHAIRPERSON: The next column tells us the description of the report?

ADV MAHLAPE SELLO: The description of the report.

CHAIRPERSON: And then you have a column for file?

ADV MAHLAPE SELLO: File would be Volume.

CHAIRPERSON: File will be volume.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: So on that it tells us if you go to volume 1 we find the report itself from pages 57 to page 173.

CHAIRPERSON: Where we say volume we ineffectively mean the report volume, is that right?

ADV MAHLAPE SELLO: Chair if I may?

CHAIRPERSON: Hm. In other – another

10 **ADV MAHLAPE SELLO**: It means volume Chair.

CHAIRPERSON: It is a volume of anything it is

ADV MAHLAPE SELLO: No it is our volumes.

CHAIRPERSON: It is a report volume. In other words it tells me what – what a report that is and what lever arch file will I be finding.

ADV MAHLAPE SELLO: Lever arch file yes.

CHAIRPERSON: Or maybe we should be saying lever arch files that of report I am not sure of what...

ADV MAHLAPE SELLO: It is because we marked the lever arch files volume 1, volume 2 up to 17.

20 **CHAIRPERSON**: Yes.

ADV MAHLAPE SELLO: So when we say volume we say go to our volume 1.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And at pages 57 to 173 that is where the report will be located.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: That is what we are trying to communicate we are not sure if it really is coming through.

CHAIRPERSON: Yes. No, no you remember I was the one that said this file report is confusing.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: And we agreed let us delete file.

ADV MAHLAPE SELLO: We delete file.

CHAIRPERSON: And say report. It is – one report may have a number
10 of files – lever arch files.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: And when we say report 1 you – we actually mean the lever arch file?

ADV MAHLAPE SELLO: No when we say report we say the report filed by MNS.

CHAIRPERSON: No, no I mean when we – you see under – under let us go back to – let us go back to page 1.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: You see where it was saying File Volume not Report
20 actually.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: File Volume.

ADV MAHLAPE SELLO: Volume.

CHAIRPERSON: We deleted file.

ADV MAHLAPE SELLO: And retained the word volume.

CHAIRPERSON: It says now volume 1, volume ...

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: So that – those numbers I earlier on said that refers to report. I think I said that but when I think it through it seems to actually refer to a lever arch file.

ADV MAHLAPE SELLO: A lever arch file.

CHAIRPERSON: So it is lever arch file 1.

10 **ADV MAHLAPE SELLO**: Indeed Chair.

CHAIRPERSON: Is that right?

ADV MAHLAPE SELLO: Indeed.

CHAIRPERSON: That – that is what we should be having.

ADV MAHLAPE SELLO: The extreme right column. Indeed Chair.

CHAIRPERSON: The extreme right column.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Maybe not volume or do you think we should retain volume?

ADV MAHLAPE SELLO: We would prefer to retain volume

20 **CHAIRPERSON**: Ja.

ADV MAHLAPE SELLO: As long as we understand that the volumes referred to – the commission's volumes – the commission has submitted to you as far as reports are concerned 17 volumes.

CHAIRPERSON: Ja. Yes

ADV MAHLAPE SELLO: And each is marked accordingly. Volume 1,

volume 2 up to 17.

CHAIRPERSON: And we must understand volume to be ...

ADV MAHLAPE SELLO: The arch lever file.

CHAIRPERSON: To mean the same thing as a lever arch file.

ADV MAHLAPE SELLO: Absolutely Chair.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Absolutely.

CHAIRPERSON: Okay hopefully it will not be confusing to somebody who might have to go through who is not here.

10 **ADV MAHLAPE SELLO**: Should – we hope not because even when they uploaded they will be uploaded under volumes.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: It will be Transnet – we call it a reference bundle.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Volume 1.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Volume 2.

CHAIRPERSON: Ja. Okay let us stick to volume.

20 **ADV MAHLAPE SELLO**: Okay thank you Chair.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Then going to the latest edition which is the last pages inserted.

CHAIRPERSON: Let me see – one second. Yes okay.

ADV MAHLAPE SELLO: Then as I indicated in response to the Chair's

query about if the Chair wants to see Exhibit 20 of the report – the 1064 report how do you go about it?

CHAIRPERSON: Okay on what page are we...

ADV MAHLAPE SELLO: It is the –

CHAIRPERSON: The first page of the new document?

ADV MAHLAPE SELLO: The first page of the new document.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We then – we said the first column is the item number.

10 **CHAIRPERSON**: Yes.

ADV MAHLAPE SELLO: Which cross-references to the main index.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Then the report itself is identified.

CHAIRPERSON: Yes, yes.

ADV MAHLAPE SELLO: And volume 1 the report itself appears at pages 57 to 173.

CHAIRPERSON: Yes you might wish you see you have got in that document report description.

ADV MAHLAPE SELLO: Yes Chair.

20 **CHAIRPERSON**: You might wish to do exactly the same on the first document you know?

ADV MAHLAPE SELLO: We will add that.

CHAIRPERSON: Because that – those items actually give a description of the report.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Ja. Okay.

ADV MAHLAPE SELLO: The Chair then enquired what is Part A, Part B, Part C.

CHAIRPERSON: Let us finish first. So where we had file we said we delete that and write volume.

ADV MAHLAPE SELLO: Volume Chair.

CHAIRPERSON: And that is fine. And then after that column you have got report – report and then part – part – exhibit – bla, bla, bla.

ADV MAHLAPE SELLO: Yes.

10 **CHAIRPERSON**: And then you have got in the next column 57 to 173

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: what is that?

ADV MAHLAPE SELLO: It says report 57 under the heading pages 57 to – from page 57 to page 173. The Chair will recall we are still in volume 1 and there are other reports that precede this particular one in volume 1.

CHAIRPERSON: There is a report 57?

ADV MAHLAPE SELLO: No, no. It is pages 57 to 173.

CHAIRPERSON: So this is pages 57 to 173?

20 **ADV MAHLAPE SELLO**: 173.

CHAIRPERSON: Pages of the – of the...

ADV MAHLAPE SELLO: Of the volume.

CHAIRPERSON: Of the report.

ADV MAHLAPE SELLO: Of the volume. The page numbering at the extreme is our volume numbering.

CHAIRPERSON: Well you have got report there and before report you have got a volume

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: That report refers to what? You have got a report description on the second column so that report is which report?

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Huh-uh.

ADV MAHLAPE SELLO: Keeping our finger there Chair and we go back to the main index. We look for item four.

10 **CHAIRPERSON**: Yes.

ADV MAHLAPE SELLO: Item four reads:

“Acquisition of 1 064 ...”

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: “...dated 7 December...”

And it tells us it is in volume 1.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: When we go then to this index that is the report item four.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO**: The next one is item five which is the next one.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: 1 064 and it starts off with the report at volume 1 and the pages from 4223 to 4306.

CHAIRPERSON: Let us talk about four.

ADV MAHLAPE SELLO: Let us – yes Chair and perhaps ...

CHAIRPERSON: I see – I see nothing about four there. Four and five are different. Is it not? They are different items.

ADV MAHLAPE SELLO: If – if I go Chair to – you just have the report at item four without the annexures.

CHAIRPERSON: Yes. So why do we have it there if the – I thought that this one is page – the pages that come after it are there to give us more details about where to locate (intervenes).

ADV MAHLAPE SELLO: To avoid confusion we – we can remove that
10 because it is a direct duplication of item four in the main index.

CHAIRPERSON: Yes, okay.

ADV MAHLAPE SELLO: We are happy then to delete four on this page.

CHAIRPERSON: Okay, yes.

ADV MAHLAPE SELLO: And then it will start will five.

CHAIRPERSON: Yes, okay.

ADV MAHLAPE SELLO: And item five is the procurement of
(intervenes).

CHAIRPERSON: And is the position that item four - that is that report
20 describing item four has no annexures?

ADV MAHLAPE SELLO: It has got no – does not have any annexures in your current volumes Chair.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay, right. So okay then – then we go to five.

ADV MAHLAPE SELLO: We go to five.

CHAIRPERSON: Then we use – we use the heading which you already have at the top.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Then in terms of that we have got volume under that column there is one – one and one and two and two and three and three. So – so those are the – those are the file – lever arch files relating to this particular report?

ADV MAHLAPE SELLO: Indeed Chair.

10 **CHAIRPERSON:** And then you then have “report” written on the next column?

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: What is that?

ADV MAHLAPE SELLO: That is the actual report from 4223 to 4306 and there under we list there its various exhibits.

CHAIRPERSON: Oh but why – why do we need the word “report” there? Is it not causing confusion because so far in terms of the first document that index?

ADV MAHLAPE SELLO: Yes Chair.

20 **CHAIRPERSON:** As I see the principle it is – if you go to the index you must know the description of the report you are looking for.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: Okay. There is an index that gives you the description of the report. Once you know the description of the report you are looking for the index will – has a column which tells you in

which lever arch file or lever arch files you will find that report.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay. We have called that volume so and so. We have not called them lever arch file whatever. So you - now you know where to find a particular report. It may be in one lever arch file. It may be in a number of lever arch files.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay. Then now you want to find annexures relating to the report. So the next thing you should know is in which pages of
10 the volumes that you have been told about you will find particular annexures. So it seems to me if when I am now looking I found the – I know which report I am looking for and I know which lever arch files relate to that report. When I am looking for where to find the annexures you tell me about a report. You are confusing me.

ADV MAHLAPE SELLO: Okay Chair maybe if I ...

CHAIRPERSON: I know the report already. I know the lever arch files. All I want now is ...

ADV MAHLAPE SELLO: Is the annexures.

CHAIRPERSON: Where are the annexures in the lever arch files?

20 **ADV MAHLAPE SELLO:** We can do so. I just need to – to bring to the Chair's attention the following: this latest index we have just given you that indicates specifically where each annexure is to be found does not relate to all seven – not to all the 17 volumes.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: This is MNS specific.

CHAIRPERSON: *Ja.* No that is fine.

ADV MAHLAPE SELLO: Yes and ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: It was intended to be able to exist separate from the main index.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Once you have this you can find your way through the entire MNS report system.

CHAIRPERSON: Yes.

10 **ADV MAHLAPE SELLO:** Yes Chair.

CHAIRPERSON: But what – what it can do if it is separate is just to say this is about the MNS report - you know and ...

ADV MAHLAPE SELLO: Then we will take out ...

CHAIRPERSON: And then you say MNS Reports are in volumes 1 to whatever and then you say annexures blah, blah, blah the page numbers.

ADV MAHLAPE SELLO: We will give it another shot Chair.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** We will take out the report. The last thing we want is to create confusion.

CHAIRPERSON: Is confusion, *ja*.

ADV MAHLAPE SELLO: Which is intended to assist ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: To avoid ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Confusion and – and ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Facilitate reference.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: So we will report ...

CHAIRPERSON: But if ...

ADV MAHLAPE SELLO: We will remove reference to report each time.
Just identify the report and start with EXHIBIT 1.

CHAIRPERSON: Yes. You have got part what – part what?

10 **ADV MAHLAPE SELLO:** That – that ...

CHAIRPERSON: This was written in – in the files?

ADV MAHLAPE SELLO: Yes. We – we do so because MNS has
grouped its exhibits in terms of Part A, Part B, Part C to F.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: That is how they have done it ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And that is why the Chair will see in Part A it
runs from 4307 to 4323.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** So that – that is at a high level.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Then at a granular level it is the next list ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Which then gives you EXHIBIT 1 is at 5335
and so forth.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Yes the – the Part A, Part B is the way the report itself is structured ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And we were trying to link the manner in which they have structured their report with our – with our index.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: But once again if – if it does not assist it is not an important feature. We can do away with it.

10 **CHAIRPERSON:** We – we have used exhibits so and so exhibit that exhibit that. That is how the transcript reads.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Is it not?

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: I do not think it has Part A, Part B and so on probably because we did not have need to talk about parts.

ADV MAHLAPE SELLO: We did not.

CHAIRPERSON: I think that maybe you - maybe what one needs in regard to the parts are to indicate – okay. So that indicates where
20 those parts are to be found?

ADV MAHLAPE SELLO: Yes. Parts as identified in the report itself ...

CHAIRPERSON: And ...

ADV MAHLAPE SELLO: And each part has its own exhibits.

CHAIRPERSON: And under volume 1 you have got Part A up to C?

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Is that right?

ADV MAHLAPE SELLO: That is correct Chair.

CHAIRPERSON: And then D falls under both volumes 1 and two.

ADV MAHLAPE SELLO: Correct Chair.

CHAIRPERSON: Okay. So maybe- maybe we can leave that as – as it is and then in – then in the – under or alongside four you have got “report” there was well.

ADV MAHLAPE SELLO: *Ja* and we have said that we are going to delete that going forward.

10 **CHAIRPERSON:** You can delete that.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: And then after that you just have EXHIBIT 1, exhibit whatever ...

ADV MAHLAPE SELLO: Hm.

CHAIRPERSON: Which is what we – we have been dealing with. So that is – that is easy.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: But now you have got numbers on the right hand side of exhibits. So those are exhibit numbers?

20 **ADV MAHLAPE SELLO:** No. On – on the right hand side?

CHAIRPERSON: On – *ja* before the pages - page numbers.

ADV MAHLAPE SELLO: Yes. It reads EXHIBIT 1, EXHIBIT 2 ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And they are all in volume 4 at least for that ...

CHAIRPERSON: Yes, yes.

ADV MAHLAPE SELLO: They are all in volume 4.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: So it is EXHIBITS 1 to 22.

CHAIRPERSON: Ja you see – you see at the top I think if you go to where we deleted the word “report” (intervenes).

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: In the dark - on the dark part just above that.

ADV MAHLAPE SELLO: Yes Chair.

10 **CHAIRPERSON:** You have got “volume 1” written there. Can you see it? Before date – dated October.

ADV MAHLAPE SELLO: I am at item six Chair.

CHAIRPERSON: No, I am at ...

ADV MAHLAPE SELLO: Item five?

CHAIRPERSON: Page 1 of the new document in the index.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: At the top.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: You see where we deleted “report”?

20 **ADV MAHLAPE SELLO:** I see that Chair. We substituted that (intervenes).

CHAIRPERSON: Before Part A, Part B ...

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: And then there is the dark part locomotives, volume 1.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Can you see volume 1?

ADV MAHLAPE SELLO: I see that Chair.

CHAIRPERSON: Now it creates the impression in – at least to my eye that what falls under that is volume whatever which would be confusing because we have got volume on the other side but that is part of the description of the item.

ADV MAHLAPE SELLO: Yes the ...

CHAIRPERSON: May – maybe what we should do I think what I will do
10 on mine when you go to – you know – the second report that we deleted?

ADV MAHLAPE SELLO: That we deleted?

CHAIRPERSON: *Ja*.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: *Ja* and then you have got EXHIBIT 1, EXHIBIT 2.

ADV MAHLAPE SELLO: Indeed.

CHAIRPERSON: I think I am going to write on top of EXHIBIT 1 – I am going to write exhibit number.

ADV MAHLAPE SELLO: Okay.

20 **CHAIRPERSON:** So – so ...

ADV MAHLAPE SELLO: You can do so.

CHAIRPERSON: So I do not link those numbers with volume 1 at the top because otherwise I think it is ...

ADV MAHLAPE SELLO: You get confused.

CHAIRPERSON: It is volume 1, volume 2. So it is exhibit number.

Okay. That – that seems to be clear for me now.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: *Ja*.

ADV MAHLAPE SELLO: And then it just follows the (intervenes).

CHAIRPERSON: Actually – actually if you go to page 2 ...

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Of the new document exactly on that column under which I have written exhibit number you have got number.

ADV MAHLAPE SELLO: Yes Chair ...

10 **CHAIRPERSON:** Yes.

ADV MAHLAPE SELLO: And we put exhibit number.

CHAIRPERSON: *Ja – ja* you have got number but we did not have number on this side. You see there was no consistency.

ADV MAHLAPE SELLO: I – I see. I see Chair.

CHAIRPERSON: So okay. Okay I - I think I – I follow – I follow the rest. I think it is just these references to “report” that would be confusing. I am just deleting them if it is fine with you.

ADV MAHLAPE SELLO: It is – it is fine Chair.

CHAIRPERSON: On page – on page 4.

20 **ADV MAHLAPE SELLO:** And as we work through the documents if there still a better way of improving the index we are happy to do that.

CHAIRPERSON: Yes, yes. Yes, no. I think I understand it much better now, thank you.

ADV MAHLAPE SELLO: Thank you Chair. So then we will be working off EXHIBIT BB8A and to the extent necessary then we shall make

reference to the index, thanks.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Mr Sedumedi are you ready?

CHAIRPERSON: Well does – have his documents been – are they the same as ours? Will we have the same understanding?

ADV MAHLAPE SELLO: As Mr Sedumedi?

CHAIRPERSON: Yes or are we going to speak to different pages?

ADV MAHLAPE SELLO: We are – different pages is not an option
Chair ...

10 **CHAIRPERSON:** *Ja.*

ADV MAHLAPE SELLO: Because we will be talking to the same pages.

CHAIRPERSON: Do – do you want a – a short adjournment to make sure that we have the same everything of ...

ADV MAHLAPE SELLO: He just gave a slight nod. I think for his comfort Chair.

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: Yes I will be happy to do that.

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: Thank you.

20 **CHAIRPERSON:** Okay. Let us take a five minutes adjournment then.
We will resume at 10 to 11.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Sello you may proceed.

ADV MAHLAPE SELLO: Thank you Chair, thank you for the opportunity and yes we will all be speaking off the same page. If I may then turn to you Mr Sedumedi. You have provided your name, could you give the Chair a sense of your professional background and what you currently do?

MR TSHIAMO MICHAEL SEDUMEDI: Thanks Chair, like I said earlier on my name is Tshiamo Sedumedi, I am the Managing Director at Mncedisi Ndlovu & Sedumedi Attorneys, it is a law firm based in Illovo,
10 17 years old this year. Our primary focus at the firm is on procurement law, construction law which speaks by and large to most of the issues that are covered in our reports, and as well as a fair amount of forensic investigations that we have been doing over the years.

ADV MAHLAPE SELLO: And you have prepared for us today a set of slides regarding your involvement in the matters that are relevant to what the Chair is enquiring in to.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: The Chair has a copy, I have a copy as well and you have your copy.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

ADV MAHLAPE SELLO: Perhaps for the benefit of the public if we can project it onto the screen and if you could take us through your slides.

MR TSHIAMO MICHAEL SEDUMEDI: It is projected Chair, it is on my slide and I can see on that – there you go.

ADV MAHLAPE SELLO: Yes, now if we turn to your second slide you list the issues you'll be dealing with which include the mandate of MNS the methodology employed by MNS in the course of investigations and then you list a number of transactions that you say were investigated by MNS.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair yes, being the 95 locomotives, hundred 1064 as well as the (indistinct) for 1064 and the infamous relocation of CNR and Bombardier to Durban.

ADV MAHLAPE SELLO: Okay starting then with your mandate, could
10 you summarise for us what your mandate was and from whom such mandate was received.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair, I think before I do the exact mandate, I think I should at least deal with the background to our appointment. We were appointed by the former Transnet Board sometime in late February 2018 but work actually commenced in earnest in March 2018. Our appointment followed the submission by Werksmans of a report to the, then Board, which the Board was not quite comfortable with and that (indistinct) to the (indistinct) for investigation as well. So, when the new Board came in, in June 2018,
20 we then had to present our preliminary findings at a particular time, mainly relating to 1064 and hundred locomotives. The Board was quite satisfied with what was presented and (indistinct) we were not as yet finished the full scope of our mandate so our instruction was then to proceed with the outstanding investigations but at the same time implement some of the findings that were coming out of our preliminary

report. So that's what happened in June last year and that spoke now to the actual mandate which was first crafted by the previous Board in the (indistinct) summarisation of a five page document that was actually given to us as part of our mandate. In essence, was to establish whether the 1064 transaction in terms of the ETC, was there any inflating of prices after hedging, whether in the procurement of 1064 and hundred locomotives were there any governance process that were followed and were such processes effective. Was there any (indistinct) between Tequesta and CSR, we'll talk about that, I think towards – after
 10 lunch and provide some recommendation as to – in view of your findings what recommendations is MNS providing to the Board and what steps can Transnet take against anyone who was found to be wanting in (indistinct) themselves in the transaction and as well recommend to the Board if there are any remedial steps within Transnet itself that they can embark upon to prevent the re-occurrence of such activities, so that is what our mandate entailed in a nutshell Chair.

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: Is there a document on which it is reflected, the mandate?

20 **ADV MAHLAPE SELLO:** Chair?

CHAIRPERSON: Is there a document here which reflects the mandate?

ADV MAHLAPE SELLO: There is not a document in the reports themselves or in the Exhibits that reflects the mandate, what Mr Sedumedi has given us is a summary of what appears from the mandate

letter.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: And I'm sure same can be made available should the Chair require.

MR TSHIAMO MICHAEL SEDUMEDI: Correct that will be done.

ADV MAHLAPE SELLO: Okay thank you, now you say that was the mandate that you were given, now could you briefly take us through the methodology that you employed in the course of investigations and what processes you followed?

10 **MR TSHIAMO MICHAEL SEDUMEDI**: Correct, obviously as a first step one would have to collate a lot of documents (indistinct) transaction and by and large we relied on the...(intervention).

CHAIRPERSON: Well maybe you might just tell us about the team that was involved because I'm sure it wasn't just you alone, the team that was involved, how was it made up, what were their qualifications for this kind of task and then proceed from there.

ADV MAHLAPE SELLO: Thank you Chair.

MR TSHIAMO MICHAEL SEDUMEDI: Certainly Chair (indistinct) we can't assign such a task only to a law firm because there was – we had
20 to set up a multi-disciplinary team of professionals I'll first start within the law firm itself obviously like I said, when I spoke about the various disciplines we had to put up lawyers focusing on procurement, corporate and commercial law and construction law in the main. Then to the extent that obviously, some of the issues that you are dealing with here, speak of financial issues. We then got an actuary who

assisted us to analyse some of the documents insofar as relating to financial issues, we also had a forensic team that obviously then (indistinct) how to collate data, how to image – you will see on methodology we speak about the imaging of computers and servers, that's what we got and as well, because the nature of instruction involved technical issues of engineering as well. We had Arcus Gibb who we roped in to look into the (indistinct) engineering aspects of the project. So that was a multi-disciplinary team that we had composed to ensure that at least all the issues that fall within our mandate are able
10 to be addressed effectively.

CHAIRPERSON: So what is the – what was the number of the members of the team, is it five or six or it differed according to the different stages of the investigation?

MR TSHIAMO MICHAEL SEDUMEDI: I must confess Chair, 95%, if not 99% of the entire MNS lawyers were involved.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: I think only one or two people wouldn't have been involved in (indistinct) MNS has 22 lawyers so the bulk of those lawyers were dedicated to this project.

20 **CHAIRPERSON:** Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Obviously as well the forensic (indistinct) had their own employees so we are talking about, close to 40 personnel who were involved in various aspects obviously of the mandate that we executed.

CHAIRPERSON: Okay, no that's fine but the disciplines that you have

mentioned were the disciplines that were represented in the team?

MR TSHIAMO MICHAEL SEDUMEDI: Correct, which is why, in actual fact when we get our volumes, different chapters were written by different people focusing on those particular expertise which is why even in terms of our testimony will be assigning different experts to focus on various aspects of the report.

CHAIRPERSON: Okay thank you.

ADV MAHLAPE SELLO: Thank you Chair. Thank you for that background Mr Sedumedi, you were then going to explain to the Chair
10 exactly the methodology that you employed and to inform him of the various processes that you followed.

MR TSHIAMO MICHAEL SEDUMEDI: Correct, so like I said obviously the first port of call will be to get documents that (indistinct) before that time we did not have any knowledge about the project so we had to collate documents. By and large the documents were sourced from Transnet, we had to identify the persons that were involved that could be able to give us the things that we required. Transnet at a stage assigned the lady called Ms Lindi (indistinct) she was our interface in terms of collating data, so quite – we had to troll through volumous
20 reports and documents that were produced by Transnet over the years. Like I said, earlier on as well, we had to ask access to their computers because some of the information might not specifically have been printed in hard copy. They also then provide us with a soft copy of their portions of the server relating to 1064, obviously again, you can't rely purely on the documents because they can only take you up so far,

we had to interview various people within Transnet in particular those whose names would have arisen as we were perusing documents. Close to (indistinct) list of interviewees that we gave to the Commission yesterday round about 20 or so members of Transnet who were also involved in the transaction. Not necessarily them being directly involved but at least even those that would have had knowledge of some of the doings on the transaction, so we did conduct those interviews and interviews were all recorded to the knowledge of those that we were interviewing, the transcripts, should the Commission also
 10 require, copies of the transcripts of the interviews that will be gladly provided to the Commission. In actual fact after my discussion with Advocate Muglape yesterday, we have already assigned a team to get us all the copies of the transcripts of each and every person that we interviewed over a period of 18 months.

CHAIRPERSON: I think that will be very important, those transcripts of those interviews.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: And we shall submit them but then just to confirm that the transcripts themselves do not form part of the Exhibits
 20 of the reports.

MR TSHIAMO MICHAEL SEDUMEDI: Yes.

ADV MAHLAPE SELLO: So they will have to be submitted separately and as soon as they are at hand Chair, that should be before Transnet – MNS rather completes it's assistance to you, we would find a way of submitting them formally into the record.

CHAIRPERSON: Ja they would form part of the record on which the report was made, was based.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: If they are transcripts, if they are statements of witnesses, transcripts of interviews, statements of witnesses that were obtained just like you have Exhibit documents that they obtained, those are all part of the record on which the report is made which are quite important because to the findings made must be made tested against the record that was available.

10 **ADV MAHLAPE SELLO**: Indeed Chair I just wanted – less there is confusion that – to clarify that the transcripts themselves are not Exhibits to MNS reports but the transcripts will be submitted to this Commission and as Mr Sedumedi indicated they are currently being collated and we hope that exercise should be complete before the week is over.

CHAIRPERSON: Yes okay thank you.

ADV MAHLAPE SELLO: Thank you Chair, now Mr Sedumedi you talk of engagements and interviews with Transnet officials, must the Chair understand by that, that you mean persons who were still within the
20 employ of Transnet at the time you were conducting the investigation?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair yes, because the focus at that stage was saying, let's focus on the internal employees in as much we were quite mindful of the fact that there are people who are also out of Transnet who might have been involved, I mean, former employees like Mr Brian Molefe as an example. Those

were part of the persons that we initially targeted to interview, we only focus on the internal ones so as to be able to enable the Board to form a view as to what action must it take against anyone who has been identified. The plan being once the reports are produced then they are made available to (indistinct) as soon as the report was done it was made available to the employees for them to respond to what the findings entailed. Indeed, there were various correspondence exchanged between the Board, the new Board and some of the former employees who were implicated in the document. As explained, 10 obviously, they would contest what was contained in the reports but then the Board then said, obviously, the only fair way of ensuring that we put their version is through normal disciplinary processes that the Board intended to take. So that is where we close the subject of ensuring that the employees have a right of reply if I can use that word. We also then requested to say, these effect external parties like the OEM's who were involved. In the last four months we have engaged (indistinct) Transnet to engage the OEM's to present to them our findings and as well what their take is on what we have found and that process commenced only, in December 2018 and is still ongoing. The 20 same applies to various (indistinct) advisors who were identified, we are engaging with them, the (indistinct) of where we are converging but obviously is expected there are points where (indistinct) from what we are saying so that is the approach.

Now insofar as the former employees in our report we said – and it was even before this (indistinct) where it was actually in place

but we always knew at the time that it was going to be a judicial Commission of Enquiry on State Capture. We made recommendations in chapter five of our volume one that people like those who are not part of Transnet currently, they must be referred to the Commission for them to put their version of what is contained in our reports. So that is put for each one of them who's not within Transnet on chapter five of volume one that is being indicated.

CHAIRPERSON: So just to make sure I understand, after you had been appointed, MNS had been appointed, you put together a team that was
10 going to conduct the investigation. In the course of that investigation you interviewed a number of employees of Transnet.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Now are you saying that you didn't interview anyone, at that stage, before preparing the report, anyone who was outside of Transnet?

MR TSHIAMO MICHAEL SEDUMEDI: Correct, that's correct indeed Chair.

CHAIRPERSON: Yes okay so – so once you had interviewed a number of Transnet employees and obtained documents and so on you then
20 prepared the report, is that right?

MR TSHIAMO MICHAEL SEDUMEDI: That's correct Chair.

CHAIRPERSON: Yes, and you presented the report to the Board.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: And there was an appreciation that there were some of the employees of Transnet who were implicated in the report and it

was decided by the Board that those would be subjected to a disciplinary process where they would get a chance to put their side of the story.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Yes, but those who may have been implicated who were within Transnet had also been interviewed by your team, or not really?

MR TSHIAMO MICHAEL SEDUMEDI: Each and every person that is being implicated in our report was interviewed Chair.

10 **CHAIRPERSON**: So in a way they had, had a chance to put their side of the story.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: But before any disciplinary action could be taken by the company they would get the normal disciplinary process as well?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: But those that were outside of Transnet at the time you were conducting the investigation, you did not interview?

MR TSHIAMO MICHAEL SEDUMEDI: We did not interview those ones Chair.

20 **CHAIRPERSON**: And that includes those who may have been at Transnet at some stage but were no longer at Transnet when you conducted the investigation?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Except for Ms Mutani who was

the former head of Treasury at the time, other than that we did – even by that time we did our investigations she was no longer part of Transnet.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: We did have an interview with persons like those.

CHAIRPERSON: Yes, yes, now the decision not to interview those that were outside of Transnet, was that a decision that was taken simply because the investigation was seen as internal to Transnet or was it
10 because they were not cooperating even though they were approached?

MR TSHIAMO MICHAEL SEDUMEDI: It was two-fold Chair the first part being obviously it was an internal process and as well we had to make a judgement call to say, given the extent of how some of them were implicated, how – what powers do we have as a team to really – I won't use the subpoena lightly, not...(intervention).

CHAIRPERSON: To get them...(intervention).

MR TSHIAMO MICHAEL SEDUMEDI: Correct because with the employees it was quite easy which sent an email to the powers that be that we need to consult with Mrs so and so, then all in all those
20 persons will then subject themselves to the interview. So, we didn't have a mechanism of foreseeing those that were outside of Transnet to cooperate with us. A person like (indistinct) we knew because if you look at how she gets reflected it was more of basically, having the same position that we heard about the role within Transnet, that is why then when we made our recommendations to Transnet in chapter 5 to

say persons like Mr Molefe, Gary Pita, Singh those one we recommend that Transnet refer them to the Commission to ensure, that at least with the powers that the Commission – because even at that time we weren't even quite sure of the extent of the powers that the Commission might have but our own reading of the law was that, obviously you would be having the powers to subpoena them they can come and say (indistinct).

CHAIRPERSON: Yes, okay and then you talked about a process that you're still involved in now, what process is that?

- 10 **MR TSHIAMO MICHAEL SEDUMEDI:** We are currently running a (indistinct) process Chair, like I said when the Board, the new Board that is, they said, obviously to the extent that they (indistinct) investigations proceed that aspect that is why, as an example some of the volumes only came available this year but at the same time you must implement the findings to date that's one part, that speaks to the institution (indistinct) proceedings where possible institute civil actions against various individuals who have been identified. Part of the process – the OEM's because currently Transnet still has contractual arrangements with these OEM's, engage with OEM – because what we
- 20 have found, obviously, impacts of the legality of these transactions to an extent that there might be a need for Transnet to review these transactions. The first port of call is to engage the OEM's and see to what extent we can, commonly approach Court as an example with a view of conceding that there were irregularities that taints these transactions and jointly agree on a just and equitable remedy, that can

be placed before the Court to see what will be the best way of dealing with the unlawfulness that we have picked up. So that process is underway, as I said Chair, it commenced in November/December 2018, so that is the power process that we are riding over and above continuing with the investigations that we are conducting to give effect to our mandate.

CHAIRPERSON: So, this phase is aimed at giving effect or implementing some of the findings or the findings that you already made in the report?

10 **MR TSHIAMO MICHAEL SEDUMEDI**: Correct Chair.

CHAIRPERSON: Okay, Thank you.

ADV MAHLAPE SELLO: Thank you Chair and if you could just finish off on the OEM's and the process that you're currently undertaking, would we be understanding you correctly if we understood you to mean that your engagement with the OEM's is a process parallel to this Commission which is investigating the conduct of the OEM's themselves. So, there will be no impact or there shouldn't be any – you don't expect your process to impact on this current Commission?

MR TSHIAMO MICHAEL SEDUMEDI: Not quite but if I can answer it
20 this way, if you accept, as an example that the outcomes of our volume one, in particular puts to doubt the legality of the transactions that have (indistinct) with the OEM's as an (indistinct) you can't sit on our laurels and say let's continue the (indistinct) we are duty bound to approach a Court of Law and say, we need to bring to the attention of the Court that these transactions are tainted with irregularity and what

will be the just and (indistinct) remedy, under the circumstances to deal with the transaction. So that, in a way might, obviously impact on what the Commission is doing but that is only geared towards resolving the contractual relationship that is there between Transnet and the OEM's.

ADV MAHLAPE SELLO: Okay that's clarified.

CHAIRPERSON: Maybe just to complete one of the points we discussed earlier on, so it would be fair to – would it be fair to say to the extent that MNS investigation didn't involve persons who may have been implicated but who were not within Transnet to that extent, it
10 might not – the report might not contain the complete story?

MR TSHIAMO MICHAEL SEDUMEDI: If you accept that the story itself is not fully ventilated in the documents that way within Transnet because it's why it was important for us to get access to the server.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: To get the complete picture of what might have happened actually but to the extent that somebody is outside might have documents which are not within Transnet, which he or she can use to rebut (indistinct) obviously that's why we said that person then, there's a forum called the Judicial State of Enquiry on the
20 State Capture where a person can then come and rebut whatever that – the documents (indistinct) are saying.

CHAIRPERSON: Yes okay thank you.

ADV MAHLAPE SELLO: Then if I may just – just to make sure we are clear, you stand by your findings as are based on documentation you obtained from Transnet?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: Okay, then ...(intervention).

CHAIRPERSON: So in effect somebody who may be implicated, obviously would have to deal with the findings you made without their input because of the constraints you had because you couldn't force them to come and cooperate, they would have to deal with that and say, well this is my side of the story but you say, within those constraints and with the understanding that you couldn't compel people from outside you are confident that the findings accord with the
10 documentation that you got.

MR TSHIAMO MICHAEL SEDUMEDI: We are Chair but to mitigate against a risk of those persons not being able to ventilate (indistinct) which is why the civil action that has been instituted at least because (indistinct) so at the right time and (indistinct) they will be able to respond to the pleadings that have been put before Court arising out of the very same investigations that we are speaking about.

CHAIRPERSON: Yes, yes.

ADV MAHLAPE SELLO: Thank you Chair. On your next slide deals with the results of the investigations and you simply list there that you
20 compiled certain reports on the basis of the investigations you undertook.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair, yes all this work that come into the production of this six reports that we presented to Transnet and these are the ones that form part of the record at the Commission.

ADV MAHLAPE SELLO: And as you indicate all these reports were presented to Transnet and the Board to act thereupon as it deems meet. Now have any of these reports been provided to all the persons implicated in some or other wrongdoing in the report or in the reports?

MR TSHIAMO MICHAEL SEDUMEDI: Like I said earlier on with regards to the employees, indeed all employees that – whose names appear in the reports do have copies of the reports, all the four OEM's to the extent that they were implicated in the transactions, it's not all of them, we have all the volumes but as an example volume one covers all the
10 OEM's so all of them do have copies of the reports and the annexures to the reports (indistinct) actually engaging with them to show them how we arrived at our conclusions and to demonstrate to them as well, look these are the data that they have submitted so that there's any document that was altered by any of the investigators or Transnet so at least we are all operating on a common set of facts, if I can use that phrase.

CHAIRPERSON: So when you said earlier on that those who were outside of Transnet were not interviewed that didn't just relate to those who may have been inside Transnet at some stage but had left Transnet
20 at the time of your investigation, it also meant anyone who were in the OEM's – anyone who was not an employee of Transnet you did not interview is that right?

MR TSHIAMO MICHAEL SEDUMEDI: That's correct Chair.

CHAIRPERSON: Those that were interviewed were only those who were employees of Transnet.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: And after the reports had been prepared then you are, since December 2018 you are approaching other people to say, this is the report, this is what it says about you let's talk.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: To see how we can, among other things, maybe recover money or how we can, jointly – how you can cooperate if an approach is made to a Court to set aside this contract or whatever.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

10 **CHAIRPERSON**: Okay.

ADV MAHLAPE SELLO: And if I may then, to just clarify on that, what the Chair has described, it relates to engagements with third parties and in this instance OEM's that concluded contractual arrangements with Transnet.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: That statement does not concern former employees of Transnet who would be implicated or could be implicated by any of the reports.

20 **MR TSHIAMO MICHAEL SEDUMEDI**: Yes (indistinct) obviously that does speak to the former employees, quite correct Chair yes.

ADV MAHLAPE SELLO: Now then we understand the approach you have adopted in regard to the OEM's what approach have you – by you, I mean Transnet, I should probably say that, are you aware of the approach that Transnet has adopted regarding each former employees who are implicated insofar as making the reports available to them is

concerned?

MR TSHIAMO MICHAEL SEDUMEDI: To our knowledge we are not quite familiar as to whether Transnet has decided to give the reports to former employees who's – if I can use Mr Singh as an example, that part I'm not quite sure if Transnet did give that to those former employees but I'm quite certain that the employees were then given the reports.

ADV MAHLAPE SELLO: Okay if I may then turn briefly to the former employees, as you indicate you are – you do not know whether
10 Transnet has shared the reports with them, are you in engagement with them in any manner or form?

MR TSHIAMO MICHAEL SEDUMEDI: Save for the engagement via the litigation process we are not in any way involved in formal discussions.

ADV MAHLAPE SELLO: Now when I turn to OEM's and I understand that you are currently in engagements to the extent that you explained to the Chair, does that engagement or do those engagements include the OEM's providing their own version or are they limited purely to accepting a possible – possible irregularities in the transactions and jointly taking steps with Transnet to address the irregularities, what
20 exactly is the position of these engagements?

MR TSHIAMO MICHAEL SEDUMEDI: It varies Chair, lets take an example of Nedbank as an example, in our (indistinct) we do make reference to the question there, transactions are recorded by Regiments their involvement of Nedbank, we then ask Nedbank to give us documents – apparently we you met that (indistinct) documents

which they think will rebut what we are saying and as well you are not even familiar with the documents that we had, so we had to exchange documents to see to what extent are we in alignment and if there are any points of disagreement where are we exactly. So that was – I'm using that as an example.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: So it's only once we have ringfenced the points of departures, we can then determine what course of action can be taken there. We use the example of GE, GE – that's
 10 General Electrics one of the OEM's by and large in terms of the extent of irregularities they were not that – except to say that (indistinct) like local content where GE complied those as well we had sessions with them, exchanged documents, we agreed that this is okay but if the NSA not out of their own doing is (indistinct) how then do we approach a Court. Obvious then different tactic will be applied depending on the extent to which the irregularity is tainted with corruption as an example. So we have a different approach that we apply to various OEM's and that will then dictate the type of approach that must be taken going forward.

20 **ADV MAHLAPE SELLO:** So then we must accept that insofar as OEM's are concerned and any other third parties that contracted with Transnet in respect of any – of these transactions it is up to the Commission to obtain their version as regards the allegations made in the respective reports about them and the findings.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: Thank you Chair. Yes Chair it has been pointed out to me I've encroached onto your tea time...(intervention).

CHAIRPERSON: Well maybe let's go up to half past then we can...(intervention).

ADV MAHLAPE SELLO: I'm happy Chair. Then against that understanding and that background can you just, briefly help us understand the various reports that you issued and what each deals with.

MR TSHIAMO MICHAEL SEDUMEDI: Okay, volume one which was
10 produced in June 2018 deals, in the main, with the actual procurement of the 1064 locomotives.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: The RFP's that were issued, what happened, what are the irregularities that arise out of the procurement process, that's volume one.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Volume two (a) speaks to the irregularities relating to the acquisition of the transition advisors because for Transnet to engage in this transaction it required expertise
20 of lawyers and commercial people, so again, we focus (indistinct) on the procurement aspects of that transaction. Two (b), now analyses the transactions that Transnet concluded on advice of the (indistinct), you might have heard Chair in the other testimonies the swaps that the (indistinct) spoke about so that is what is contained in two (b). Three (a) speaks to the procurement of the 95 locomotives, that (indistinct)

happened prior to the 1064 acquisitions, 95 is dedicated to that as well it speaks to the procurement irregularities that occurred in that transaction followed by the procurement of the hundred locomotives which occurred at the same time when 1064 was acquired, you might have heard Mr Callard as an example and the (indistinct) speaking about the confinement of this hundred locomotives as well and lastly then the relocation of CNR and BT to Durban, so that is what is contained in those various reports.

ADV MAHLAPE SELLO: Then, you have prepared, I think, a slide to
 10 help us understand the inter-relationship if any between the various transactions, if you could...(intervention).

MR TSHIAMO MICHAEL SEDUMEDI: Yes what I've said earlier on is schematically represented by the slides, so like I said it's a 95 you'll see that RFA was issued in December 2012 and it was awarded in September the following year and then there is a procurement of the hundred locomotives, for purpose of logic, specifically look at this slides 1064 would have happened first but we know that during the course of 1064 hundred cropped up but just to make things easy for the Commission lets focus on hundred first then we can focus on 1064.
 20 Now on 1064 you will note as well on the slides there that, that's where the issue of the transition advisors would have been involved so there's a volume two (a) and (b) that focuses on the procurement of the TA's that happened in June 2012 and as well the (indistinct). So all – the TA's and relocation speak directly only to 1064. There were no TA's on the 95 and the hundred locomotives, so that's the purpose of this

particular diagram.

ADV MAHLAPE SELLO: And you propose to follow the order of your bubbles there in helping us.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: So you start with 95 followed by hundred, we then turn our attention to 1064 and the two side transactions that emanate from 1064.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair that will make it quite easier for one to follow the various transactions.

10 **ADV MAHLAPE SELLO:** Okay, thank you Chair, it's drawn to my attention it's now half past before I run over again.

CHAIRPERSON: Yes we will take the tea adjournment and we will resume at quarter to twelve.

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes you may proceed.

20 **ADV MAHLAPE SELLO:** Thank you. We are ready Chair. You just presented a slide indicating the different transactions that you investigated. Can you briefly tell the Chair how it came about you investigated this? Were you investigating Transnet and transactions within Transnet in general or were you investigating only specific transactions and if it is the latter on what basis you confined yourself to certain transactions?

MR TSHIAMO MICHAEL SEDUMEDI: Yes Chair. Like I said in my introductory slide the point of entry for us was 1064 because at the time like I said there were various media allegations about the irregularities arising out of 1064 in particular. It is why when Werksmans as well when we appointed on that report we focus on that aspect. So our point of entry was 1064 a specific transaction. But now obviously as you are going through 1064 that is when our other transactions spill out of 1064. 100 as in example. The TA's and the relocation all those are related to 1064. But now during our

10 investigations then it also then came to our attention and close attention that there was another transaction of a locomotive acquisition which also was problematic. That is where 95 comes in. So there were specific transactions that we were limited to investigating. And as well like I said in [indistinct] because this was more of a – a due diligence on the legalities of the transaction. You will see the common thread in our reports about irregularities. So it is more a legal analysis of what transpired. What the [indistinct] saying about these issues. So that also helped in terms of limiting a need to be interviewing people from outside of Transnet because the documents themselves as they sit and

20 confirmed as well by the internal employees as to what transpired there it was able to give us and put us in a position to reach conclusions that we have – came up with in our report.

CHAIRPERSON: Would it be fair to describe your investigation as for all intents and purposes an internal Transnet investigation but conducted by people from outside Transnet?

MR TSHIAMO MICHAEL SEDUMEDI: That is a perfect summation of our

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: What we did Chair.

CHAIRPERSON: Yes. Ja.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: They may as well have conducted it themselves internally but for certain reasons they preferred that it be done by outside people but it was otherwise an internal investigation.

10 **MR TSHIAMO MICHAEL SEDUMEDI:** That is correct Chair.

CHAIRPERSON: Thank you. Okay.

ADV MAHLAPE SELLO: And – thank you Chair. And therefore we – that is why we understand that we have specific transactions you are limited to it is what you are requested to do and you could not go beyond the scope of your mandate?

MR TSHIAMO MICHAEL SEDUMEDI: That is correct Chair.

ADV MAHLAPE SELLO: You then get to the next slide where you give us a background to the acquisition of locomotives and the Chair will have – will be familiar with some of the issues there because certain
20 witnesses have testified thereto.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Yes. You [indistinct].

MR TSHIAMO MICHAEL SEDUMEDI: Yes. The purpose of the slide in the main Chair is just to give context to why the number 1064 is that this number comes from a fleet plan that Transnet produced in 2011.

And you will note at that – in that fleet plan it plans to acquire 1202 locomotives within the general freight business. Now the procurement of that was then staggered. In 2011 a business case was approved to first acquire the 138 being the 43 electric – diesel and the 95 that I spoke about earlier. So there are two transactions that preceded the 1064 which is why now if you look at you minus the 43 and then it in fact that is why you are then left with 1064. So [indistinct] was the only transaction that was not acquired during 2011. So that is the purpose of this particular slide just to give context to how we arrive at the figure
10 of 1064.

ADV MAHLAPE SELLO: Now you indicate that of that 1202 approved locomotives 95 electric locomotives and 43 diesel locomotives business case was developed to acquire them separately that is leaving a balance of 1064?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: Now the 95 electric locomotives you refer to are those the same locomotives on which you intend to comment shortly?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

20 **ADV MAHLAPE SELLO:** Now can you tell the Chair about the 43 diesel locomotives that process and any transactions undertaken in the course of that? Have you investigated that if not why not?

MR TSHIAMO MICHAEL SEDUMEDI: We did not investigate the 43 because it was not part of our mandate. Like I said earlier on which confirms the whole issue of seeing it was only specific transactions that

we were mandated to investigate. 43 was not part of our mandate and from – even from our own preliminary assessment in Transnet there seems to have been no issue with the acquisition of the 43 but [indistinct] than that I cannot say because we have not actually done a thorough investigation of the 43 it was not part of our scope. But 95 and the rest yes.

ADV MAHLAPE SELLO: Okay. And then against that background you then deal with procurement of the 95 specifically?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair. Now in dealing
10 with 95 Chair we will just again at a high level speak about the background to the acquisition of the 95. What are our key findings where in that investigation? We speak mainly and there are various issues that are – we touch upon and as we will disclose that Fundudzi as well did conduct an investigation on 95. By and large we are in agreement but we thought it appropriate as well to highlight the two areas where we differed with Fundudzi on the findings that they have made. But in the main we are in all force in terms of the findings that they have made but – ja – but that will be our last slide when we deal with that aspect.

20 **ADV MAHLAPE SELLO:** Okay.

MR TSHIAMO MICHAEL SEDUMEDI: Now.

ADV MAHLAPE SELLO: You may continue.

MR TSHIAMO MICHAEL SEDUMEDI: Like I said earlier on the board of the – after the approval of the 1202 fleet plan a business case was developed to acquire 93 and 43

ADV MAHLAPE SELLO: 95.

CHAIRPERSON: [indistinct] it has got 95 electric and 43 diesel. The estimated total cost on the 94 was R2.6 billion and the board as required by Section 64(2) of The PFMA which requires that if an [indistinct] Transnet wishes to procure or to dispose or acquire a significant transaction – asset it needs to get the permission of the executive authority and as well notify treasury. So that we know was done on the acquisition of 95 and that appears in volume 11 on page 3864 of the bundle.

- 10 **ADV MAHLAPE SELLO:** May I correct you there. I think it is page 8364 not 3864.

MR TSHIAMO MICHAEL SEDUMEDI: Transposition error.

ADV MAHLAPE SELLO: 8364 yes. And at 8364 is there approval by the Minister for Transnet to acquire the 95 electrical – electric locomotives for an estimated cost at – of R2.6 billion?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: And you express the view that that approval is appropriate and consistent with the provisions of the PFMA?

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

- 20 **ADV MAHLAPE SELLO:** Okay.

MR TSHIAMO MICHAEL SEDUMEDI: And as you can see the approval was obtained on the 21 December 2011.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: And then that led to – because a week – weeks earlier the tender was then issued – advertised and we

know now but we will talk about how CSR got in but it is common cause that CSR was the successful bidder in this 95 transaction.

ADV MAHLAPE SELLO: And just to remind ourselves this – this was on an open tender basis not on a confinement?

MR TSHIAMO MICHAEL SEDUMEDI: This was an open tender process.

ADV MAHLAPE SELLO: Okay. You then proceed in your slides to highlight the key findings you make in your report regarding this transaction.

MR TSHIAMO MICHAEL SEDUMEDI: Correct. When we reviewed
10 various documents in [indistinct] transaction I think it was quite apparent that from a very, very early stage CSR seems to have enjoyed some special relationship with Transnet and that happened both prior to the issuance of the RFP self and during the procurement process. And we will take the Chair through various correspondence that we picked up that seems to demonstrate that at the very least there was an improper engagement and communication between the executives – some executives and CSR during the procurement process of this 95 locomotives.

ADV MAHLAPE SELLO: Okay.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** If you can start on Volume 11 page 8527 we find an email from Mr Garry Pita.

ADV MAHLAPE SELLO: Just if you – excuse me Mr Sedumedi. Chair at this juncture we will need you perhaps to get Volume 11 because we will not be projecting that particular document on the screen.

CHAIRPERSON: Okay. Well – it looks like the volumes are not put in

accordance with their correct sequence.

ADV MAHLAPE SELLO: It should never happen Chair I do not know how. May we attend to that at lunch?

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: Okay. Well I may be wrong.

ADV MAHLAPE SELLO: Much relieved to hear it Chair.

CHAIRPERSON: Okay, alright what page?

ADV MAHLAPE SELLO: He had referred us to 8527 Mr Sedumedi?

10 **MR TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

ADV MAHLAPE SELLO: Yes we are at 8527.

MR TSHIAMO MICHAEL SEDUMEDI: At the bottom of 8527 you will see on that page Chair.

CHAIRPERSON: One second let me get there? Yes I have got it.

MR TSHIAMO MICHAEL SEDUMEDI: At the bottom of that page because there are two emails in that page Chair. Right at the bottom because the top one is a response to the one at the bottom.

CHAIRPERSON: Yes.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** In that email from Mr Pita on the 16 December 2011 it is addressed to Mr Wang Ping – Mr Wang Ping is from CSR. I am not quite sure...

CHAIRPERSON: I am sorry I am trying to get where – where you get oh yes

ADV MAHLAPE SELLO: About two thirds away of the page Chair.

CHAIRPERSON: Yes Mr Wang Ping okay no I was looking at the – I

was looking at the email address and I was looking for the surname but I think the – his email address does not reflect his name.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Okay alright yes.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Chair you want me to go to read or to summarise as per the slides?

ADV MAHLAPE SELLO: You may summarise and to the extent – only to the extent necessary may you read.

10 **MR TSHIAMO MICHAEL SEDUMEDI**: Okay.

ADV MAHLAPE SELLO: But you brought us to this document to make the – when you make the point that CSR seems to have enjoyed a special relationship with Transnet and pointed to some irregular communication between CSR as a bidder and Transnet?

MR TSHIAMO MICHAEL SEDUMEDI: Okay.

CHAIRPERSON: But he – because it is a very short one he may as well just read.

ADV MAHLAPE SELLO: Read?

CHAIRPERSON: Ja.

20 **MR TSHIAMO MICHAEL SEDUMEDI**: Okay.

CHAIRPERSON: But if it is a long one he could summarise.

MR TSHIAMO MICHAEL SEDUMEDI: Yes.

“Dear Mr Wang Pan my CEO Mr Brian Molefe advised me that you met in early December. He also stated that CSR Zhuzhou Electric locomotive that is CSR

showed interest in participating in our next tender for 95 electric locomotives. I wish to advise you that this tender has been released and is available from Transnet Freight Rail. I am sure whether CSR is aware of this and it has already bought the tender documents. You will see overleaf the email regards Garry Pita being the Group Supply Chain Officer.”

Right it is from this email we could pick up that Mr Pita was [indistinct] meeting that actually happened early in December where CSR
10 expressed an interest in an upcoming tender. That is what now if you are referring to an upcoming tender it means at that time surely the tender would not have been issued at that stage.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: And if you look at the top of that page now it is a response from Mr Wang Pan.

“Dear Mr Pita thank you for your email. We were very pleased to have the chance to meet with your Group CEO Mr Brain Molefe at the beginning of December. We expressed our interest in your tender
20 for 95 electric locomotives and the South African market as well. Regarding the tender document we are conducting with Mr – that is supposed to Ms Khoza we know that Ms Lindiwe Mdletshe is a Ms – Ms Mdletshe and transferring money to your account for getting the document. You to only the SA rand is

acceptable. The money transferring process is a little bit complicated but we believe that we could get a tender document within – in this week. You are very kind to facilitate us your support on the tender document if we need and inform you.”

So now two things come out of this letter. One at least Mr Wang Pan confirms that indeed a meeting happened with Mr Molefe in early December. And now there are also now a [indistinct] call as well by this time on the 19 December the tender was already issued now in 6
10 December. So that is what we pick up from this email.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Now on the 19th of – we go to page 8530 of the same volume. It is now an email from Mr Wang Pan in essence attaching well go to the letter as it appears on 8531 but for now this an attachment.

“Dear Mr Molefe please be so kind to check the attached letter.”

So it is just an attachment of a letter that already been faxed to you.

ADV MAHLAPE SELLO: And this is 19 January?

20 **MR TSHIAMO MICHAEL SEDUMEDI:** This is 19 January 2012. You note Chair if you look at attachment it says 2011.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: This seems to have been a typo on your side because I mean if the email was send in 2012 we cannot attach – so we assumed that is a – because in 2011 there was no 95

locomotive acquisition in any event so the letter is being attached is dated 19 January 2011 but the assumption, reasonable assumption to be reached was that this 2011 is supposed to refer to 2012. Especially as well if you look at the contents of the letter.

CHAIRPERSON: Now well early in January people when they put the date in correspondence they still use sometimes they still.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Use the old – the previous year so maybe that is what it was.

10 **MR TSHIAMO MICHAEL SEDUMEDI**: Yes. So it is quite an excusable error on their part.

ADV MAHLAPE SELLO: But the email date as well appears to be incorrect because you indicated that the public tender notice was issued on the 6 December 2012 regarding 95. And I see the email says it is dated Thursday 19 January 2012 which will like precede the tender by 12 months. And yet when one has regard to the letter attached overleaf which is the letter itself is dated 2011 to compound things even further there is reference to the 95 and the 34 locomotives and we know that decision was only taken in 2012.

20 **MR TSHIAMO MICHAEL SEDUMEDI**: Not – the tender was issued in 2011.

ADV MAHLAPE SELLO: 2011?

MR TSHIAMO MICHAEL SEDUMEDI: 2011.

ADV MAHLAPE SELLO: Then please...

CHAIRPERSON: December or what was the month?

MR TSHIAMO MICHAEL SEDUMEDI: Let me just check. Correct.

Maybe let us go to the actual tender advert. It appears on Volume 8370
let us just confirm?

ADV MAHLAPE SELLO: On this volume 8370?

MR TSHIAMO MICHAEL SEDUMEDI: Ja.

ADV MAHLAPE SELLO: Okay.

MR TSHIAMO MICHAEL SEDUMEDI: 8370. Correct, yes.

ADV MAHLAPE SELLO: So it is 2011, December?

MR TSHIAMO MICHAEL SEDUMEDI: The tender was advertised on 6
10 December 2011.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Which is why the email is dated
19 – we are on...

ADV MAHLAPE SELLO: We are at 8531 now yes. 8530

MR TSHIAMO MICHAEL SEDUMEDI: 85 – 85. Now the essence of this
letter.

ADV MAHLAPE SELLO: Sorry before we get into that then. This is for
record purposes you might want to consider your annex – your slide 12.
The date you give there I think is erroneous because you call it the 6
20 December 2012.

MR TSHIAMO MICHAEL SEDUMEDI: The 6 December 2011 my
apologies Chair.

ADV MAHLAPE SELLO: So it is 2011 it must read yes.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Okay. Right please proceed.

MR TSHIAMO MICHAEL SEDUMEDI: Now in this letter CSR Mr Wang Pan addresses to Mr Brian Molefe. You must recall at a stage Chair the tender advert itself it indicates who is the person that you need to contact in the event that you have got a query on this tender.

ADV MAHLAPE SELLO: Hm.

MR TSHIAMO MICHAEL SEDUMEDI: If you go to the advert itself it indicates Ms Lindiwe Mdletshe is a person that you must liaise with in the event you have got queries. You will also recall in the email that he sent to Mr Pita he did indicate that we are liaising with Ms Lindiwe
10 Mdletshe to obtain the tender documents and all related issues. Now in this letter addressed to Mr Molefe three issues come out of that letter. He thanks Mr Molefe for giving CSR an opportunity to tender for the 95 locomotives. That appears on the first paragraph of that letter. That is the first paragraph. In the second paragraph he then advises Mr Molefe that the CSR delegation that will attend the tender briefing session because it was in terms of the tender there was going to be a briefing session on the 31 January 2012 so he advised him indeed CSR will be attending and takes the liberty of even outlining the nature of the delegation that will be attending that briefing session. That is
20 contained Chair in the third paragraph where he says:

“For ease of reference we would like to participate in the briefing session held on this date and this [indistinct] General Manager Mr Fu Chen Jung who led a delegation that consisted of those three persons.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: But he does indicate that they

will be in South Africa from the period 30 January to 2 February. Now the next paragraph that follows Mr Wang Pan seeks the support of Mr Molefe in four issues. First. He wants to have a meeting with Mr Molefe for a discussion of cooperation as they phrased it in their document. Secondly CSR – Mr Molefe must assist in arranging a meeting with only says you I must – something that can only be Transnet's technical group to discuss and optimise the technical specifications of this tender. Fourth he also wants him to arrange a site visit that CSR may conduct at some of the locomotive depots or the engineering factories to study the existing electric locomotives. And as well for him to assist in discussions with potential preferred companies that they can work with for localisation he calls it localisation work so the assumption there that maybe to get the local partners [indistinct] so that is what Mr Molefe must assist in arranging. Now we then find a response from Mr Molefe overleaf on page 8533 the same volume.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: He responds first obviously thanking Mr Wang Pan for the letter and indicating to him that he has forwarded the letter from his request to Mr Siyabonga Gama who will then respond and process the request by CSR. And indeed if you look at that email Mr Gama is copied on that correspondence. Now obviously we do not have any record of whether any of these meetings happened after this issue. But two issues come out of that issue. Like I said earlier on Ms Mdletshe and I think Ms Assegai were the two persons that were supposed to be contacted in the event that you got

any query about this tender. Those are the two persons that you must liaise with. CSR is able to do at that letter to the GCE. The GCE initial response he does not say sorry Mr Wang Pan we are now in a procurement space please refer all your queries to Ms Mdletshe as indicated in the RFP advert. It simply says in actual fact I will send his request to Mr Gama who was at that stage the acting – he was the GE Group no, no the CE my apologies Chief Executive at TFR where these locomotives were going to be procured. Now the conclusion that we reached on this [indistinct] in view of all these issues it confirms the

10 view that CSR seemed to have enjoyed the special relationship and it creates a reasonable apprehension that CSR might have been favoured over other bidders because within the procurement space fairness and transparency is key. You cannot as an organ of state be seeing to be favouring a particular entity especially during the procurement space. In a [indistinct] you might not necessarily have a direct evidence that confirms subsequent meetings but that is sufficient to create a reasonable apprehension and perception that indeed the relationship between Transnet at least some of its executives and CSR is not in line with the spirit and purpose of a fair and competitive tender process.

20 **ADV MAHLAPE SELLO:** Now on – we know this is around 19 January 2012 do you know where the evaluation process or the tendering process was at as of January 2012?

MR TSHIAMO MICHAEL SEDUMEDI: In – because...

CHAIRPERSON: But maybe before – before that question the conclusion you had that you were talking about – about a possible

relationship between CSR and either Mr Brian Molefe or Mr Gama you are not at this stage because of just this one letter or email saying that there was an improper relationship. I take it that what you are saying is there may be something inappropriate about this direct communication to people other than the one who was being given in the document – tender documents as the person to be contacted about this tender. So in other words if you are interested in the tender and you have been told that the person to be contacted about this tender at Transnet is Mr Mdletshe that is the person you write to not to other
10 people. But there may well be other things that you came across in your investigation that on which you might base your – your conclusion.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: [Indistinct].

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair which is why even now we get what follows thereafter.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: That seems to fortify

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: This view that this is not an
20 innocent communication that can be said to be a once off. So that must be viewed in the context of subsequent events that occur in this particular transaction.

CHAIRPERSON: Okay. I interrupted while ...

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: No I wanted to understand if – if – to find out from Mr Sedumedi whether he can recall off the top of his head where the evaluation or tender process was at as at January 2019 – was the evaluation completed?

CHAIRPERSON: 2012?

ADV MAHLAPE SELLO: 2012

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: 2012 – 19 January 2012 which is the date of the communication. To your recollection was the evaluation underway,
10 had it been completed, had a decision been taken on the tenders?

MR TSHIAMO MICHAEL SEDUMEDI: No Chair you recall that on the same email it confirms that the briefing session will only take place on the end of January. So at this stage there is no evaluation of the bidder as yet.

ADV MAHLAPE SELLO: Okay.

MR TSHIAMO MICHAEL SEDUMEDI: Because in actual fact even the briefing session has not occurred so that even tells us that even a tender date was not yet there. So not was not there but the tender had not closed by this particular period.

20 **ADV MAHLAPE SELLO:** They are not closed. Okay. Alright thank you. We have dealt with the communication that you call inappropriate of January 2012.

MR TSHIAMO MICHAEL SEDUMEDI: Okay.

ADV MAHLAPE SELLO: What is next you would like to draw the Chair's attention to?

TSHIAMO MICHAEL SEDUMEDI: Right. It is now the evaluation of this bit. If you go to – that slide is a summary of the evaluation criteria that was prescribed in the RFP – if you go to page 8399 the same volume 8399.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: In terms of the evaluation criteria contained in that Chair will be paragraph 29. This document that appears on page 8399 is the actual copy of the RFP document starting on page ...

10 **ADV MAHLAPE SELLO:** 8371 perhaps?

TSHIAMO MICHAEL SEDUMEDI: It starts on page 8372. That is the RFP document for the supply of 95 electric locomotives. Just to close up that (indistinct) you made earlier on you will see that the closing date was 28 February 2012 as it appears on page 8372. So the paragraphs that I have referred the Chair to on page 8399 speaks to the evaluation criteria that was stipulated in this particular date. There were three stages that the RFP envisaged. Stage 1 and it says here:

“Transnet will utilise ...”

I am reading Chair under paragraph 29.

20 “Transnet SOC ...”

CHAIRPERSON: Thank you. Thank you, yes I am there.

TSHIAMO MICHAEL SEDUMEDI: “Transnet SOC will utilise the following criteria in selecting a preferred a supplier if so required.”

We focus on stage 1. So stage 1 just to summarise it Chair it required

the bidders to have a B-BBEE Certificate. They must complete forms that will indicate their commitment to Supply Development which are listed there under. They go over to page 8400 but what is important Chair is the block that appears at the bottom of that stage 1. So this is stage 1 requirements. It says:

“An overall minimum threshold of 60 percent for stage 1 evaluation must be met or exceeded for respondent’s proposal to progress to stage 2.”

Stage 1 is your gatekeeper. You cannot proceed to further stages until
10 you at least acquire 60 percent for this stage 1 or exceed that.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Now ...

CHAIRPERSON: Hm. So – so what it means is that points would be added up that you get under the different criteria under stage 1?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: And if you fall under 60 percent in terms of your total then you do not proceed to – to stage 2 but if you achieve 60 percent and more then you go to stage 2?

TSHIAMO MICHAEL SEDUMEDI: Then you can then – you go to stage
20 2.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: So that is what was put in the RFP that was advertised. So all the bidders when they received the bids - when they respond – they know they must comply with this requirement.

If things (indistinct) then it will not even bother to participate in this bid.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Now what happens is that obviously now when the bids are received there is what we call a Cross Function Evaluation Team. Usually it is a – a team that evaluates the bids in accordance with the requirements in the RFP. The next slide Chair there is a document - I am not sure if I must be able to - this TS1?

ADV MAHLAPE SELLO: No. No I have not. You refer at page - slide
10 18 to TS1?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: And I require you to introduce it to the Chair for me to ...

TSHIAMO MICHAEL SEDUMEDI: Okay.

ADV MAHLAPE SELLO: Hand it in.

TSHIAMO MICHAEL SEDUMEDI: Okay. Chair in our report when it was submitted to the Commission the CF – this document was going to be an annexure to a memorandum that appears on – I will be with you now. If you can just bear with me for a second.

20 **ADV MAHLAPE SELLO:** Okay.

TSHIAMO MICHAEL SEDUMEDI: On page 8535 we will touch on – so what I am just – to put context into this document.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: The memorandum on 8535 they attached a CFET Report.

ADV MAHLAPE SELLO: 8535?

TSHIAMO MICHAEL SEDUMEDI: 8535.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: Which appears on 8539.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: But when this was copied to the Commission we attached an incorrect CF - because there were different CFET Reports.

ADV MAHLAPE SELLO: Yes.

- 10 **TSHIAMO MICHAEL SEDUMEDI:** The one for technical and the one for finance. So we erroneously inserted a finance one.

ADV MAHLAPE SELLO: Hm.

TSHIAMO MICHAEL SEDUMEDI: So 8539 does not at all speak to 8535. So this document that we are introducing is a correct version of what was supposed to appear on 8539.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: So it – this one that I presently have will be replaced by another one?

ADV MAHLAPE SELLO: It has to be replaced Chair.

- 20 **CHAIRPERSON:** *Ja.*

ADV MAHLAPE SELLO: The issue is we are not – no that 8359 currently forms part of the formal report by GNS.

CHAIRPERSON: Oh.

ADV MAHLAPE SELLO: By MNS.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Which would mean if an error has crept into the compilation of the exhibits ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: It might be appropriate for MNS to issue an (indistinct) ...

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: To do a proper replacement.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: So that is why we did not take the liberty of
10 just exchanging.

CHAIRPERSON: Yes, yes.

ADV MAHLAPE SELLO: We shall await their formal (indistinct) ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And make the changes then but in the meantime ...

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: Mr Sedumedi has given us the correct one and as

CHAIRPERSON: *Ja.*

20 **ADV MAHLAPE SELLO:** Page – slide 18 indicates we have marked it TS1 for reference ...

CHAIRPERSON: *Ja.* It is okay.

ADV MAHLAPE SELLO: And we shall be dealing with it shortly.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Thank you Chair. Yes Mr Sedumedi we have

handed in TS1 ...

TSHIAMO MICHAEL SEDUMEDI: Okay.

ADV MAHLAPE SELLO: As per your slide 18 to the Chair.

TSHIAMO MICHAEL SEDUMEDI: Correct. Now in applying this criteria ...

ADV MAHLAPE SELLO: The criteria we have just dealt with ...

TSHIAMO MICHAEL SEDUMEDI: Stage 1 yes.

ADV MAHLAPE SELLO: Stage 1 you must acquire at least 60 percent, yes.

10 **TSHIAMO MICHAEL SEDUMEDI**: Correct. The coming slide – if you go to page – on that document it is marked page 5.

ADV MAHLAPE SELLO: Yes, go ahead.

CHAIRPERSON: That is page 5 of TS1?

TSHIAMO MICHAEL SEDUMEDI: Correct. What you see on the slide – on the slide there is an exact replica of the table that appears on page 5.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Which indicates that on an application of a stage 1 criteria three bidders qualified to proceed.

20 That is Siemens – you will see at the bottom of the document Chair it shows the scores. Siemens – on the top is - are the names of the bidders. That is Siemens the first one. It got 63 percent. Bombadier - 70 percent and you go to the far right it is SSMM Consortium they also met and exceeded the 60 percent threshold. So all three bidders ...

CHAIRPERSON: Huh-uh.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Qualified to proceed – to progress to stage 2.

ADV MAHLAPE SELLO: And then on the same table we see after Bombadier there are certain railways but CRRC CNR Global is that China North Rail?

TSHIAMO MICHAEL SEDUMEDI: That is China North Rail.

ADV MAHLAPE SELLO: And it scored 40 percent?

TSHIAMO MICHAEL SEDUMEDI: Ja.

10 **ADV MAHLAPE SELLO:** And CSR Zhuzhou scored 56 percent?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: So this is after applying the criteria as stipulated in the RFP?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: And as you can note you – you will see on the item one there it says B-BBEE score card. The reason that they – they fell short amongst other is that they scored zero because that is what the RFP required. That if you do not have the B-BBEE
20 Certificate then you will be scored zero. So they then fell below the required 60 percent threshold.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: However what happens is that every CFET now which is this report ...

ADV MAHLAPE SELLO: TS1?

TSHIAMO MICHAEL SEDUMEDI: TS1.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: They decided to create an alternative evaluation criteria.

CHAIRPERSON: Hm, who is they now?

TSHIAMO MICHAEL SEDUMEDI: The CFET Chair.

ADV MAHLAPE SELLO: Cross Functional ...

TSHIAMO MICHAEL SEDUMEDI: The Cross Functional Evaluation Team.

10 **CHAIRPERSON:** Yes.

TSHIAMO MICHAEL SEDUMEDI: We will in detail analyse their reasons for (indistinct) but I think draw the Chair's attention to paragraph ...

ADV MAHLAPE SELLO: At page 2 of that ...

TSHIAMO MICHAEL SEDUMEDI: Page 2.

ADV MAHLAPE SELLO: Paragraph 4 it starts with evaluation methodology ...

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: And overleaf it introduces concepts of option

20 1 and option 2?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Is that what you ...?

TSHIAMO MICHAEL SEDUMEDI: That is what I ...

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: Referred to. So we in (indistinct)

Chair analyse these reasons but what they do they create an alternative evaluation criteria where now they remove B-BBEE because they indicate in their report that the RFP required a B-BBEE Certificate ...

CHAIRPERSON: *Ja*, I think both of you have or I have lost both of you.

TSHIAMO MICHAEL SEDUMEDI: Okay.

CHAIRPERSON: We were dealing with stage 1 ...

TSHIAMO MICHAEL SEDUMEDI: Correct.

10 **CHAIRPERSON:** And we are looking at the criteria and we are looking at the points which various bidders got and you said only three were able to satisfy the requirement that you must at least get 60 percent in order to proceed to stage 2?

TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Where are you now?

TSHIAMO MICHAEL SEDUMEDI: Alright. Let me start. During that evaluation this same team ...

CHAIRPERSON: During the stage 1 evaluation?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Okay, alright.

20 **TSHIAMO MICHAEL SEDUMEDI:** During stage 1 evaluation the officials who are tasked to implement the provisions of the RFP ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: On their own accord decides to amend the evaluation criteria ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: By removing the requirement of a B-BBEE ...

CHAIRPERSON: Huh-uh.

TSHIAMO MICHAEL SEDUMEDI: Scoring ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: And create what they call option 2 evaluation.

CHAIRPERSON: Now is that a body with a particular name that is doing that now?

10 **TSHIAMO MICHAEL SEDUMEDI:** It is called the Cross Functional Evaluation Team.

CHAIRPERSON: Okay. Cross Functional Evaluation Team, *ja* okay.

TSHIAMO MICHAEL SEDUMEDI: It is a team that has been set up internally to evaluate ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: The technical aspects of ...

CHAIRPERSON: *Ja* and award points?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Okay, alright.

20 **TSHIAMO MICHAEL SEDUMEDI:** Alright.

CHAIRPERSON: So they – they change or amend the – the criteria applicable to stage 1?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Yes, okay.

TSHIAMO MICHAEL SEDUMEDI: Alright. Now (indistinct) we get the

results of their – because all that they do they remove the requirement for B-BBEE. They only evaluate supplier development. If you go to the next slide ...

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: These are now the results of them having removed ...

CHAIRPERSON: Now I think one of the reasons why you seem to – I seem to lose you is I think you may be jumping from ...

ADV MAHLAPE SELLO: Oh slide to document.

10 **CHAIRPERSON:** The exhibit to another document ...

TSHIAMO MICHAEL SEDUMEDI: Oh.

CHAIRPERSON: Without telling me.

ADV MAHLAPE SELLO: That is noted Chair.

CHAIRPERSON: So which document are you now looking at?

ADV MAHLAPE SELLO: We are now back in the slides Chair.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We are looking at page 20. In fact it starts at page – slide 19 tells us that the CFET amended their evaluation criteria.

20 **CHAIRPERSON:** Okay, alright. As you ...

ADV MAHLAPE SELLO: Now he is ...

CHAIRPERSON: As you change ...

ADV MAHLAPE SELLO: I will call that.

CHAIRPERSON: Let me know then ...

ADV MAHLAPE SELLO: Absolutely.

CHAIRPERSON: Then I can follow, okay.

ADV MAHLAPE SELLO: And please try and remember Mr Sedumedi when you refer us at change over.

TSHIAMO MICHAEL SEDUMEDI: I will work with the Chair.

CHAIRPERSON: Okay.

TSHIAMO MICHAEL SEDUMEDI: Correct. So slide 20 is a replica of an option 2 or alternative option that was created by the CFET ...

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: And just to confirm the contents of
10 this slide is derived – now Chair we go back to that CFET Report.

CHAIRPERSON: Just one second. I am trying to catch up with what you were dealing with before. So where the Cross – do you say Cross Functional ...?

TSHIAMO MICHAEL SEDUMEDI: Cross Functional Evaluation Team.

CHAIRPERSON: Yes. Where – the page where – which reflects the amendment where they were amending which page is that?

TSHIAMO MICHAEL SEDUMEDI: That is the one Chair which is why I was taking Chair to – we now go – as I was saying slide 20 ...

CHAIRPERSON: *Ja.*

20 **TSHIAMO MICHAEL SEDUMEDI:** Is a replica of – now Chair you must now go to the actual CFET Report.

CHAIRPERSON: Huh-uh.

TSHIAMO MICHAEL SEDUMEDI: Page 6 of the CFET Report.

ADV MAHLAPE SELLO: For the record it is a document submitted in currently marked TS1.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: Yes.

ADV MAHLAPE SELLO: Now if – if I may assist. If Chair we go a few slides back ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: If I understand Mr Sedumedi – Mr Sedumedi please listen to me and if I am correct – I am wrong please correct me.

TSHIAMO MICHAEL SEDUMEDI: Alright.

ADV MAHLAPE SELLO: At 18 – slide 18 Mr Sedumedi says in terms of
10 TS1 which is the correct Cross Functional Evaluation Team Report we have a table indicating what the results are when you apply the evaluation criteria prescribed by ...

CHAIRPERSON: As is.

ADV MAHLAPE SELLO: As is.

CHAIRPERSON: Or as they are.

ADV MAHLAPE SELLO: *Ja* as they are.

CHAIRPERSON: Criteria *ja*.

ADV MAHLAPE SELLO: So insofar as stage 1 is concerned ...

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** When CFET applies the – the criteria the results are that there are only three companies reach or exceed the minimum threshold of 60 percent.

CHAIRPERSON: And they in that report (intervenes).

ADV MAHLAPE SELLO: And that is at slide 18 - the blocks in green ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: At the bottom.

CHAIRPERSON: It is – it is SSMM Consortium and then Siemens and Bombadier?

ADV MAHLAPE SELLO: That is correct Chair.

CHAIRPERSON: Yes. Now that is ...

ADV MAHLAPE SELLO: Then that is ...

CHAIRPERSON: That is the result of an application of the ...

ADV MAHLAPE SELLO: Proper application of the ...

CHAIRPERSON: Authorised criteria ...

10 **ADV MAHLAPE SELLO:** Absolutely Chair.

CHAIRPERSON: Or advertised criteria?

ADV MAHLAPE SELLO: As advertised.

CHAIRPERSON: Yes, yes.

ADV MAHLAPE SELLO: Mr – Mr Sedumedi then indicates that in the same Annexure TS1 ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: The Cross Functional Evaluation Team notes that when applied strictly you get that result.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** It then on its own accord ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Suggests what it calls option 2 ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And it deals that in the report.

CHAIRPERSON: Oh and – yes.

ADV MAHLAPE SELLO: The next table ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Again extracted from TS1 ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Shows the results of evaluation on the basis of option 2.

CHAIRPERSON: Of the amended criteria?

ADV MAHLAPE SELLO: Of the amended which is ...

CHAIRPERSON: Option 2 ...

10 **ADV MAHLAPE SELLO:** Is the amended ...

TSHIAMO MICHAEL SEDUMEDI: Is the ...

CHAIRPERSON: Is the amended criteria?

ADV MAHLAPE SELLO: Indeed Chair.

TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Yes but where it makes the decision is that reflect – is that on a particular page that is what I am looking for.

ADV MAHLAPE SELLO: At TS1.

TSHIAMO MICHAEL SEDUMEDI: Yes Chair.

ADV MAHLAPE SELLO: If you could take us to that.

20 **CHAIRPERSON:** Hm.

TSHIAMO MICHAEL SEDUMEDI: If you go Chair paragraph 4 of the actual Report TS1 ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: Headed “Evaluation Methodology”.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: It outlines the methodology that it used. Maybe it is best to read it out.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: “As information was extracted from the RFP document as well as relevant annexures the tenderers were invalid on the above mentioned as the criteria which accounted for 80 percent.”

CHAIRPERSON: Hm.

10 **TSHIAMO MICHAEL SEDUMEDI:** “B-BBEE and FRC ...”

FRC is Further Recognition Criteria.

“...accounting each 10 percent.”

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: “Hence the effective weight for SD is 48 percent.”

Right. Overleaf:

“The intention of SD is to address the NGP.”

The New Group of Objectives. That is a policy by the DTI.

“The RFP in stage 1 ...”

20 This what we are saying now.

“...RFP in stage 1 refers to B-BBEE and FRC which in some instance is in conflict with the initial SD spirit. Therefore the team had two options. Namely option 1 include B-BBEE and FRC in SD evaluation stage 1 which might mean that foreign tenderers

who do not have local offices will be prejudiced.

Such companies if is locally - a start-up enterprise
will be able ...”

There is a typograph on their side but as it is.

“...will be able deemed to have a B-BBEE status of
level 4 contributed (intervenes).”

CHAIRPERSON: So that must be intended to – to (intervenes).

TSHIAMO MICHAEL SEDUMEDI: Will be deemed.

CHAIRPERSON: Will be able to be deemed?

10 **ADV MAHLAPE SELLO**: Indeed.

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Hm. They wanted to enable them to be ...

TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: To be deemed *ja*.

TSHIAMO MICHAEL SEDUMEDI: Correct. So they make reference to
the Codes of Good Practice.

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: So it says:

20 “If you are an enterprise you will deemed to a B-
BBEE level 4 in the first year of operation as per
the Codes of Good Practice.”

Then they – option 2 which we were talking about earlier on Chair.

“Option 2 is to evaluate the SD specifics only and
evaluate B-BBEE and FRC in stage 3. Transnet’s
expression was that a minimum SD target of 60

percent of the respondent's bid value be offered as part of the SD bid document to be submitted excluding B-BBEE. Indeed given the nature of the bid involving foreign companies. This could not be fairly evaluated on the B-BBEE status and FRC. In any case B-BBEE and FRC will be evaluated at stage 3."

Which is why then in the next paragraph they then outline the results of using different options which we were talking about earlier on. Option 10 1 it is those three entities and option 2 you will note now that we now have five entities and if the Chair can have regard to page 6 of the same document. For now let us part with the slides because as I was saying the slide appearing on page 20 is a replica of what is contained on page 6. You will note that now on – on this option 2 Chair you will see that B-BBEE is not taken into account at all now. It is only Supply Development (indistinct) items which are being evaluated. Now Siemens is still in – 70 percent. Bombadier – 75 – 77. CSR which in option 1 their B-BBEE was not qualifying. They now meet and exceed the 60 percent threshold and another company called Nelesco and as 20 we know SSMM Consortium which in any event on option 1 they are qualifying. They were still in. So where for option 1 which is an RFP criteria you had three bidders that made the threshold. We now have five which five includes CSR after applying the amended evaluation criteria.

CHAIRPERSON: So is it – it is CSR and which one which have ...

TSHIAMO MICHAEL SEDUMEDI: Nelesco.

CHAIRPERSON: Come through now?

TSHIAMO MICHAEL SEDUMEDI: Nelesco – 85. There is a company that appears on the right – to the right of the – of CSR. Nelesco – 85.

CHAIRPERSON: Yes, okay.

TSHIAMO MICHAEL SEDUMEDI: They are now on 70 percent because you recall in their explanation ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: That appears on ...

10 **ADV MAHLAPE SELLO:** Page – page 3 of the document first.

TSHIAMO MICHAEL SEDUMEDI: Let us go to page 2 ...

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: Of that document Chair. There is a paragraph 2 B-BBEE evaluations. It says ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO:

TSHIAMO MICHAEL SEDUMEDI: “The Transnet Cross Functional Evaluation Team commenced with B-BBEE evaluation of stage 1.”

20 B-BBEE points were allocated based on 10 points B-BBEE stage level because that base if you are level 1 you obviously get more points compared to those who are further down in the levels.

“As part of the evaluation CFET further confirmed whether B-BBEE Certificates are submitted by the tenders where SANAS are created or (indistinct) are

created. Two entrants were scored based on the following: Nelesco submitted a B-BBEE Certificate that was not SANAS accredited ...”

Because in the RFP it required people to submit a SANAS accredited certificate.

“...which could get a – sorry – which could get a SANAS accredited certificate if it becomes a preferred bidder.”

That is what it supplied. Nelesco did not submit a valid certificate.

10 Two – B – sorry.

“CSR is a foreign company that is committed to a JB with a local company if it becomes a preferred bidder.”

So we now know at this stage CSR does not have a – the certificate. It simply indicates that if you are successful we will then have a JB with a local company which is why it explains the two entrants when you apply the amended evaluation criteria. That is why Nelesco and CSR now get into or qualify on (indistinct) evaluated to progress to stage 3. Now in slide 21 it simply summarises what I have just read to say these are the
20 justifications that were used by CFET in amending the evaluation criteria. What then happens is that on 6 June 2012 ...

CHAIRPERSON: Well before that this amendment of the criteria at stage 1 it looks like the changing of the rules of the game when the game is on. The game ...

TSHIAMO MICHAEL SEDUMEDI: The Chair is ...

CHAIRPERSON: The game starts – everybody knows what the rules are if you are talking about soccer. You know what – when do you have an offside. You know when you get a penalty. Everybody knows the rules. Somewhere when the game is on the rules are changed and on this they are changed without the knowledge of – at least at this stage I do not know later – the knowledge of the participants.

TSHIAMO MICHAEL SEDUMEDI: Participants being the bidders?

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: At that ...

10 **CHAIRPERSON:** At that stage.

TSHIAMO MICHAEL SEDUMEDI: At the stage correct Chair.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: That is why this recommendation has been made by CFET.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: Which is why now CFET does not have powers to (indistinct).

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: Which is why now on 6 June ...

20 **CHAIRPERSON:** Yes.

TSHIAMO MICHAEL SEDUMEDI: Mr Jiyane - and let us continue Chair but just to close that point – indeed what appears here is the Chair has pre-empted our conclusion in our report that tenderers submit bids based on the rules of the game. You make a choice before you bid whether to participate or not by looking at the criteria. If you know that

you will not met the said criteria always make sure that you are not going to participate. Now it becomes unfair if during the game – if I use the Chair's analogy – we are now told as soccer players that no there is no more offside. So even those of us who are good soccer players and having known that offside is not a requirement then we are going to participate or take interest in a soccer – this sport of soccer. So what happens here - Mr ...

ADV MAHLAPE SELLO: Sorry - before you move onto Mr Jiyane.

TSHIAMO MICHAEL SEDUMEDI: Yes.

- 10 **ADV MAHLAPE SELLO:** Just so we understand we have our set of criteria. There is an evaluation. At least CSR – let us concentrate on that for now.

TSHIAMO MICHAEL SEDUMEDI: Yes.

ADV MAHLAPE SELLO: Scores 56 percent. It is below. As the Chair says you change the rules mid – midstream. You re-evaluate.

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: And when you re-evaluate now on your own new set of evaluation criteria as the CFET CSR now has scored 69 percent.

- 20 **TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

ADV MAHLAPE SELLO: And now it has met and exceeded the minimum threshold?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: And ...

TSHIAMO MICHAEL SEDUMEDI: Which makes them to progress

(indistinct) on that assumption – sorry – at that stage then CSR qualifies to progress to the next stage.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: So what then happens is that on as per slide 22 it is Mr Jiyane who at that stage was the Chief Procurement Officer at TFR and Mr Siyabonga Gama who at that stage was the Chief Executive at Transnet prepared a memorandum that appears on ...

ADV MAHLAPE SELLO: I think you have an error there with your
10 volume 11.

TSHIAMO MICHAEL SEDUMEDI: It is volume 11.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Page 8535 of the Chair's volume 11.

CHAIRPERSON: Okay. I am sorry. I am looking at your slide 22 at the top 6 June 2012. You were saying what happened and then I hear there is an error.

TSHIAMO MICHAEL SEDUMEDI: Okay. It is volume 1. That – where it says volume 1 supposed to be volume 11.

CHAIRPERSON: Okay. You want me to have ...

20 **ADV MAHLAPE SELLO:** No, no Chair.

CHAIRPERSON: I do not need to ...

ADV MAHLAPE SELLO: The error is in the slide. That is correct.

CHAIRPERSON: So it should be volume 1?

ADV MAHLAPE SELLO: Volume 11 not volume 1.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay. Okay, yes.

ADV MAHLAPE SELLO: So the same volume we have before us, yes
Mr Sedumedi?

MR TSHIAMO MICHAEL SEDUMEDI: Yes in that memorandum
...(intervention)

ADV MAHLAPE SELLO: At 8535?

MR TSHIAMO MICHAEL SEDUMEDI: At 8535.

ADV MAHLAPE SELLO: Would you like us to go there?

10 **MR TSHIAMO MICHAEL SEDUMEDI:** Yes if we go to 8535.

CHAIRPERSON: But before we go there are these the two people to
which that team was making recommendations, you said earlier on they
didn't have the power to change, but they were making
recommendations.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: The team that was – so maybe I guess we shouldn't
say they were amending, but they were proposing, the were
recommending an amendment of the criteria.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair and in actual fact
20 that appears on page 3 of TS1, it fully sets out there under
recommendation that our recommendation ...(intervention)

CHAIRPERSON: Yes, yes.

MR TSHIAMO MICHAEL SEDUMEDI: ...is based on option two.

CHAIRPERSON: Yes, okay.

MR TSHIAMO MICHAEL SEDUMEDI: So let's proceed on the basis of

option two.

CHAIRPERSON: Okay, okay. So they haven't changed the rules of the game but they are proposing that they be changed.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Okay, alright, so their recommendation goes to the two officials you have mentioned, is that right?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Okay, alright.

MR TSHIAMO MICHAEL SEDUMEDI: As recorded on page 8535, this is
10 a memorandum which ...

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: You will see it's from Mr Siyabonga Gama on the top there, if you want to see the name of Mr Giyani that appears on page 8537 under signature. It is Mr Giyani and Mr Gama. Making a further, they are requesting on page 8535 Chair they are requesting Mr Brian Molefe who was the GC at that stage, for him to approve the shortlisted bidders, based on scenario two.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: As proposed by the CFET.

20 **CHAIRPERSON:** Yes.

MR TSHIAMO MICHAEL SEDUMEDI: In the body of this document they summarised what transpired at the CFET and what CFET is saying.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: And then sort of assuming or adopting the recommendation of CFET and are proposing Mr Molefe to

approve that recommendation.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Now in ...(intervention)

CHAIRPERSON: I'm sorry, the recommendation of the CF
...(intervention)

MR TSHIAMO MICHAEL SEDUMEDI: ET.

CHAIRPERSON: CFET did not contemplate re-advertising and starting
the process afresh.

MR TSHIAMO MICHAEL SEDUMEDI: Not at all Chair.

10 **CHAIRPERSON:** It simply contemplated that if those above them
approved their views, their recommendation the short listing, if one can
call it that at stage one be dealt with as if the rules had already been
changed when the people put in their bids, so are they saying apply a
rule that wasn't there before.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: In order for people to get to stage two.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Okay, alright.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** So indeed as it appears on page
8537 ...(intervention)

CHAIRPERSON: Okay so you say Mr Siyabonga Gama in this
...(intervention)

MR TSHIAMO MICHAEL SEDUMEDI: Memorandum.

CHAIRPERSON: Sorry?

MR TSHIAMO MICHAEL SEDUMEDI: Yes, Mr Gama and Mr Giyani.

CHAIRPERSON: In this memo starting at page 8535.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Which they address to Mr Brian Molefe they show that they go along with the recommendation made by the ...(intervention)

MR TSHIAMO MICHAEL SEDUMEDI: The CFET.

CHAIRPERSON: ... CFE team and they ask him to approve this recommendation that the short listing or the decision as to who goes to stage two be on the basis of the amended rules or rules that didn't exist before.

10 **MR TSHIAMO MICHAEL SEDUMEDI:** Correct and that Chair is confirmed in paragraph nine, if you go to paragraph nine of (indistinct) it is recommended that the GCE approves the short listing of the five tenderers that have met the minimum (indistinct) of 60% as evaluating option two.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Approves the issue of letters to unsuccessful tenderers, due to their not meeting the minimum standards.

20 **CHAIRPERSON:** So if Mr Brian Molefe goes along with this recommendation from Mr Gama and Giyani he would in effect be saying here are tenderers that will go to stage two, they have been selected on the basis of among others a rule that wasn't there when they – you all put your bids, basically that's what ja.

MR TSHIAMO MICHAEL SEDUMEDI: That's the sum total of what happened Chair and that – his approval is evidenced by signature at

the bottom on the 8th of June 2012.

CHAIRPERSON: So he approves by signing that memorandum?

MR TSHIAMO MICHAEL SEDUMEDI: Correct it is approved by
...(intervention)

CHAIRPERSON: Yes, on the 8th of June 2012.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Yes, okay.

ADV MAHLAPE SELLO: Okay then what happens after their approval
is granted ...(intervention)

10 **CHAIRPERSON**: Maybe before we deal with that, maybe we should
deal with the reasons on which this is – this changing the rules is
justified.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: I believe so, for that you – perhaps its best
we deal with it from Annexure TS1 itself because the reasons are
advanced in that document.

CHAIRPERSON: That's fine, whatever, because we now have a
situation where the rules have been changed, the change has been
approved, let's hear what the justification is.

20 **ADV MAHLAPE SELLO**: Okay.

MR TSHIAMO MICHAEL SEDUMEDI: Like I said earlier on Chair so
two reasons are advanced, one is that the (indistinct) extents is unfair
to foreign bidders and those that do not have the BBB certificate
because they cannot then (indistinct). Two, an impression has been
created in the memorandum, but in any event if you are a start-up

entity you will be deemed to as per code of practice to be legible at least for a Level 4 (indistinct) that is the reasons that we are advancing that memorandum and furthermore in any event in Stage three BBBEE will be assessed, but they forget one point that this was, (indistinct) to use BEE as a gatekeeper in Stage one.

Now like the Chair has already said earlier on it is unfair (indistinct) our analysis in terms of – on slide 23, to say it's a matter of law, it is unfair to change the rules of procurement during the procurement process. The spirit and purport of Section 217 that we
10 must all be exposed to a competitive, fair and transparent tender process. The PPM itself ...(intervention)

ADV MAHLAPE SELLO: Sorry, where the PPM is?

MR TSHIAMO MICHAEL SEDUMEDI: The PPM is Transnet Procurement Procedure Manual.

ADV MAHLAPE SELLO: Yes .

MR TSHIAMO MICHAEL SEDUMEDI: It says if there should not be any changes especially material changes to an evolving criteria. Should there be a material change to the criteria like the Chair said earlier on at least all the bidders must be informed of that particular change. So
20 on a first principle it is already unfair for anyone to change the criteria at that stage.

Secondly (indistinct) rely on the codes of good practice, that as well is legally flawed. A definition of a start-up enterprise in the code says a recently formed is the company enterprise that is recently formed or incorporated for less than one year. At that stage CSR was

not even incorporated in South Africa, right. So they won't qualify as a start-up so you can't even use the codes as a justification (indistinct) because at a stage in our (indistinct) they will get their (indistinct) once they are a preferred bidder. So at that stage they are not even falling within the four corners of the codes of good practice insofar as it prescribes that a newly incorporated entity (indistinct) enterprise which qualifies for (indistinct) so on those two points already the argument that is being advanced is flawed.

ADV MAHLAPE SELLO: So if I ...(intervention)

10 **CHAIRPERSON:** So you said there were two reasons they advanced.

MR TSHIAMO MICHAEL SEDUMEDI: Yes.

CHAIRPERSON: Why BB ...(intervention)

MR TSHIAMO MICHAEL SEDUMEDI: Must be waived.

CHAIRPERSON: Must be waived or mustn't be a factor at stage one, they said it was unfair to use them against foreign companies.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: And was that on the basis that foreign companies might not have that requirement in their own countries so rigid.

MR TSHIAMO MICHAEL SEDUMEDI: Correct, correct.

20 **CHAIRPERSON:** Yes, but isn't the position, wouldn't the position be that for example if you are a foreign company like that and you know that there is that requirement that you can comply by having a local partner, is that the position or not? I'm asking wouldn't you be able to meet that requirement by having a joint venture with a company that would bring about, bring you BEE status.

MR TSHIAMO MICHAEL SEDUMEDI: Certainly Chair, correct. (Indistinct) Bombardier, Bombardier is not a South African based company but at that stage they already had a local presence. So all that CSR said it said it will only do that, form JV, once it is a preferred bidder, meaning at this stage ...(intervention)

CHAIRPERSON: Ja.

MR TSHIAMO MICHAEL SEDUMEDI: Of the evaluation process they are not as yet complying or having a BBB certificate.

CHAIRPERSON: Yes, it is not going to help you to talk about stage
10 three because you won't get there, but also what's wrong if foreign companies that don't have BEE, don't have the BEE elements are excluded, if there are enough local companies that have got BEE status, what's wrong with not having foreign companies?

MR TSHIAMO MICHAEL SEDUMEDI: Chair that gives context to the earlier slides when we spoke of the special treatment.

CHAIRPERSON: Yes

MR TSHIAMO MICHAEL SEDUMEDI: That CSR seems to be enjoying because the major beneficiary of this waiver is CSR.

CHAIRPERSON: Because maybe if its only foreign companies that can
20 provide what you are talking about maybe what you are looking for then maybe you – the right body within Transnet can look at whether their policies can make provision to say under the following circumstances the BEE requirement will be waived you know, then that's the right body to look at that, but then the other question with regard to this team that recommended the amendment is who has the right to amend the

criteria, were you able to establish that at the time of investigating to the extent that anybody may amend, who had the right to amend the criteria, would it be the Board or some other ...(intervention)

MR TSHIAMO MICHAEL SEDUMEDI: Chair in this instance it could have still been GCE, the issue of who has the right to amend I don't think that's where the issue lies, the issue is if you are going to a material amendment which affects the level, the playing fields, then the right thing to do is to reissue the tender, issue an erratum to say now the rules of the game have now been changed in this fashion, so we
10 didn't pick much of an issue with a right of a particular body or person to change, the question is an assessment of the import of that change and at what stage of the procurement process, if indeed, because this looks noble, assuming this looks noble the right thing to have occurred is for this tender to be re-advertised so that those who chose not to respond on a basis of this gatekeeper of the (indistinct) then they would have been freely able to participate in the revised bid documents.

CHAIRPERSON: Well somebody would have the power to say the criteria that would be applicable are the following, now either you have
20 a document that sets the criteria in general and that's the criteria that gets applied all the time or you may have a body or a person that has the power to determine the criteria in regard to a particular transaction, and I would imagine that where there is somebody who has the power to determine the criteria in relation to a particular tender that if you seek to change them you would need to go back to that person because

they shouldn't be changed by anybody who decides I don't like this part of the criteria so I will change you know.

MR TSHIAMO MICHAEL SEDUMEDI: Got it.

CHAIRPERSON: But so, so but in this case there was a recommendation that they be amended, that request was made to Mr Brian Molefe, he agreed, he approved.

MR TSHIAMO MICHAEL SEDUMEDI: Correct yes.

CHAIRPERSON: Okay thank you.

ADV MAHLAPE SELLO: And if I may, I know it's lunchtime Chair, just
10 to close on that point, Mr Molefe not only approves or he is requested to approve that amendment, he is also requested to approve the results of the evaluation already undertaken in terms of the amended set of criteria.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: I see it's one o'clock Chair, might this be an opportune moment?

CHAIRPERSON: Thank you, we will adjourn, take the lunch adjournment, we will resume at two. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Are you ready?

ADV MAHLAPE SELLO: We are ready Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: Before you proceed just going back to that

memorandum prepared by Mr Siyabonga Gama and – or was it prepared by Mr Siyabonga Gama only? The one that was also signed by Mr Giani and Mr Brian Molefe approving the change of the rules once approved by Mr Molefe. So I just had a look at the memorandum again...

ADV MAHLAPE SELLO: Chair with your permission I...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Mr Sedumedi I think it is at 8535 yes okay.

CHAIRPERSON: Oh I am sorry I am not telling you where I am.

10 **ADV MAHLAPE SELLO:** And your microphone as well please.

CHAIRPERSON: Well maybe it is not so bad because the two of you were not telling me sometimes when you were changing documents. Okay ja A – and – ja it starts at 8535. As I understand it really it seems to amount to this that when the team that was evaluating the bids at stage 1 conducted their evaluation which was supposed to be in terms of the rules as known by all the bidders and the commencement of the process. They discovered that one of the local bidders had not complied with one of the criteria applicable to stage 1 in that the BEE certificate that they provided was not accredited by the right body, is
20 that right?

MR TSHIAMO MICHAEL SEDUMEDI: That is correct Chair.

CHAIRPERSON: And then – then there was a foreign supplier or more that did not have local representation and therefore did not have any BE certificate?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair there is only one

Chair not more.

CHAIRPERSON: Only one yes.

MR TSHIAMO MICHAEL SEDUMEDI: Only one.

CHAIRPERSON: Ja CSR.

MR TSHIAMO MICHAEL SEDUMEDI: CSR.

CHAIRPERSON: Ja. And they then thought that for them to continue and apply the criteria that had been advertised would be unfair as they were would be unfair to these two. Now it does not make sense. You – you say to – you tell the market – you tell the public those who meet
10 the following requirements may submit bids for this job. Somebody who does not meet one of those requirements decides to submit...

MR TSHIAMO MICHAEL SEDUMEDI: The bid [indistinct].

CHAIRPERSON: The bid anyway. When you look at them you realise that this person does not meet one of the requirements of the criteria and therefore should not have submitted a bid. But you then say it is going to be unfair to apply the rules that they decided not to comply with.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: It is...

20 **MR TSHIAMO MICHAEL SEDUMEDI**: It makes a more [indistinct] of the [indistinct] criteria that is why there is a criteria in the very first place to be able to sieve through those that we want to evaluate. So it does not make sense to say that we should prescribe at this late stage at least it is unfair to those who are not going to meet the very requirement that we want to be put [indistinct] I do not think.

CHAIRPERSON: And it is not even a situation because I am sure if it was we would be told. It is not even a situation where these entities who submitted bids knowing that they did not comply with one of the criteria it is not even a situation where they supplied – they put in their bids but made representations to say but this particular criterion is not proper, it is not acceptable or it works – it is prejudicial to a certain category of possible bidders and myself because of the following reasons and they were persuaded by that argument. It is not that situation.

- 10 **MR TSHIAMO MICHAEL SEDUMEDI**: It is not but I will take it further Chair. Even if those bidders made that representation let us for a second assume that indeed there is some form of nobility in this concern reasonable [indistinct] the appropriate step to take at this late stage of the process would have been to re –[indistinct] so as to reincarnate that or reproduce that fairness and competitiveness into the procurement process.

CHAIRPERSON: Ja not I mean at least you would know where this comes from. You would say a bidder who did not meet one of the criteria submitted a bid and sought to persuade the company.

- 20 **MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

CHAIRPERSON: That they should allow them in even if they do not meet because of these possible reasons.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: And maybe they would then after looking at those reasons say actually this bidder has a point but the way to do it is to

re-advertise and take out this criterion on that does not – that is unfair.

MR TSHIAMO MICHAEL SEDUMEDI: Yes.

CHAIRPERSON: So here you do not see where the initiative for this concern comes from bidders that should not have put in bids in the first place comes from. And then you – you say – it is like you say you advertise a vacancy you want people to apply for a job. You say only those who have got matric may apply. Somebody who does not have matric applies, you say but it is going to be unfair not to insist on matric and then you change the rules. Is that your understanding as well?

10

MR TSHIAMO MICHAEL SEDUMEDI: That is our understanding Chairperson.

CHAIRPERSON: Ja.

MR TSHIAMO MICHAEL SEDUMEDI: On record there is nothing that indicates some form of representation.

CHAIRPERSON: Ja.

MR TSHIAMO MICHAEL SEDUMEDI: That was made by either [indistinct] or CSR on this point.

20

CHAIRPERSON: And on this memorandum there is also nothing that suggests that this change of the rules was aimed particularly unless I have missed something, was aimed particularly maybe of addressing a concern from Transnet to say you know if we were to re-advertise maybe the delays that would occur would prejudice Transnet seriously and this is urgent and so on where we will not be able to make it if we start afresh and re-advertise. Or if we change the rules. There is

nothing that seems to say what would be wrong with sticking to the rules or if you want to change them starting afresh properly and making sure everybody is aware of what the new rules are. Okay.

ADV MAHLAPE SELLO: Thank you Chair. Thank you Chair. And I – just to close up this point Mr Sedumedi before we broke for lunch we were looking at Annexure TS1 to your slides which is the actual evaluation done by the CFET.

MR TSHIAMO MICHAEL SEDUMEDI: Yes.

ADV MAHLAPE SELLO: And you did indicate that in that document
10 CFET indicated the reasons for why they were recommending a second option.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: Now I would like you to have regard to 8535 which is the memorandum we are talking...

CHAIRPERSON: I am sorry Ms Sello.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: I am interrupting you while you are putting that question.

ADV MAHLAPE SELLO: I will hold Chair.

20 **CHAIRPERSON:** Do not forget the question.

ADV MAHLAPE SELLO: I will not.

CHAIRPERSON: Going back to what we were discussing a minute ago. Do you say there is nothing unfair in excluding a bidder who does not qualify to put in a bid in the first place?

MR TSHIAMO MICHAEL SEDUMEDI: There is nothing unfair Chair if

CHAIRPERSON: Hm.

MR TSHIAMO MICHAEL SEDUMEDI: On the early – ago you prescribed the criteria that you are going to use to evaluate.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: If that criteria is being publicly known all of us when we respond we know what is it that you are going to be judged against. Then if I fail to meet that which was prescribed then there is no unfairness there. It is something else Chair.

CHAIRPERSON: Hm.

10 **MR TSHIAMO MICHAEL SEDUMEDI:** If you put an irrational requirement in a bid document and you pick up that this is unfair like I said earlier on even if that was – if for one second we assume that it was irrational for Transnet to put this prequalification in stage 1. Like you said the appropriate mechanism of getting around that irrational criteria that you have put up initially is to re-advertise the tender. Let those who are potential bidders to know that this is the criteria that they are going to use. So that is a point that we make on this one.

CHAIRPERSON: But it – it seems to amount to saying at the beginning when you set the criteria you are excluding those who do not meet that
20 criteria.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Therefore there is nothing wrong.

MR TSHIAMO MICHAEL SEDUMEDI: Yes.

CHAIRPERSON: In keeping them outside because the criteria keeps them outside they do not comply.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: If for some reason you think that you made a mistake by setting a certain criteria that excludes certain people then – then you may have to consider changing but then you must start all over again when – so that everybody knows what the rules are.

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Ja. Okay.

ADV MAHLAPE SELLO: Thank you Chair. Before then I turn back to my question. Just to follow up on the point that the Chair makes please
10 have regard to page 08 – 0h 00 – 8400 same file.

MR TSHIAMO MICHAEL SEDUMEDI: Same file 8400?

ADV MAHLAPE SELLO: It is part of the RFP that starts at page 8370. So I would like us to have regard to 8400.

MR TSHIAMO MICHAEL SEDUMEDI: I am there Chair.

ADV MAHLAPE SELLO: And it – it is so on my reading and I would like to test that with you that it starts at 8399 regarding the evaluation criteria.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: The question of fairness. You read I think
20 into the record what is stated in the box below at 8400 specifically saying – pointing out that an overall minimum threshold of 60 for stage 1 evaluation criteria must be met or exceeded for a respondent's proposal to progress to stage 2.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: So in light of – so it is light of the fact that

there are criteria you must meet. You are also told of the consequences of failing to meet those criteria.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: And under those circumstances would a question of fairness even arise?

MR TSHIAMO MICHAEL SEDUMEDI: It should not arise at all because you knew what you are getting into.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: When you went to collect these
10 RFP documents.

ADV MAHLAPE SELLO: Indeed. Now then the question I was posing to you I had referred to the TS1 Annexure TS 1 to your...

CHAIRPERSON: It sounds like it is unfair to allow to kick out gate crashers.

ADV MAHLAPE SELLO: Ja So Chair sometimes equal treatment of people is unfair so I can see how the unfairness creeps in in this case I do Chair.

CHAIRPERSON: I would have thought that if you gate-crash you must be kept out?

20 **ADV MAHLAPE SELLO**: Well I guess the principle is once you are in notwithstanding that you gate-crash it is only appropriate that you be allowed to – you permitted to continue to enjoy the party.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: TS1 is we know is a CFT – CFET report that recommended this option 2.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: The result of which was bring CSR in. Now my reading of the memorandum at 8535 from Mr Siyabonga Gama and Mr Giani to Mr Molefe does not seem to annex that report – that specific report? At 8535. There is no reference to this report in that is there?

MR TSHIAMO MICHAEL SEDUMEDI: Chair insofar as it being attached I take your point that it does not seem as if it was attached but at least we can see from the document itself that they make reference.

10 **ADV MAHLAPE SELLO:** Yes.

MR TSHIAMO MICHAEL SEDUMEDI: To the CFET process.

ADV MAHLAPE SELLO: And when I – I read at 8536 from paragraph 5 through to 8.2 overleaf my interpretation of that section is that it reflects precisely what is in the report itself?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair Yes.

ADV MAHLAPE SELLO: So even without the actual report it is fair to conclude that Mr Molefe at the point that he approved CSR participation on the basis of option 2 was fully aware of the reasons advanced for changing the rules?

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Well he signed the same document containing those reasons.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: And therefore he must be taken to have been

adopting those reasons.

ADV MAHLAPE SELLO: Indeed and the...

CHAIRPERSON: As the reasons for his decision to approve.

ADV MAHLAPE SELLO: And the point I sought to make was that there is nothing in the actual report.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: That has not been brought to his attention.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: As justification for changing the rules.

10 **CHAIRPERSON:** Yes.

ADV MAHLAPE SELLO: So he was fully appraised of all the facts relevant at the time?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: Okay so we see that these are approved on the same day they were presented to him.

MR TSHIAMO MICHAEL SEDUMEDI: Yes Chair.

ADV MAHLAPE SELLO: And now if we go back to your slides this would take us up to your slide 23.

20 **CHAIRPERSON:** Before you go to the slides let us go back to an earlier question that I asked and I think you said that may – your team might not have focussed on that question. That is the question of who had the power to change the criteria. It – did I understand you correctly that that is not an issue you applied your mind to whether as to who if anybody had the power to change or amend the criteria?

MR TSHIAMO MICHAEL SEDUMEDI: Chair in our report on a specific

transaction we did not flash out that point but we are quite aware in terms of [indistinct] other transactions that within Transnet there would be the legal authorities that have been granted to various officials. In the first – the PPM the Transnet Procurement Procedure Manual will outline the different rules of each structure be it a CFET and various mandates and then there will be a [indistinct] of authority that indicates who must do what. Typically on a transaction like this when the board approves the transaction it will even indicate that the GCE as an example is authorised to issue the RFP and such other activities necessary to see

10 this process up to the finish. So even if on our report we did not specifically flash out the mandate on this one but we are quite aware that in other transactions as well we do have various degrees of authority that have been delegated to different structures within Transnet. So it is not actually surprising to see the GCE himself was [indistinct] that is why Siyabonga Gama and Mr Giani recommends to him to change. So it might have been that at that stage and for this specific transaction he might have had that delegated authority to change this specific [indistinct] that is we did not flash out that [indistinct] also look into.

20 **CHAIRPERSON**: Yes okay. I think Ms Sello

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: If you do not – if you have not had a chance to look at it it is something that I will be interested in earlier because it might be one thing not to advertise when you are supposed to advertise a change of criteria. It might also be another thing if you do not have the

power to amend in the first place.

ADV MAHLAPE SELLO: Indeed.

CHAIRPERSON: Somebody else should be approached for amendment.

ADV MAHLAPE SELLO: Yes Chair indeed it is a discussion we had with MNS and as Mr Sedumedi said their investigation did not go that far.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Because we do not have a clear understanding whether – when Mr Gama and Mr Giani approached Mr Molefe it was in a – with an intention that he approve at that stage but he in turn submit to a higher and authorised body.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: In order to effect the change.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: That is one issue they have not investigated.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We will apply our minds to the procurement manual accepting that the procurement manual might tell us one thing but not answer this question specifically which to my mind would mean we must perhaps locate a witness within Transnet regarding this particular RFP to enquire firstly who had the authority to put together the RFP. Presumably that would be the body with the authority to amend it terms. And we take it from there.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: In order to answer the second question

whether Mr Molefe had the authority to amend as he purported to do here.

CHAIRPERSON: Yes, yes. I think what you would look at in terms of Transnet policies and manual would be whether you have a general provision in some policy document.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: That says these will be the criteria for example that must be used only or whether you will have a provision for a general criteria but another provision to say there may be specific transactions
10 which require specific criteria and in that event who decides what criteria will be applicable. And then see whether in regard to this one

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: It was a general – it was general criteria or it was a specific one and who decides you know because it may be that once it has been decided that a project must be put out to tender somebody formulates the criteria or a body or a committee formulates the criteria for that specific project or job and then they are at large to put whatever criteria. Probably that would be the same body that would have the right to amend.

20 **ADV MAHLAPE SELLO**: Presumably Chair.

CHAIRPERSON: Ja

ADV MAHLAPE SELLO: We will look at it Chair and we will revert to you on how best to present that evidence.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: To you.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you Chair. As I indicated Mr Sedumedi this takes us to page 23 of your slides. So our next slide would be 24.

MR TSHIAMO MICHAEL SEDUMEDI: That is correct Chair.

ADV MAHLAPE SELLO: Yes. You may take it from there.

MR TSHIAMO MICHAEL SEDUMEDI: Ja. On the slide in essence all that we were trying to do Chair was to one like I said even to recognise the fact that this transaction was also investigated by Fundudzi who by and large were in sync on most of the findings except for these two
10 specific ones relating to the issuance of the bid documents. Just some factual background. When like I said earlier on Ms Mdletshe's name is the one that appears on a bid document as the person that you must raise any queries or even obtain documents. So CSR after the advert they paid but they paid from China I will just refer you to – on your Volume 11 Chair page 8440.

ADV MAHLAPE SELLO: And Volume 11 Chair is the volume that you currently have open before you.

CHAIRPERSON: Well it is the same page that we were dealing with ...

ADV MAHLAPE SELLO: No we were dealing with 8537. We would like
20 us to have regard to 8440.

CHAIRPERSON: Oh I have 8400. 8440?

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Chair this document on 8440 it was sent by CSR to Transnet. The heading of [indistinct] says

[indistinct] confirmation of [indistinct] remittance. What it sought to indicate to Transnet was that CSR's account as you can – this context. CSR is based in Hong Kong or wherever China.

CHAIRPERSON: Hm.

MR TSHIAMO MICHAEL SEDUMEDI: They need to pay R20 000,00 deposit for them to obtain the bid documents.

CHAIRPERSON: Hm.

MR TSHIAMO MICHAEL SEDUMEDI: So they instructed their bank in China

10 **CHAIRPERSON**: Hm.

MR TSHIAMO MICHAEL SEDUMEDI: To say pay Transnet R20 000,00.

CHAIRPERSON: Hm.

MR TSHIAMO MICHAEL SEDUMEDI: So what they then provide to Transnet is a document that comes from the Bank of China telling CSR we confirm the following funds have been debited from your account if you have any queries please contact us as soon as possible. But what is important is the following. On the top there – the remittance account number that is CSR's bank account in the Bank of China. That is 601557366040. It says remittance account number and the remittance
20 name. That is how you pick up that this is CSR's bank account number. Alright? It then says they have debited 2 080 US dollars for the benefit of account number 20315859 the beneficiary is Transnet Freight Rail. These bank details are the same bank details that appear on the RFP advert telling the bidders where must they deposit their R20 000,00. This they sent to Ms Mdletshe. On the strength of this document Ms

Mdletshe releases the bid documents to Transnet.

ADV MAHLAPE SELLO: CSR.

MR TSHIAMO MICHAEL SEDUMEDI: Ag my apologies to CSR. It was a view of Fundudzi that on the – by the time Ms Mdletshe released the documents the money was not yet cleared in Transnet's account. We had a different view to say no money when you [indistinct] documents. You go there with a deposit slip that proves that indeed I have paid. The official at Transnet does not necessarily log into the banking system to see if indeed money is in the account. They rely on the
10 people's slip that you produce for them to release bid documents. So therefore we held [indistinct] it was not necessarily untoward of Ms Mdletshe to release the documents because at least on the face of it this document seems to suggest that the CSR account has been debited with this amount in favour of Transnet. So that is where we just departed on the views of Fundudzi

CHAIRPERSON: Well it might not – it might not be unreasonable – it might not have been unreasonable maybe for Ms Mdletshe to accept this as meaning that the money was in Transnet's account. But there may have been an obligation on the part of Transnet to check whether
20 when they are given a document that purports to prove that payment has been made whether indeed the money had come in because one can think of all kinds of things that can happen where you accept the document and assume that the money is in only to find that it was not in yet and after you had made the assumption something happened and the money ended up not getting in. And in the meantime you may have

allowed a bidder in who has not actually complied. So it just – it might just depend what it is that one – one is looking at. It is – it is like if you are supposed to pay by today and you deliver a cheque today but the cheque – I - I accept the cheque but the cheque will only be cleared later. So it becomes important to know whether the delivery of the cheque is taken to be compliant or it is assumed to be compliant until it is checked whether the money is in and if the money is not in then you have not complied. So – but in the end it depends whether it became a – a material issue or not.

10 **TSHIAMO MICHAEL SEDUMEDI**: Okay. Just the PPM ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: Did envisage that type of eventuality ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: Chair.

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: Clause 3.7.3 ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: Of the PPM ...

20 **CHAIRPERSON**: Hm.

TSHIAMO MICHAEL SEDUMEDI: Reads as follows:

“At the tender opening the number of responses received must be checked against the number of payments received.”

So at least that risk of a cheque bouncing or an EFT being reversed at

least is material by the fact that at least when you receive the bid documents there is an obligation on those who are doing the first stage to check if the monies that in fact on the deposit slips are indeed within Transnet's account because we would not have submit this one in particular two days later – if my memory services me – their account was created. So as I was saying on that point at least the (indistinct) was sufficient to address that requirement.

CHAIRPERSON: Okay, alright.

ADV MAHLAPE SELLO: And on that score if you have regard to the
10 tender notice at page 8370 it seems to address the issue of payment and what I may call "Proof of Payment"?

TSHIAMO MICHAEL SEDUMEDI: Correct. So what – what it ...

ADV MAHLAPE SELLO: At – at your – it is a number of notes there. Note 123 on my reading or one to two – one and two. Will you confirm that? Am I correct in my reading?

TSHIAMO MICHAEL SEDUMEDI: Correct. That is payment is made to the following account.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: The deposit slip must reflect the RFP
20 number to be presented prior – prior to the collection of tenders. So all of them must present a deposit slip.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Like I said (indistinct) then will address that risk that the Chairperson made reference to.

ADV MAHLAPE SELLO: And now on this score you point out that

Fundudzi held that what was required was the proof of receipt of the –
of the funds ...

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Before Ms Mdletshe could release, okay.

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: You said there were two issues on which you
agreed.

TSHIAMO MICHAEL SEDUMEDI: The second issue relates to CSR's
non-submission of a tax certificate as well held the view that CSR
10 ought to have been disqualified for not issuing a valid tax certificate.
Now we need to look at the genesis ...

CHAIRPERSON: I am sorry. That – that requirement was for stage 1
or for a later stage – a tax clearance certificate?

TSHIAMO MICHAEL SEDUMEDI: Generally the tax certificate it is one
of the requirements before you even evaluate stage 1.

CHAIRPERSON: Yes, *ja* okay alright.

TSHIAMO MICHAEL SEDUMEDI: You do an administrative
responsiveness ...

CHAIRPERSON: Yes, okay.

20 **TSHIAMO MICHAEL SEDUMEDI**: To ensure that ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: All documents are signed.

CHAIRPERSON: So if you do not meet it you probably should not even
...

TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Be considered for stage 1?

TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Yes, okay.

TSHIAMO MICHAEL SEDUMEDI: However here is a twist Chair. The – the source of requiring a TCC – Tax Clearance Certificate – comes from Regulation 16 in the PPPFA – the Preferential Procurement Policy Framework Act which states that:

10 “No bidder that does not have a tax clearance
 certificate issued by the South African Revenue
 Services...”

Because now we know a TCC can only be issued for various purposes by the South African Revenue Services. Now for that Chairperson you must check whether this particular person is a taxpayer as contemplated in the various tax laws in South Africa. At that stage know CSR was not a South African company. So there was no tax obligations that it had towards SARS to enable SARS to issue because the Tax Administration Act tells us that:

20 “A tax certificate will be issued by a SARS Official
 upon checking if indeed this particular taxpayer –
 taxpayer for that matter his or her or its tax affairs
 are in order.”

Now to an extent that the CSR did not have tax obligations in South Africa. There was no incoming source from South Africa. So therefore there would not have been any – it was legally impossible for SARS to issue ...

CHAIRPERSON: (Intervenes) the requirement could not apply to them?

TSHIAMO MICHAEL SEDUMEDI: It could not apply ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: And in actual fact Chair there is an SBD1 form that is – SBD1 is a Standard Bidding Document issued by National Treasury ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: Which on the particular one it needs to attach the certificates. There is a question there that they ask at the
10 bottom.

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: If you are a foreign company you say yes.

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: Do you have any tax obligations in South Africa. You say no. Then - it then says then there is no need for you to submit a Tax Clearance Certificate.

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: So that confirms the view that it
20 would have been legally impossible for CSR to submit because these certificates are supposed to be issued by SARS. SARS cannot even issue a certificate to somebody who is not a – a taxpayer.

CHAIRPERSON: So are you saying there was a difference of opinion between your team and Fundudzi on that?

TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: So we had a good look on this one CSR – it was not irregular ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: For CSR to evaluate despite the fact they did not have a ...

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: A tax certificate. So that is the view that we had with them but as I said those are the only two issues ...

10 **CHAIRPERSON:** Yes.

TSHIAMO MICHAEL SEDUMEDI: Where we departed from the Fundudzi findings.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you for bringing that to the Chairs attention. I guess at the end of the day it is for the Chair to determine legally speaking which of the two findings is – is correct.

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: On my – on my copy I – it would seem that we have reached the end of 95?

20 **TSHIAMO MICHAEL SEDUMEDI:** That is correct Chair.

ADV MAHLAPE SELLO: Okay. If you may proceed then with your presentation.

TSHIAMO MICHAEL SEDUMEDI: Okay. The next part of the presentation Chair is now focusing on the procurement of the 100 locomotives. You recall there were other witnesses before you who

testified about the confinement of the 100 locomotives to CSR. We will not deal much with the principle of confinement and the rationale save to – you recall as well when Mr Callard testified there was this issue about the memorandum of Mitsui – I think it was – yes it was Mitsui that was withdrawn but when questioned by the Chair he could not explain what was the rationale or the reasons that we advanced in the Board Meeting for the withdrawal of that memorandum. So that is the part that I think we will focus on. If the Chair can have regard to volume 11 page 8618?

10 **CHAIRPERSON:** On what page of the slides document?

TSHIAMO MICHAEL SEDUMEDI: Currently Chair I am on – on the slides I am on slide 28.

CHAIRPERSON: 20?

TSHIAMO MICHAEL SEDUMEDI: 28 – 2-8.

CHAIRPERSON: 28. Yes, okay.

TSHIAMO MICHAEL SEDUMEDI: Where we now inform the Chair about the reasons why that memorandum was withdrawn. It is 8618. This is an extract of a BADC Meeting – the Board Acquisition and Disposals Committee – had on 21 October 2013. The relevant paragraphs there
20 is paragraph 5.1.5 and paragraph – until – 5.1.6. In essence it was an enquiry by Ms - Ms Tshepe was one of the Board Members who enquired – sought clarity behind the withdrawal of the 160 diesel submissions from the current agenda because you recall from Mr Callard's evidence that there was a memorandum that was initially prepared in October recommending Mitsui signed by Mr Molefe and

everybody else who was enquired to sign had actually signed that memorandum for its presentation at the BADC but on that day it was withdrawn. The – so upon an enquiry by Ms Tshepe management – (indistinct) management does not specifically say who. It is on – it says:

“Management ...”

I will – I will take the Chair to one, two – the second sentence from 5.1.5. (Intervenes) whether must I just ...?

CHAIRPERSON: Yes.

10 **ADV MAHLAPE SELLO:** *Ja.*

TSHIAMO MICHAEL SEDUMEDI: (Intervenes).

CHAIRPERSON: And if you can read if ...

TSHIAMO MICHAEL SEDUMEDI: Okay.

CHAIRPERSON: Thank you sir *ja*.

TSHIAMO MICHAEL SEDUMEDI: “Ms Tshepe sought clarity

20 behind the withdrawal of the 160 diesel submission from the current agenda as the Committee had requested that it be table due to urgency on the transaction. Management stated that the matter was put on the table to the Committee and still concerns were raised. The request was based on a tender that was awarded in 2006 and subsequently confined in 2010. A further request for a confinement was being made. Management indicated that upon reflection it opted to withdraw

the matter after concern that when the initiatory
confinement was made in 2010 ...”

That is three years ago.

“...the press reports alleging that the company had
entered into a 1.4 billion locomotive procurement
secret deal. An article in relation to this matter was
included in the meeting. Ms Tshepe was of the view
that the press reports and a confinement ought to
have been considered prior to the matter being
10 tabled to the Committee. She stated the (indistinct)
submission was still on the basis of urgency to
alleviate the risks relating to MDS volumes.
Management’s regard the withdrawal of the agenda
item was due to potential governance risks relating
to the transaction.”

So in a sense the reason advanced was that some three years earlier
there was an issue around confinement. So during the negative
publicity that happened three years ago around confinement it would be
a governance risk to Transnet to pursue this route of confining to
20 Mitsui. So that was the – at least the official reason that was advanced
and on that basis the Board accepted the withdrawal of that particular
memorandum. However three months later – January 2015 – we now
know that there was a new confinement memorandum that was
submitted to the BADC and indeed it was approved by the BADC and
the Board on 21 January 2015 as it appears on volume 8621 and that is

the memorandum that I think Mr Callard and Mr Volmink even (indistinct) as well addressed the Chair on in terms of its compliance or incompliance with the PPM requirements. So I will not belabour that point.

CHAIRPERSON: Well it may be that Ms Sello will take you to the minutes of the – excuse me – of the Committee or Board when it approved that submission three – three months later but I want to find out whether you have seen the minutes of that meeting and – and whether have also seen both submissions. Whether it is the same
 10 submission or there was a change. Whether you have had a chance to compare the submission that was withdrawn and the submission that was later put before the Committee and the Board and whether it was exactly the same and whether this issue – this reason which was advanced to justify withdrawing it - whether three months later it was addressed to say what is – what is – what has changed. Did – is that something you - you have looked at and you are aware of?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair indeed. One can confirm that indeed there was a change in the contents of the memorandum. You will recall that the initial memorandum had indicated
 20 that Transnet will like to – to confine to Mitsui and on a Friday before this particular meeting Mr Callard was requested to change – no actually to update the memorandum but when the draft came back to him for editing or formatting – that is the word that he used – he realised and could see the changes in the two documents in terms of removing the name Mitsui and replaced with CSR but on almost the

same basis that was initially advanced by Mr Callard. So that indeed our investigation revealed only compared the two documents. We could then see the changes that Mr Callard referred to and as well we analysed that memorandum in relation to the confinement requirements in the PPM and made a finding that from the look of things this is not in line with the requirements of the PPM from an urgency point of view and if you look at the time that it took CSR to actually produce this – because as I said the memorandum spoke of a 19E (indistinct) but this 21E that was eventually produced it took time to be manufactured in
 10 due of the fact that the specifications that were initially advanced were now becoming a problem. So that we were able to confirm with ...

CHAIRPERSON: You have not finished continue.

TSHIAMO MICHAEL SEDUMEDI: Okay. So the third aspect that the Chair asked was whether the reasons that were previously used in October ...

CHAIRPERSON: Just to justify the withdrawal.

TSHIAMO MICHAEL SEDUMEDI: To justify the withdrawal.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: How did the ...?

20 **CHAIRPERSON:** Whether they were addressed subsequently.

TSHIAMO MICHAEL SEDUMEDI: How (indistinct)?

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: If you go to – in the actual minute – in actual fact Chair it does speak to that aspect.

CHAIRPERSON: Okay. No let us leave it that. I think Ms Sello was

planning to take you there.

ADV MAHLAPE SELLO: Yes. Yes Chair.

TSHIAMO MICHAEL SEDUMEDI: Okay.

CHAIRPERSON: Yes. Let me allow her to - to do so at – at the time that suits her.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: I wanted to just know that but before she does so just to refresh my memory the submission that was withdrawn from the Board on the basis that they are proceeding with it on the basis of
10 confinement would be a governance risk. That one reflected Mitsui as the preferred bidder. Is that right?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: But when three months later it came back it was a different bidder.

TSHIAMO MICHAEL SEDUMEDI: Entity.

CHAIRPERSON: Okay.

TSHIAMO MICHAEL SEDUMEDI: That is correct.

ADV MAHLAPE SELLO: Thank you Chair. Before then we – we addressed specifically the – the issue of minutes. At your slide 28 I
20 think you have another date error. It is 21 January 2014?

TSHIAMO MICHAEL SEDUMEDI: The 24th that is correct.

ADV MAHLAPE SELLO: If one has regard to page 8618 that minute is of 21 October 2013 and the memorandum you refer to at 8621 is 21 January 2014?

TSHIAMO MICHAEL SEDUMEDI: That is correct.

ADV MAHLAPE SELLO: If you could just effect that correction. So according to your documentation you have provided us with the memorandum that served before BADC submitted by Mr Brian Molefe on 21 January 2014 and as you have pointed out to the Chair we know that that is the memorandum arguing for confinement but this time to CSR? The change has occurred.

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: That document is then followed by a minute at 8645.

10 **TSHIAMO MICHAEL SEDUMEDI:** I am there.

ADV MAHLAPE SELLO: Except that this minute is of the Board of Transnet not of BADC?

TSHIAMO MICHAEL SEDUMEDI: Yes Chair.

ADV MAHLAPE SELLO: And this particular confinement and in particular to CSR is dealt with by the Board extensively?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: The Chair enquired whether you were aware of the reasons to justify three months later asking for confinement again albeit to CRS.

20 **TSHIAMO MICHAEL SEDUMEDI:** Yes.

ADV MAHLAPE SELLO: And – and whether these reasons were shared with BADC or with the Board.

TSHIAMO MICHAEL SEDUMEDI: Yes. On the bundle we have the minutes of 21 January ...

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Appearing on page 8645.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: What we do not have in this bundle because we subsequently learnt that there was a BADC Meeting earlier in that day.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: So the same day – 24 January. So – but for now if you go to paragraph 412 appearing on page 8646.

ADV MAHLAPE SELLO: And we are now into the minute of the Board?

10 **TSHIAMO MICHAEL SEDUMEDI:** The minute of the Board.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Are you there Chair?

CHAIRPERSON: Page 86 ...?

TSHIAMO MICHAEL SEDUMEDI: 8646 – that document starts on page 8645. That is where the Chair will see ...

CHAIRPERSON: Oh yes.

TSHIAMO MICHAEL SEDUMEDI: The – the forum - the Special Board of Directors on the 21st.

20 **ADV MAHLAPE SELLO:** And before you – you get into the detail of that minute you – you point out - out to the Chair that the previous minute we dealt with was that of BADC withdrawing 21 October 2013 request for confinement. What you have in your report is the minute of the Board subsequently in January 2014?

TSHIAMO MICHAEL SEDUMEDI: Yes.

ADV MAHLAPE SELLO: Although it has now come to – to your

attention that BADC reconsidered that confinement that particular minute does not form part of your record?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Okay. What you have instead is the minute of the Board dealing with the same issue?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: And on that basis you then say we should have regard to 8645?

TSHIAMO MICHAEL SEDUMEDI: That is correct Chair.

10 **ADV MAHLAPE SELLO**: Then you may lead us through that.

CHAIRPERSON: I am sorry. The – the minutes that we looked at where Ms Tshepe ...

TSHIAMO MICHAEL SEDUMEDI: Tshepe.

CHAIRPERSON: Was querying why that submission was withdrawn. Were those minutes of the Board or of BADC?

TSHIAMO MICHAEL SEDUMEDI: It was BADC.

CHAIRPERSON: It was BADC?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Okay and the minutes that start at 8645 they relate to
20 the Board?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Ja they – not to BADC.

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: Okay but you – you say that the same issue that the – the Board had to deal with here at 8645 had been dealt with by BADC?

TSHIAMO MICHAEL SEDUMEDI: Dealt by BADC on the same day.

CHAIRPERSON: On the same day?

TSHIAMO MICHAEL SEDUMEDI: On the same day Chair because the Board ...

CHAIRPERSON: But you just do not have the minutes?

TSHIAMO MICHAEL SEDUMEDI: Not on record but we have ...

CHAIRPERSON: You have got them somewhere?

TSHIAMO MICHAEL SEDUMEDI: We have got them – we have them somewhere Chair, yes.

10 **CHAIRPERSON**: Oh, then you can provide them?

TSHIAMO MICHAEL SEDUMEDI: That shall be – it has been ...

CHAIRPERSON: Oh.

TSHIAMO MICHAEL SEDUMEDI: Or it has been provided. We did not want to tamper with the (intervenes).

CHAIRPERSON: Yes as it is, *ja*.

TSHIAMO MICHAEL SEDUMEDI: *Ja*, so ...

CHAIRPERSON: Okay.

TSHIAMO MICHAEL SEDUMEDI: We have (intervenes).

CHAIRPERSON: (Intervenes) can provide it in a supplementary.

20 **ADV MAHLAPE SELLO**: Yes Chair.

CHAIRPERSON: Okay, alright.

ADV MAHLAPE SELLO: Okay. Then on my reading Mr Sedumedi it starts at – at paragraph 4 at 8645 under the heading “Matters for Approval”.

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: Okay. You can take it from there and take the Chair to the relevant passage.

TSHIAMO MICHAEL SEDUMEDI: Yes. As you can see this the heading for – under 4.1 is “Acquisition of Additional 100 Class 19E Equivalent Dual Voltage Electric Locomotives and 60 Class 43 Diesel Locomotives.”

ADV MAHLAPE SELLO: Ys.

TSHIAMO MICHAEL SEDUMEDI: The parts that are relevant to the 100 locomotives is paragraph 4.1.2.

10 **ADV MAHLAPE SELLO:** Overleaf.

TSHIAMO MICHAEL SEDUMEDI: Overleaf on page 8646.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: “Mr Sharma ...”

Now I am reading.

“Mr Sharma stated that the matter ...”

Meaning this submission of 100.

“...was dealt with at the BADC – Board Acquisitions and Disposals Committee. The request for a confinement had been on the Committee’s agenda for three months and the matter (intervenes) ...”

20

CHAIRPERSON: I am sorry. You are reading from where? I am at 8645 and 8646.

TSHIAMO MICHAEL SEDUMEDI: Yes Chair. Paragraph 4.1.2.

ADV MAHLAPE SELLO: At 8646.

CHAIRPERSON: Oh.

TSHIAMO MICHAEL SEDUMEDI: At 8646.

CHAIRPERSON: Okay, alright.

TSHIAMO MICHAEL SEDUMEDI: Okay. I will start again Chair.

“Mr Sharma stated that the matter was dealt with at the Board Acquisitions and Disposals Committee. The request for a confinement had been on the Committee’s agenda for three months and the matter was (indistinct) deliberated by the Committee.”

10 The Committee referring to BADC.

“The company ...”

That is Transnet.

“...currently has a contract with General Electric South Africa Technologies in terms of the Class 43 diesels. The proposal was to confine the 100 electrics to China South Rail. There were adverse media reports on the previous Mitsui confinement process. To manage reputational matters the company seeks to advance to a new supplier. Management indicated that TFR locomotive (indistinct) was first approved by the Board in April 2011 and updated with the 1 064 GFB locomotive submissions.”

20

But we just stop there Chair. So there is no way you see how at least on the reading of these minutes and as well – like I can confirm when

you go through the BADC Minutes that was the issue to say to manage that risk of 2010 where you confine to Mitsui. So let us substitute Mitsui now with CSR so as to avoid that negative publicity that we had three years ago around confinement to Mitsui. So that is – that is the official version that appears on both minutes.

CHAIRPERSON: But now what is being said to the Board now by Mr Sharma ...

TSHIAMO MICHAEL SEDUMEDI: Yes.

CHAIRPERSON: Suggest that the adverse publicity that they – they
10 are to be concerned about or should be concerned about that had happened before was related to the identity of the entity Mitsui?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair. That is from the reading of the document, yes.

CHAIRPERSON: As opposed to this – the process that was followed. In other words when we read the minutes where Ms Tshepe raised this issue why that submission was being withdrawn ...

TSHIAMO MICHAEL SEDUMEDI: Yes.

CHAIRPERSON: And the reason advanced was that previously there was bad – bad publicity and to proceed would – it would be a
20 governance risk.

TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: I got the impression that what was being said was we cannot proceed with this submission on the basis of a confinement because previously Transnet's minute had used confinement and it was criticised.

TSHIAMO MICHAEL SEDUMEDI: Yes.

CHAIRPERSON: So one expected that if they were to bring the issue back they would bring it back on the basis of not any confinement but maybe open tender but at least they would not use confinement because the previous criticism related to why use a secret process.

TSHIAMO MICHAEL SEDUMEDI: Yes.

CHAIRPERSON: That was my understanding. Was that your understanding?

TSHIAMO MICHAEL SEDUMEDI: That was mine as well Chair that the
10 reason that was put forth was that confinement seems to be an issue because of this negative ...

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: Publicity that we ...

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: Enjoyed.

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: Now three months later ...

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: That process that you are saying was
20 a bit of governance risk ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: You follow it but this time around using a different entity. So ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: That is – you quite correct Chair

when ...

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: Because that is also the impression that – that we formed when we ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: For confidential reasons.

CHAIRPERSON: Because now the way it seems to come across - at least to me – is you know there is nothing wrong with the – with confinement. It is just Mitsui that gave us problems last time. Let us
10 use another entity then we will be fine.

TSHIAMO MICHAEL SEDUMEDI: That is correct.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you Chair. We are still at 4.1.2 and you wanted to make that clarification for – for the Chair and I think ...

TSHIAMO MICHAEL SEDUMEDI: That is correct.

ADV MAHLAPE SELLO: You have gone through the exercise of – of comparing and contrasting the various reasons put forward in BADC and relative to the Board minute. Is there anything in particular you would like to draw Chair's attention to in that minute still?

20 **TSHIAMO MICHAEL SEDUMEDI:** Nothing save to state that indeed then at this meeting the Board then approved this confinement memorandum. If you go to – Chair must turn over page 8647.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Under paragraph 4.1.7:

“Resolve...”

(Indistinct) paragraph down the line:

“Resolve that the Board approved the confinement
and award of the procurement for 100 electrical
locomotives to CSR.”

So that reasons which we advanced then were then adopted by the
Board – Board and approved the confinement to CSR.

CHAIRPERSON: And I note that Ms Tshepe ...

TSHIAMO MICHAEL SEDUMEDI: Tshepe.

CHAIRPERSON: Was not – did not attend this meeting. She being the
10 one who had raised this issue pertinently at the earlier BADC Meeting
when the submission was withdrawn. I wonder whether you do recall
even before we see the minutes whether you may have noted whether
she attended the BADC Meeting earlier – probably not.

TSHIAMO MICHAEL SEDUMEDI: Chair ...

CHAIRPERSON: When this happened. You might not know.

TSHIAMO MICHAEL SEDUMEDI: I – I cannot recall that Chair.

CHAIRPERSON: Yes, okay but ...

TSHIAMO MICHAEL SEDUMEDI: I will be ...

CHAIRPERSON: I just note that at this meeting where this issue is
20 raised and the decision is taken she is not there.

ADV MAHLAPE SELLO: Chair ...

CHAIRPERSON: So I – I just raise that in the sense that maybe if she
was there maybe she – she would have raised the issue of but really
that is not what you told us last time.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: So why are you still using confinement now ...

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Because she – she had particular reasons last time.

ADV MAHLAPE SELLO: As – as Mr Sedumedi indicated the – that minute of BADC of the ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Even date – 24 January 2014 – is available.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: The Chair suggested that perhaps it may be
10 submitted.

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: Mr Sedumedi overnight will make a statement
...

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: To tender that particular minute ...

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: And when we resume tomorrow first thing in
the morning we will

CHAIRPERSON: *Ja.*

20 **ADV MAHLAPE SELLO:** Answer that question for the Chair ...

CHAIRPERSON: Yes, no thank you.

ADV MAHLAPE SELLO: With reference to the document.

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: That is in order.

ADV MAHLAPE SELLO: And as part of the resolutions it is to confine

to CSR for 100 electric locomotives at an estimated cost of 3.8 billion that is under “Resolved” at page 8647 the second bullet point of the resolution.

TSHIAMO MICHAEL SEDUMEDI: Yes, yes.

ADV MAHLAPE SELLO: So it – at – approved both ...

TSHIAMO MICHAEL SEDUMEDI: It was plus ...

ADV MAHLAPE SELLO: The ETC and confinement and the entity to which the acquisition would be confined.

MR TSHIAMO MICHAEL SEDUMEDI: Correct yes, both the amount and
10 the entity.

ADV MAHLAPE SELLO: Alright, then we proceed with your presentation.

MR TSHIAMO MICHAEL SEDUMEDI: Okay Chair now what happens thereafter is that now on slide (indistinct) on 26 February after all these approvals were made Mr Brian Molefe then issued a confinement RFP to CSR, the Chair will find a copy of the RFP on page 8663, we just want to take the Chair through some of the key issues raised in this RFP because it becomes relevant at a later stage when you look at the award and as well when during the course of the week we will be taking
20 the Chair through the increase in the (indistinct) for this particular transaction.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: On page 8663 on our slides there, so the Chair must look at page 8663 and my slide page 29.

CHAIRPERSON: 8663?

MR TSHIAMO MICHAEL SEDUMEDI: 8663m

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: And for completeness of that reference
Volume 11.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Same volume.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Yes, Mr Sedumedi?

MR TSHIAMO MICHAEL SEDUMEDI: So in that volume there is a letter
10 by Mr Molefe that you can pick up from the next page on A64, it is
addressed to CSR:

“I have pleasure in advising that a Trust Board Resolution has
authorised the acquisition of an additional 100 locomotives to
CSR with certain modifications and certain commercial terms
and conditions to be agreed upon in negotiations.”

Now what we now know in terms of at least Chair must go to 4A now we
know it's for the 100, the quantity is 100, B one of the issues that we
put as our requirement in this RFP is expeditious delivery for
acceptance testing is a priority commencing latest September 2014 with
20 completion by March 2015. Any (indistinct) on early delivery are
invited. You will recall this is a confined RFP Agency, it is of
importance which is why the timeframes are being outlined that we
need to get this thing latest by March 2015.

Furthermore in paragraph 4E we state as Transnet that the
payment terms a 10% deposit based on the current value per

locomotive shall be paid:

1. on successful completion of the negotiations;
2. the signing of the amendments to the agreement giving facts to the extension

Because you will recall at this stage CSR had an agreement with Transnet for the provision of the 95 locomotives, so as well the amendment and compliance with all suspensive conditions. So lastly overleaf paragraph H supply development:

10 “This is a non-negotiable suspensive condition and shall meet or exceed 70% as measured in the SD value summary.”

So these are now the ...(intervention)

CHAIRPERSON: I'm sorry whereabouts on 8664 is that?

MR TSHIAMO MICHAEL SEDUMEDI: That is H Chair.

CHAIRPERSON: H?

MR TSHIAMO MICHAEL SEDUMEDI: H, the ...(intervention)

CHAIRPERSON: Oh supply development.

MR TSHIAMO MICHAEL SEDUMEDI: So those are some of the conditions that were stipulated in the RFP document that was issued to CSR.

20 **ADV MAHLAPE SELLO:** Yes?

MR TSHIAMO MICHAEL SEDUMEDI: Now first in our report we then analysed this – because for all intents and purposes this is an RFP that has been issued.

ADV MAHLAPE SELLO: It's headed as such.

MR TSHIAMO MICHAEL SEDUMEDI: Yes, albeit for (indistinct) is an

RFP.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Chair on 16 July 2012 Treasury issued a practice note, maybe let me just take Chair to that specific because it becomes relevant for this transaction and as well the (indistinct) transaction. It's on page – Volume 3, (indistinct) on Volume 11, so Volume 3, page 5137.

ADV MAHLAPE SELLO: While we're there ...(intervention)

CHAIRPERSON: Yes.

10 **ADV MAHLAPE SELLO:** ... Mr Sedumedi must we go to the document itself or are you dealing with the issues arising.

CHAIRPERSON: Do we need to look at it or you will be able to make the point you're making.

MR TSHIAMO MICHAEL SEDUMEDI: I can make the point and the (indistinct) but I correctly (indistinct) as it appears.

ADV MAHLAPE SELLO: I will always cross-check you and (indistinct) yes.

MR TSHIAMO MICHAEL SEDUMEDI: But then we can then focus on slide 13, the essence of that particular practice note was to prescribe
20 the new thresholds for local content and production because from time to time DTI will designate certain sectors as being qualifying for local content and production so this one focuses itself on the rail rolling stock and you will see these are the percentages that are stipulated in the practice note. There's a clause in that practice note that says the RFP or the big documents it must be a bid condition that only bids that

comply with minimum threshold will be considered. It actually instructs an Organ of State that you must put this as a condition, in your RFP document you must up front indicate to your potential bidders that this is a (indistinct) sector and you shall comply with this condition and only those that meet this threshold will then be evaluated further.

Now when you look at this specific RFP it's not prescribed that condition because this RFP is 2014 so the mandatory requirement that this put by the practice note that that must be included in a bid document that is not put on this particular RFP.

10 **ADV MAHLAPE SELLO:** And the instruction note is from July 2012, so at the time of production of this RFP it was in force already.

MR TSHIAMO MICHAEL SEDUMEDI: It was in force already.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Right.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Now the effect so on a point alone this RFP itself was irregular because it didn't comply with the requirements of the law, so this RFP to understand that the RFP failed to put that condition as mandated by the practice note that renders the
20 RFP itself to be irregular. But we don't look at the effect thereof, but now CSR submitted who has responded to this RFP on the 14th of March 2014, their response is found in Volume 11 page 8657, and this was accepted by Transnet, this is the RFP – the proposal that eventually formed the contractual relationship between Transnet and CSR. Forty of the hundred locomotives were going to be completely

manufactured in China.

If I can take the Chair to page 8666 it's a local content information for 100 sets of 21E, overleaf you will see that the local content at the bottom of that table, the local content percentage was 15%. When the practice note required that the – this is for electric, the local content was 60%, so this is a product of one the condition not being put in the RFP document and now you can even see the direct results of that requirement not being met. I mean the fact that forty of the hundred comes from China, the practice note expects 60% of the product to be locally produced, not 60% of the total package of goods that you are procuring.

ADV MAHLAPE SELLO: So your interpretation of that requirement is of every product manufactured 60% must have been locally sourced.

MR TSHIAMO MICHAEL SEDUMEDI: That is the whole rationale behind designating the (indistinct), you are seeing as a country you have done your research, because that's what even the (indistinct) tells you that even if you look IPAP being the policy from DTI that where you've conducted enough research to establish the capabilities of the country will then put, pack those thresholds at that particular level.

20 **ADV MAHLAPE SELLO:** So in splitting the various locomotives between China and South Africa that is not addressing the key issue that as DTI requires be addressed by way of local production.

MR TSHIAMO MICHAEL SEDUMEDI: That's correct.

ADV MAHLAPE SELLO: So you say at 8666 and 8667 this is a document received from CSR and there is a clear indication that the

local content component will only 15%

MR TSHIAMO MICHAEL SEDUMEDI: 15% and the fact that only 40, sorry, only 60 of the full complement will be manufactured in South Africa.

ADV MAHLAPE SELLO: And notwithstanding the requirement of the practice note for 60% local content.

MR TSHIAMO MICHAEL SEDUMEDI: Content and production.

ADV MAHLAPE SELLO: And if I understood your reference to the RFP inconsistent with the RFP itself which I understood had prescribed a
10 supply development percentage of 70%?

MR TSHIAMO MICHAEL SEDUMEDI: Chair that is – supply development is something else.

ADV MAHLAPE SELLO: Something different, okay.

MR TSHIAMO MICHAEL SEDUMEDI: As the separate concept from ... (intervention)

ADV MAHLAPE SELLO: We're still at local development.

MR TSHIAMO MICHAEL SEDUMEDI: Correct, we will come to the issue of the (indistinct) now when you look at the response that comes from CSR addressing that aspect at least of the SD.

20 **ADV MAHLAPE SELLO:** Then let's take it in the manner that you have approached, we have dealt with your slide 30 ... (intervention)

CHAIRPERSON: Yes, before we proceed the request for proposals did not deal with this in circumstances where it was mandatory that it should deal with it.

MR TSHIAMO MICHAEL SEDUMEDI: That's correct Chair.

CHAIRPERSON: In the course of your investigation did you check whether in previous transactions for locomotives I think there may have been one a few years earlier, or a few years before 2012 did you check whether maybe you know local content had always been there even if it was not mandatory in respect for proposals?

MR TSHIAMO MICHAEL SEDUMEDI: Chair the practice note came into effect 2012.

CHAIRPERSON: But that's when it became mandatory.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

10 **CHAIRPERSON:** Yes.

ADV MAHLAPE SELLO: The 1064 transaction had that provision.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: So we know Transnet ... (intervention)

CHAIRPERSON: Oh yes.

MR TSHIAMO MICHAEL SEDUMEDI: So this transaction remember Chair it happens in the context or during the same period when 1064 is being procured, so the bid documents for 1064 had that specific ... (intervention)

20 **CHAIRPERSON:** Yes, had that requirement, but this one did not have.

MR TSHIAMO MICHAEL SEDUMEDI: This one did not have it.

CHAIRPERSON: Yes and they were more or less the same time?

MR TSHIAMO MICHAEL SEDUMEDI: Same time Chair.

CHAIRPERSON: In terms of the persons or person or body preparing or formulating the request for proposals does it happen to be very

different people or is it one of those situation where it's the same department, the same – maybe it's different persons but in the same unit or what, or is that something you didn't get a chance to apply your mind to?

MR TSHIAMO MICHAEL SEDUMEDI: Ordinarily the RFP process would be managed by the supply chain management department of Transnet, you will recall even on the – you will recall when we dealt with the 95 Mr Giyani being the Chief Procurement Officer he (indistinct) supply chain unit would have initiated their bid process which is why Miss
10 Mljeje was one of the persons that you were required to contact, so under normal circumstances that is the process that would be ...(intervention)

CHAIRPERSON: That's the section that ...(intervention)

MR TSHIAMO MICHAEL SEDUMEDI: That's the section that ordinarily would deal with this aspect. What is not clear from the records is the role if any that was played by Supply Chain Management in the issuance of the RFP, but what it just see is this letter that's being signed by Mr Molefe, being issued to CSR.

CHAIRPERSON: Yes and do you know what role supply chain
20 management may have played in regard to the 1064, the RFP for the 1064?

MR TSHIAMO MICHAEL SEDUMEDI: Indeed Chair.

CHAIRPERSON: They played a role there?

MR TSHIAMO MICHAEL SEDUMEDI: They played a critical role in the ...(intervention)

CHAIRPERSON: And the RFP had this requirement?

MR TSHIAMO MICHAEL SEDUMEDI: The RFP had that requirement.

CHAIRPERSON: Here the RFP – well this doesn't have this requirement, and we don't know what role if any supply chain management played in regard to it.

MR TSHIAMO MICHAEL SEDUMEDI: Certainly Chair.

CHAIRPERSON: Okay, thank you.

ADV MAHLAPE SELLO: Thank you Chair, so then the we dealt with your 8663 which is the RFP, you then referred us to 8657 which you –
10 at volume 12 still which you indicated was CSR's response to that RFP.

MR TSHIAMO MICHAEL SEDUMEDI: Yes Chair the 86 ...(intervention)

ADV MAHLAPE SELLO: That's the last document you had referred us to.

CHAIRPERSON: Do you want to repeat the page number, 8657?

ADV MAHLAPE SELLO: 8657 – slide 31.

CHAIRPERSON: The response from CSR?

MR TSHIAMO MICHAEL SEDUMEDI: Yes Chair are you there?

ADV MAHLAPE SELLO: Okay I was inviting you to now deal with that response.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Alright, this response on 8657 the two issues that we picked up on page 8657 until page 8659 are the various options that CSR proposed to Transnet The difference in the main between the three options are the following:

Option one is when all 100 locomotives are assembled, manufactured and assembled in China as it appears from paragraph,

sub-paragraph 1 of 1.1, page 8657, right?

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Then if you look at Option two appearing on 8658 the difference on number one there is the sixty locomotives will be manufactured and assembled in China with the 40 in South Africa, assembled at TET, TET being Transnet Engineering a Division within Transnet.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Option three is the one that we
10 spoke about where the 40 locomotives will be manufactured and assembled in South Africa.

ADV MAHLAPE SELLO: 40 in China, 60 in South Africa.

MR TSHIAMO MICHAEL SEDUMEDI: 40 China, 60 in South Africa, so that's the difference between the three options, obviously as well the price difference between those three options, but (indistinct) central is that aspect in the payment terms.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Now what – and we now I can confirm to the Chair Option three was the one that was chosen,
20 confirmation for that you will find ...(intervention)

CHAIRPERSON: That is Option 1.3?

MR TSHIAMO MICHAEL SEDUMEDI: No Option three.

CHAIRPERSON: Oh Option three under paragraph 1.3?

MR TSHIAMO MICHAEL SEDUMEDI: Under 1.3

ADV MAHLAPE SELLO: That's correct.

MR TSHIAMO MICHAEL SEDUMEDI: That is the option that eventually was accepted by Transnet and confirmation of that you will find Chair on page 8672 which is an extract of the agreement that was concluded between CSR and Transnet.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: On this transaction, but later on we will take you through this specific document. Now what is key about this option three are two issues, the delivery that CSR proposed you recall that in the RFP Transnet wanted an expeditious delivery of the
10 locos, latest March 2015. This proposal, which is accepted, sets out proposals or indicate that they will deliver the first locomotive in February 2015, and the last one in September 2015. Now that whole urgency concept of this thing is urgent, it needs to be done quicker, CSR is not complying with that requirement.

Secondly the (indistinct) the fact that the RFP required 70%, CSR in its proposal of 14 March it says it can do 60% of the SD, that – so we are saying those two will indicate to us that their proposal itself was not compliant with that which we were requesting as Transnet.

ADV MAHLAPE SELLO: Now on that score if we have regard and
20 keeping our finger at 8659 if we have regard to the 100 RFP it – the RFP indicated that one of the conditions is payment and and I'm trying to locate my RFP, is payment of a 10% deposit on the achievement of certain milestones, do you recall that?

MR TSHIAMO MICHAEL SEDUMEDI: Correct yes Chair, 8663.

ADV MAHLAPE SELLO: 8663, thank you very much.

MR TSHIAMO MICHAEL SEDUMEDI: Yes, 4E.

ADV MAHLAPE SELLO: Yes sir. Now I read then what you say is Option three which was – is what was eventually contracted upon and I look at the payment conditions, they seem to be significantly higher the deposit payments than what was contemplated in RFP?

MR TSHIAMO MICHAEL SEDUMEDI: That is correct Chair and you will recall this was one of the issues that was raised by the earlier witnesses, (indistinct) in particular, but if you look at this payment condition it's 30% of the current amount to be paid before the contract comes into effect, as opposed to the 10% that was stipulated in the RFP.

ADV MAHLAPE SELLO: And it goes further to say 30% of the contract amount to be paid after designed review.

MR TSHIAMO MICHAEL SEDUMEDI: Correct but not later than six months after the effectiveness of the contract.

ADV MAHLAPE SELLO: So then in the first six months of signature of the contract 60% must be paid out and at that juncture there is not a single locomotive on the South African tracks?

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

20 **ADV MAHLAPE SELLO:** Okay do you know, were you able to determine on what basis Transnet accepted these very high payment conditions and did not comply with their own stipulation in the RFP of 10%, is there anything you are able to lay your hands on that could shed light on how this came to be?

MR TSHIAMO MICHAEL SEDUMEDI: Nothing on record Chair sheds

light on what would have informed Transnet's reasoning in accepting the terms that are not even in line with what was put up in the RFP.

ADV MAHLAPE SELLO: Is there a record of any negotiation around these issues between Transnet and CSR?

MR TSHIAMO MICHAEL SEDUMEDI: Not that was made available to us, even when we conducted our own forensic searching the imaging of the servers we could not pick up any of these issues.

ADV MAHLAPE SELLO: So with reference to what you have already referred the Chair to as the contract at 867 is the Chair entitled to
10 accept that on presentation of the option the option was accepted lock, stock and barrel without further query?

MR TSHIAMO MICHAEL SEDUMEDI: From the look of things because all the terms that are on Option three they found their way in the schedule to the LCA as it appears on page 8672.

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: Did you in the course of your investigation go back to – I'm going back to an issue that we dealt with maybe ten minutes, fifteen minutes ago, did you go back to the media to see how this negative publicity that the management was talking about which they
20 said was associated with the confinement of Project Tumatuwe, to see whether you were – you are able to see whether the negativity related to the identity of the entity or on the process of confinement?

MR TSHIAMO MICHAEL SEDUMEDI: No Chair we didn't go as far as that (indistinct) can be noted.

CHAIRPERSON: I would like that to be done.

ADV MAHLAPE SELLO: It shall be done Chair.

CHAIRPERSON: Go back to because they when they presented this submission three months later they seem to suggest that the negativity was connected with the identity of Mzuwe.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: So let's see whether if we check that, that will be ... (intervention)

ADV MAHLAPE SELLO: We shall Chair and we will provide you with all newspaper articles and such relating to that issue.

10 **CHAIRPERSON:** Ja, ja, ja, okay.

ADV MAHLAPE SELLO: Now we then have gone through page 31 of your slides and we have, you have expressed a view on the contract that was subsequently concluded on the terms, counter-proposed if I may say by CSR at your slide 32, you've dealt with those issues.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Thank you. You then want to deal with further – in further detail with some of the payments made in terms of the contract subsequently concluded with the CSR and and you start that at your slide 33.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Correct Chair, if we still keep our finger on that page 8672 Chair, that extra ... (intervention)

CHAIRPERSON: Page 86?

MR TSHIAMO MICHAEL SEDUMEDI: 8672.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Like I said this is a Schedule 1

being the pricing and payment terms of the agreement. In terms of this agreement in particular Clause 122B which appears on 8673 but we will obviously read it from Clause 122 first.

ADV MAHLAPE SELLO: So at the foot of 8672?

MR TSHIAMO MICHAEL SEDUMEDI: Yes, so let's start on page 8672, because that's where paragraph 1.2.2 starts.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: It says:

“No milestone payment shall be due ...”

10 We ignore A for now, it's not relevant for our discussion.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: And we go to B, that appears on page 8673, except in respect of the final payment, until the contractor has provided evidence (indistinct) to the company that the advance payment bond extends to the amount due in respect of that applicable milestone payment. All it says in a sense is that the contractor in this instance being CSR must provide Transnet with an advance payment guarantee or a bond as referred to in this clause before any milestone payment can be made, obviously bar the last (indistinct) being the final
20 payment so to understand you're going to make in advance payments let us have security because the whole rationale is for Transnet to have security for all the payments that it advances to their contractors.

Now in this transaction if you go to slide 34 Chair, we know there was a first milestone payment that milestone payment indeed there was an advance payment guarantee. However on 1 October when

we made payment of R1 320 000.

ADV MAHLAPE SELLO: R1 billion I guess.

MR TSHIAMO MICHAEL SEDUMEDI: Or R1 billion my apologies.

CHAIRPERSON: R1 billion.

MR TSHIAMO MICHAEL SEDUMEDI: R1 320

CHAIRPERSON: 320 million

MR TSHIAMO MICHAEL SEDUMEDI: Million

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: And 20 000 – we had to rehearse
10 with the I think it is the law how to pronounce this big figures Chair so
it is...

ADV MAHLAPE SELLO: I heard it right the first time Mr Sedumedi.

CHAIRPERSON: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: So this payment was made
without Transnet that is on that date of 1 October having received any
APG Advanced Payment Guarantee from Transnet.

ADV MAHLAPE SELLO: From CSR.

MR TSHIAMO MICHAEL SEDUMEDI: From CSR

ADV MAHLAPE SELLO: Yes.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** And I want to take the Chair to
the same Volume page 8686.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: It is an email dated the 10
October.

ADV MAHLAPE SELLO: Hm.

MR TSHIAMO MICHAEL SEDUMEDI: Addressed to Mr Anoj Singh from Mr Thamsanqa Gianni and copied Mdletshe and Ms Nomfuyo Galeni was at a stage a CFO at TFR.

ADV MAHLAPE SELLO: If I may just interrupt you shortly. Somewhere we forgot the transcribers. Thamsanqa Jiyane it is Thamsanqa

MR TSHIAMO MICHAEL SEDUMEDI: Nqa.

ADV MAHLAPE SELLO: Second name is Jiyane. This other name is Lindiwe Mdletshe, Lindiwe Mdletshe.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

10 **ADV MAHLAPE SELLO:** Thanks you may proceed.

MR TSHIAMO MICHAEL SEDUMEDI: Alright.

“Dear Chief I am aware that the issue of the payment to CSR without an APG exposes Transnet. I take full responsibility to the payment being effected without the APG being issued and finance paid on an instruction from my office. If you [indistinct] which led to the APG not being issued on time and we are not clear – and we are not clear as to CSR on when exactly the payment will be made.”

20 So this email seems to accept on the face of it that it was improper or Transnet was put on risk when this payment was made without an APG being in place and Mr Jiyani on this score accepts that he is the one that caused the payment to be done without an APG. So it is clear that this as well was in breach of that clause 1 22B that I had earlier quoted which is a schedule to the [indistinct] requires that prior to any advance

payment being done at least minus the last [indistinct] payment there ought to be an APG in place.

ADV MAHLAPE SELLO: Now remind us what – what position did Mr Jiyani hold at this point within Transnet?

MR TSHIAMO MICHAEL SEDUMEDI: Mr Jiyani at that time was the Chief Procurement Officer at Transnet Freight Rail.

ADV MAHLAPE SELLO: Understanding as you do the policies and procurement policies and delegations of authority within Transnet did Mr Jiyani have any authority to authorise payment of that 1.3 billion
10 without the necessary guarantee in place?

MR TSHIAMO MICHAEL SEDUMEDI: Definitely not Chairperson.

ADV MAHLAPE SELLO: So in as he states taking full responsibility for that payment...

CHAIRPERSON: I am sorry. What is the basis for saying he was not?

MR TSHIAMO MICHAEL SEDUMEDI: Because in terms of the [indistinct] it will indicate who are the parties that would have authority to alter the terms of any agreement that Transnet would have with its suppliers.

CHAIRPERSON: Hm.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** [Indistinct] just a Chief Procurement Officer responsible for procurement of goods and safety. So she took responsibility for all applicable aspects. As soon as now there is a contractual in [indistinct] that function it is out of his pay view and even terms of the amounts the amount that we are speaking about here did not fall within his delegated authority.

CHAIRPERSON: Yes you see it is one thing if somebody from Transnet telling me that. You are not from Transnet. So that is why I am asking.

MR TSHIAMO MICHAEL SEDUMEDI: Okay.

CHAIRPERSON: What the basis? Is it because you have seen?

MR TSHIAMO MICHAEL SEDUMEDI: We have seen.

CHAIRPERSON: Relevant documents that set out who has what power and who does not have what power.

MR TSHIAMO MICHAEL SEDUMEDI: My apologies I just [indistinct] yes. As part of our investigation we did peruse various documents that
10 indicated who had what particular authority within Transnet.

ADV MAHLAPE SELLO: So you tested whether or not Mr Jiyani would have had the authority to instruct treasury in the manner that he did to pay the R1.3 billion.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: And having done that interrogation you satisfies yourselves that he did not have such authority?

MR TSHIAMO MICHAEL SEDUMEDI: That is correct yes.

CHAIRPERSON: And who would have had the authority?

MR TSHIAMO MICHAEL SEDUMEDI: The – I do not have the
20 documents in front me but definitely in terms of the amounts

CHAIRPERSON: Ja.

MR TSHIAMO MICHAEL SEDUMEDI: This would have been a sum that falls within – at the very least would have been...

CHAIRPERSON: Would have been the Chief.

MR TSHIAMO MICHAEL SEDUMEDI: Would have been – at the Group

level if [indistinct] maybe even the Chief Executive but definitely not anybody below ...

CHAIRPERSON: Not the [indistinct] lower.

MR TSHIAMO MICHAEL SEDUMEDI: Not anybody below the level of Chief.

CHAIRPERSON: The Group Chief.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Then perhaps I am sure it would not be too
10 much of an imposition for you to look through that tonight and perhaps tomorrow with reference to the delegation of authority and any other relevant policy you would be able to definitively answer the question and point the Chair to the relevant clauses.

MR TSHIAMO MICHAEL SEDUMEDI: That is correct. I will do certainly.

ADV MAHLAPE SELLO: So then my question is when Mr Jiyani under those circumstances states: I take full responsibility for payment of the 1.3 billion without an APG being issued an in place that is cold comfort to Transnet? What is your view?

20 **MR TSHIAMO MICHAEL SEDUMEDI**: Being a lawyer you always say this comfort as cold as it may sound it is not something that fell within the mandate of Mr Jiyani. No matter how noble the intention might have been or the fact that his [indistinct] full responsibility. Taking full responsibility that means then the consequences must follow because you then breached our policies as Transnet.

ADV MAHLAPE SELLO: So you are saying he did not even have authority to give comfort? Okay. Yes. Anything else you would like to draw the Chair's attention to at 8686 that email?

MR TSHIAMO MICHAEL SEDUMEDI: No that is basically [indistinct] special issues.

ADV MAHLAPE SELLO: Before then you go my question to you is when you look at that email the last paragraph before the salutations it reads:

“There is another payment due in 5 days and I know that we will be
10 engaging CSR to delay the payment. We may end up in the same situation once more.”

CHAIRPERSON: I am sorry.

ADV MAHLAPE SELLO: 8686 Chair.

CHAIRPERSON: Ms Sello. I am interrupting you but we should have discussed this earlier.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: I have in mind that we should try and go beyond four o'clock today.

ADV MAHLAPE SELLO: Yes Chair.

20 **CHAIRPERSON:** If that is fine with you and the witness. On Thursday we might not be able to sit after lunch.

ADV MAHLAPE SELLO: Oh.

CHAIRPERSON: So therefore it is necessary to try and make sure that the hours that we will not sit we make for them here by adding some hour – extra hours. But I am not sure in terms of your line up of

witnesses how that might affect your line up.

ADV MAHLAPE SELLO: It does impact Chair in this sense. I was hoping to have finished with three witnesses by Thursday.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: That was assuming that we will run until Thursday close of business.

CHAIRPERSON: Yes. But of course...

ADV MAHLAPE SELLO: Now it is not going to happen we accept that.

CHAIRPERSON: Yes.

10 **ADV MAHLAPE SELLO:** So I am trying to think how we – we make up.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: As things stand we were supposed – the aim had been to finish with Mr Sedumedi today.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Because the next witness is going to become fairly technical and the pace would be slower.

CHAIRPERSON: YEs.

ADV MAHLAPE SELLO: But we will not be achieving that.

CHAIRPERSON: Yes. Maybe what...

20 **ADV MAHLAPE SELLO:** We may try

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Today we run to perhaps five o'clock.

CHAIRPERSON: Five o'clock ja

ADV MAHLAPE SELLO: And we start tomorrow at nine o'clock.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Until five.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And we have another early start on Thursday.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And see where we are at on Thursday lunch
Chair.

CHAIRPERSON: Yes because...

ADV MAHLAPE SELLO: And another – a different witness – okay –
true still relating to Transnet.

10 **CHAIRPERSON:** Ja.

ADV MAHLAPE SELLO: Was scheduled for Friday and at the current
planning he would take the whole day.

CHAIRPERSON: Yes. Because if we do not sit after lunch on Thursday
we would lose two or three hours.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: If before – I mean on Thursday. If before Thursday
we add these hours that we are adding we certainly will make up for the
loss of two or three hours.

ADV MAHLAPE SELLO: Yes definitely Chair.

20 **CHAIRPERSON:** So but for today we can go up to five?

ADV MAHLAPE SELLO: We can go up to five.

CHAIRPERSON: We can go up to five.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: And then maybe – and tomorrow we can start at nine?

ADV MAHLAPE SELLO: We can start at nine.

CHAIRPERSON: We can start at nine.

ADV MAHLAPE SELLO: I am happy to.

CHAIRPERSON: YEs.

ADV MAHLAPE SELLO: Mr Sedumedi you are available? Yes Chair.

MR TSHIAMO MICHAEL SEDUMEDI: I am.

CHAIRPERSON: Is going up to five fine with you today?

MR TSHIAMO MICHAEL SEDUMEDI: It is very fine Chair.

CHAIRPERSON: And starting at nine tomorrow it is fine?

MR TSHIAMO MICHAEL SEDUMEDI: Very fine Chair.

10 **CHAIRPERSON**: Okay no that is fine. Let us do that and then maybe tomorrow at some stage you can talk to me about how not sitting on Thursday afternoon might affect your

ADV MAHLAPE SELLO: What affect it has?

CHAIRPERSON: Might affect your line up of witnesses but obviously we – we are certainly going to end up using not less hours than we were going to use in the whole week. And it is a question of probably whether witnesses are able to come a bit earlier where it is necessary to do so.

ADV MAHLAPE SELLO: I am sure we can manage that on our side
20 Chair.

CHAIRPERSON: Ja. Okay.

ADV MAHLAPE SELLO: Let us see how far we get.

CHAIRPERSON: Okay thank you. Then we can take an adjournment – a short adjournment at four.

ADV MAHLAPE SELLO: At four.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Ja, ja and then – and then resume and continue up to four – up to five.

ADV MAHLAPE SELLO: We will thank you Chair.

CHAIRPERSON: Okay thank you.

ADV MAHLAPE SELLO: Mr Sedumedi we were still at 8686 and out of interest that last paragraph before the salutations there that refers to another payment being due in five days from the date of the email and
10 states that quote, unquote “we will be engaging CSR to delay the payment we may end up in the same situation once more.” My first question I do not know if you looked into this issue? What payment would have been due in five days based on the terms of the contract as at 10 October 2014? What next payment could – is Mr Jiyani conceivably talking of?

MR TSHIAMO MICHAEL SEDUMEDI: That Chair because if I – if I look at the schedule of payments.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: That on the face of the document
20 ought to be effect [indistinct] payment payable on the date of issuance of an acceptance certificate for a locomotive. So presumably reading this email in relation to the agreement that payment would be relating to an – in certain [indistinct] of the contract price being when the first locomotive passes an acceptance test.

ADV MAHLAPE SELLO: But then that is where my confusion arises

becasuse...

MR TSHIAMO MICHAEL SEDUMEDI: Ja it does as well.

ADV MAHLAPE SELLO: Because on CSR's counter offer the first locomotive would roll off the line in February 2015?

MR TSHIAMO MICHAEL SEDUMEDI: Yes.

ADV MAHLAPE SELLO: And reading Mr Jiyani's email of 10 October 2014 he says another payment is due in 5 days so that would presumably be around 15th, 16th October?

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

10 **ADV MAHLAPE SELLO:** How do I reconcile all these – you have not...

MR TSHIAMO MICHAEL SEDUMEDI: No. We have not because evidently that sentence in any event is not even in line with the payment terms.

ADV MAHLAPE SELLO: Absolutely.

MR TSHIAMO MICHAEL SEDUMEDI: As appearing on the agreement itself.

ADV MAHLAPE SELLO: Absolutely.

MR TSHIAMO MICHAEL SEDUMEDI: So it – quite keen to see what payment was he referring to. But I did speak to this transaction

20 [indistinct] I am not quite sure on that one.

ADV MAHLAPE SELLO: Well if the – if the email is anything to go by it would seem to be the same transaction.

MR TSHIAMO MICHAEL SEDUMEDI: It is correct.

ADV MAHLAPE SELLO: As [indistinct] ja. And are you aware of a further payment made subsequent to this 1.32 billion in the course of

your investigations did you look at that – any other payments?

MR TSHIAMO MICHAEL SEDUMEDI: Yes because obviously there were other payments because the locomotives were delivered so some [indistinct] which entitled CSR to be paid indeed were achieved. So there were payments that were done but those payments seemed to have at least have had the required APG's.

ADV MAHLAPE SELLO: But besides the two that you refer to at your slide 34 are you suggesting the third payment was when delivery started taking place of the locomotives?

10 **MR TSHIAMO MICHAEL SEDUMEDI:** That is something that I cannot speak off the cuff but I think by tomorrow we can [indistinct] but I know my colleagues...

ADV MAHLAPE SELLO: Be able to achieve that.

MR TSHIAMO MICHAEL SEDUMEDI: Always had these spreadsheets that were indicating various payments that were made to CSR so by tomorrow morning we will be able to confirm this aspect.

ADV MAHLAPE SELLO: Okay. According to your slides that would then bring you to the conclusion of the issues you deal with in your report on 100 locomotives?

20 **MR TSHIAMO MICHAEL SEDUMEDI:** That is correct Chair.

ADV MAHLAPE SELLO: On your current slides that would then take us to 1064?

MR TSHIAMO MICHAEL SEDUMEDI: Indeed.

ADV MAHLAPE SELLO: Okay. We are ready when you are.

MR TSHIAMO MICHAEL SEDUMEDI: I am. The – on slide 38 Chair we

just indicate the various topics that we will be addressing when we present the – our findings on 1064.

ADV MAHLAPE SELLO: Yes go ahead.

MR TSHIAMO MICHAEL SEDUMEDI: Again as you can see that will be the business case itself but we will not delve much into it because amongst others Mr Callard had dealt with it. We will speak to the unlawfulness of the RFP that was issued. Again the changes that occurred during the [indistinct] process of 1064. The non-compliance with local content and production, batch pricing, the Tequesta
10 agreement and the increase in the ETC. Even though I will not necessarily speak about that in depth because there is another witness who will speak to those items.

ADV MAHLAPE SELLO: Sorry just to get clear. You will speak on everything on that list of contents in detail except to the extent necessary except the increase in ETC?

MR TSHIAMO MICHAEL SEDUMEDI: In the ETC.

ADV MAHLAPE SELLO: Because that is for another witness?

MR TSHIAMO MICHAEL SEDUMEDI: Yes but the ETC that we will be speaking about here will be mainly relating to the failure of Transnet to
20 obtain the requisite approval or reporting the transaction to its executive authority being the shareholder Minister.

ADV MAHLAPE SELLO: Okay.

MR TSHIAMO MICHAEL SEDUMEDI: Now again by [indistinct] background just to recall 1064's part of the 1202 and you also confirm that on 23 July 2012 the Transnet issued the tender for the

procurement of 1064 and just to note Chair but just for noting nothing much will come out of it in terms of our presentation that by the time the tender was issued the business case that we are talking about was not yet finalised. So the tender went out before the business case was approved. Because the business case was only approved sometime April 2013 when the tenders went out a year earlier.

ADV MAHLAPE SELLO: So on that score then what was the tender based on if not on the business case?

MR TSHIAMO MICHAEL SEDUMEDI: During those early days a draft
10 document was – Mr Callard did indicate that he had worked on the business case which was presented to TFRIC Transnet Freight Rail Investment Committee.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: And CAPIC that is the Capital Investment Committee but at that structure it was then decided that the business case must be given to an external service provider insistence when it was McKinsey to validate the business case because there were some issues that the committee had with some of the assumptions and other issues that were presented to them so the business case was
20 not approved it was then given to McKinsey who only finalised their work because late on in early April, March 2013 for its adoption in 2013. So we are quite correct when it was issued the business case was not there but some elements coming out of the drafts of the business case already you could see them being reflected in the scope of work that was contained in the RFP albeit not yet approved by the

board.

ADV MAHLAPE SELLO: Did you test the lawfulness or appropriateness of that approach?

MR TSHIAMO MICHAEL SEDUMEDI: Those of us who are purists in procurement will tell you that SCM Supply Chain Management starts with Demand Management. So Demand Management you must ensure that all the things – first and in fact what is it that you need? How must it be procured? What is the value of that transaction? That then closes up issue of demand. We have now established I need so much
10 of the goods that must be procured. This is how they have been costed and this is the value and this is how we are going to procure them. So that is where now the business case comes in. In actual fact the – subsequent the 2012 procurement procedure manual of Transnet demands that. It says before you got on tender all procedures should have been completed. But what you must state though is that by the time this one went out the applicable PPM was at 200 2009 PPM that did not elaborate at length the steps [indistinct] about Demand Management, Acquisition Management, Procurement and Control Management. So that is a notion that you always know that before you
20 could procure at least have a business case that informs that which you are procuring. It is why as well now if you look at evaluation [indistinct] to know that when you are asked some of the officials when we interviewed to what extent did you use the business case when you evaluating now they did not even have regard to the business case. So ja. Even though on our report we did not necessarily make that finding

but that is something that we noted to say by the time this was issued there was no approved business case at the time but there was an approval from the board that the procurement was taking place earlier acknowledge the fact that the business case is still underway but – and the principles coming out of it were presented to the board.

ADV MAHLAPE SELLO: Okay.

MR TSHIAMO MICHAEL SEDUMEDI: So that is the furthest that we could take that point.

ADV MAHLAPE SELLO: Okay thank you. You may proceed then with
10 your slide presentation it now takes us to ...

MR TSHIAMO MICHAEL SEDUMEDI: Now if we now got to slide 40?

ADV MAHLAPE SELLO: What is it now? Yes slide 40.

MR TSHIAMO MICHAEL SEDUMEDI: We now look at testing the lawfulness or otherwise of the RFP document.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: Like you said the board approved the RFP process in 25 April 2012.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: The actual advert not the
20 documents were advertised on the 15 July 2012.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: That we will find on that part of the record. We make mention only as dealing with 100 Chair I did bring to your attention the fact that at least on the 16 July there was this instruction note that required bidders to have a local – there is a local

production and content. So that principle becomes relevant again in this transaction. And we just quoted that extract again. Now this instruction note provides that those who meet the threshold must be evaluated on the basis of 80/20 orientation depending on the value of costs of the transaction. Now that requirement at a stage was a bit of a problem for Transnet why and I will show the Chair in the next slide. All skilled 2 entities those are the major public entities that are on schedule 2 of the PFMA were exempted from certain provisions of the PFMA. Maybe what we must look at if you allow me so that maybe deal

10 with that.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: And then come back to slide 41.

ADV MAHLAPE SELLO: Okay.

MR TSHIAMO MICHAEL SEDUMEDI: On slide 42 it is a summary of the exemption that was issued from the 7 December 2011 expiring I think around about 7 December 2012 so it was a year's exemption. The items on the left those are the provisions which – in which entities like Transnet were exempted from that is a regulation 2.2 that confirms that an organ of state must supply the PPPFA. Key 1 again there is

20 evaluation on 80/20 and 90/20 they were exempted from using that criteria. What they were not exempted from appears on the right column being what is relevant is regulation 9. On [indistinct] for local content and production. So it was not – you are not exempted from not compliance provision you were required in an event that you are – you fall within the general sector you are either required to least comply

with us – requirement and as well obvious reasons the issue of the tax clearance certificate. Now if you go back to slide 41.

ADV MAHLAPE SELLO: Hm.

MR TSHIAMO MICHAEL SEDUMEDI: At that time Transnet was not using a 90/10 evaluation criteria. So when this came up it became apparent that they now have to abandon the criteria they have been using all along and use 90/10. All get a further exemption from the Minister. So they then decided to split the RFP into two. Part 1 and part 2. Part 1 dealt mainly with the technical scope of work. So issues
10 relating to evaluation were deferred to a later date when they were hoping that at that stage when they issue part 2 the whole exemption process would have been completed and probably then would have obtained an exemption from treasury.

ADV MAHLAPE SELLO: Before.

MR TSHIAMO MICHAEL SEDUMEDI: So that is what the issue was all about.

ADV MAHLAPE SELLO: Before you go further.

MR TSHIAMO MICHAEL SEDUMEDI: Ja.

ADV MAHLAPE SELLO: I am at your 42. Are we to understand –
20 standing this manner and I will call it the 2011 exemption.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: The 2011 exemption which was in place for a period of one year exempted Transnet from – entirely Transnet from the provisions – certain provisions of the PPPFA?

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: That exemption however did not include regulation 9?

MR TSHIAMO MICHAEL SEDUMEDI: That is correct Chair.

ADV MAHLAPE SELLO: So regulation 9 dealing with designated sectors for local content production was never part of the first exemption?

MR TSHIAMO MICHAEL SEDUMEDI: Yes. I understand it was never part of the exemption at all.

ADV MAHLAPE SELLO: So when the decision is taken to split the
10 RFP's to await a decision a decision could only have been in respect of Transnet now getting a further exemption which is in respect of 9 which it did not have in terms of 2011 exemption?

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Is that correct?

MR TSHIAMO MICHAEL SEDUMEDI: With specific reference to how to evaluate the bids that made the threshold, correct.

ADV MAHLAPE SELLO: In terms on 9?

MR TSHIAMO MICHAEL SEDUMEDI: In terms of 9 that is right.

ADV MAHLAPE SELLO: Chair I think we are on to your – four o'clock.

20 **CHAIRPERSON:** Okay we will take a short adjournment of ten minutes so we will resume at ten past four. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed.

ADV MAHLAPE SELLO: Thank you Chair. Mr Sedumedi we are into the last mile for the day. You have just taken us through the 2011 exemption and the peculiarities of Regulation 9 which you – you indicated that – which you indicated that Transnet had never been exempt for?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Okay. You can take your discussion from there. Your mic please, thank you.

TSHIAMO MICHAEL SEDUMEDI: Apologies. So like I said in – in the
10 (indistinct) Transnet was quite aware of this challenge. It is why they issued part – deferred the issuance of part – Part B or Part 2 out of (indistinct) stage hoping to get this exemption. Now despite that exemption that had been forthcoming Transnet nevertheless in December issued the second part of the RFP with the following criteria which was not in line with the long term requirement on slide 43. The Chair can just focus on stage 6. You will note that stage 6 is an extract of the evaluation criteria taken from the RFP document as it appears on volume 2 page 4527. You will note there Chair that (indistinct) is 90 for price – 90 points for price and 10 points for B-BBEE. In this regard
20 Transnet issued the bid with an (indistinct) it was 60/20 – 60 percent for price, 20 for SD and 20 for B-BBEE. This typically would have been the criteria that they used during the exemption period. Now on slide 44 like I said you will see Transnet was quite aware of this requirement. Now we had a letter in volume 1 page 43 – 4316.

ADV MAHLAPE SELLO: Volume 1?

TSHIAMO MICHAEL SEDUMEDI: Volume 1.

ADV MAHLAPE SELLO: 4316?

TSHIAMO MICHAEL SEDUMEDI: It is a ...

ADV MAHLAPE SELLO: 4316 Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Volume 1 for the record.

CHAIRPERSON: Thank you. Got it.

ADV MAHLAPE SELLO: Thank you Chair.

TSHIAMO MICHAEL SEDUMEDI: Chair this is a letter from the former
10 Honorary Minister Malusi Gigaba who was at that time the Minister of
Public Enterprises.

ADV MAHLAPE SELLO: Huh-uh.

TSHIAMO MICHAEL SEDUMEDI: This correspondence is addressed in
the context of this consternation that I made mention of earlier of
saying the impact that it was becoming apparent that this specific
(indistinct) was going to affect how Transnet all along have been
evaluating its bids. So I think it will probably that one reads at least
the first two paragraphs of that letter because what – what is – because
I do not know should I read that or should I summarise as per my slide?
20 **ADV MAHLAPE SELLO:** Whatever works best but I think it is
appropriate we place the letter fully on record with reference to the
date it was issued ...

TSHIAMO MICHAEL SEDUMEDI: Okay.

ADV MAHLAPE SELLO: And the subject matter as per the heading
line.

TSHIAMO MICHAEL SEDUMEDI: Okay. This letter is from the Minister of Public Enterprises dated 7 December 2012.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Addressed to the then Chairperson of the Board Mr Mafika Mkhwanazi. The subject is the Preferential Procurement Policy Framework Act and the Locomotive Fleet Procurement.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: It reads thus:

10 “There are a number of unresolved issues pertaining to the extension of exemption to State Owned Companies from Regulations 2.2 through to eight and so forth.”

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: “I believe that these issues can have a material impact on the ability of Transnet to extract optimal commercial developmental and transformational value from strategy procurements. Given the situation ...”

20 **ADV MAHLAPE SELLO:** And you – you are reading the first paragraph of that letter?

TSHIAMO MICHAEL SEDUMEDI: That is the first paragraph ...

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: This letter Chair.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: Second paragraph.

“Given the situation I am personally engaging with the Minister of Finance to resolve these issues and I am confident we will come to a mutually agreeable outcome. In the meantime Transnet should continue to procure as if the extension to the exemption is in place. In addition no communication should take place between the SOC and National Treasury pertaining to the PPPFA until
10 the situation has been resolved.”

ADV MAHLAPE SELLO: Huh-uh.

TSHIAMO MICHAEL SEDUMEDI: “Should any queries be directed to the SOC from National Treasury regarding the PPPFA please refer National Treasury to my office.”

So the import of this letter as is apparent from those two paragraphs was that the Honourable Mr (indistinct) operate as if the exemption is still in place in the sense and I think in particular you see in the last paragraph – you know – I must read that because that is where the
20 issue is. Let us just read that third paragraph.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: “I am aware that Transnet is anxious to proceed with the procurement of the 1 064 locomotives. With regard to the instruction note relating to the invitation and evaluation of –

based on a stipulated minimum threshold for
(indistinct) production content for the (indistinct).”

This Chair is the same Practice Note that we spoke about earlier on.

ADV MAHLAPE SELLO: Of July 2012?

TSHIAMO MICHAEL SEDUMEDI: Of July 2012.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: “Transnet should not –
should procure taking the designation of thresholds
into account meaning indeed you must have a
10 requirement for local content and production.”

CHAIRPERSON: So effectively saying apply it in the meantime?

TSHIAMO MICHAEL SEDUMEDI: Apply ...

CHAIRPERSON: Do not ignore it?

TSHIAMO MICHAEL SEDUMEDI: Do not ignore it. Now the next
paragraph is an important one.

20 “However Transnet should not feel constrained by
Section 5.1.2 of the Instruction Note and should
rather establish an (indistinct) framework that
provides reasonable incentives to suppliers to
support our (indistinct) and transformation
objectives.”

Clause 5.1.2 of the Practice Note is the one that said:

“Those bidders that meet the threshold must be
evaluated on a 90/10 basis.”

So in this paragraph the Minister is saying do not feel obliged or

constrained by that Clause 5.1 to apply a different framework that will optimise what are benefits that at - Transnet at that stage envisaged to derive when they apply a 60/20/20 formulation. Now the view that we (indistinct) with due respect to the Minister as noble as maybe the intentions might have been but he is not having the authority to override the law and prescribe any criteria that is not part of the Instruction Note. So to the extent that the RFP then did not comply with the agreement that RFP was irregular as it offends the principle of (indistinct).

- 10 **ADV MAHLAPE SELLO:** And if you – you may confirm that Treasury Notes issued by Treasury derived (indistinct) from the PFMA?

TSHIAMO MICHAEL SEDUMEDI: The PFMA, correct.

ADV MAHLAPE SELLO: So then that – the RFP was issued with a different scoring framework. Instead of 90/10 they went for 60/20 – 60 price, 20 SD, 20 B-BBEE ...

TSHIAMO MICHAEL SEDUMEDI: Hm.

ADV MAHLAPE SELLO: As appears at your slide 43.

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: Okay.

- 20 **CHAIRPERSON:** So with regard to the previous ones that we were dealing with there was no reference to this local content requirement at all?

TSHIAMO MICHAEL SEDUMEDI: Correct because remember the previous...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: Transaction there have been the –
you must remember 95 ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: But 95 occurred when the Practice
Note was not in place.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: 100 ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: Like you said earlier on required this
10 ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: Practice Note was already in place.
So it ought to have been ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: But the - the question that Chair
asked earlier ...

CHAIRPERSON: Hm.

TSHIAMO MICHAEL SEDUMEDI: To say whether when we were dealing
with 100 whether other RFPs ...

20 **CHAIRPERSON:** Yes.

TSHIAMO MICHAEL SEDUMEDI: Did they have (indistinct).

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO:

TSHIAMO MICHAEL SEDUMEDI: If the Chair can go to slide 43.

CHAIRPERSON: What page?

TSHIAMO MICHAEL SEDUMEDI: Slide ...

CHAIRPERSON: Slide 43?

TSHIAMO MICHAEL SEDUMEDI: 43.

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: The Chair will note that on stage 3 ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: Indeed local content was factored in.

CHAIRPERSON: Okay.

TSHIAMO MICHAEL SEDUMEDI: Local production 55 percent for
10 diesel and 60 percent for electric.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Okay. You may proceed.

TSHIAMO MICHAEL SEDUMEDI: So that – those were our findings on
that part of the RFP.

ADV MAHLAPE SELLO: And you conclude on that topic at slide 44 to
point out that Transnet did not have the authority to deviate from the
provisions of the Instruction Note?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: But they did nonetheless?

20 **TSHIAMO MICHAEL SEDUMEDI:** They did nonetheless.

ADV MAHLAPE SELLO: You may proceed with your presentation.

TSHIAMO MICHAEL SEDUMEDI: Okay. The next slide this slide just
in terms it deals with the changes to the evaluation criteria. The tender
specifications for 1 064 in particular – I think – it was Annexure K it
detailed the specifications order that the bidders must comply with. It

is called Bo-Bo and Co-Co Chair. Bo-Bo and Co-Co simply refers to the type of an axle of a locomotive, alright. You must arrange with Mr Callard. He is the one who explained this to me the (indistinct). In a sense a Bo-Bo is two axle because it is A-B so that is two. Co-Co is three axle that is where C comes from. So it is Co-Co. So there is – it is not like it is some cartoons or some – so it is Bo-Bo for a two axle and Co-Co for a three axle. So that is what the bidder can submit either a Bo-Bo or a Co-Co.

ADV MAHLAPE SELLO: So we should not take Bo-Bo and Co-Co to be
10 characters in some cartoons?

TSHIAMO MICHAEL SEDUMEDI: That is what I am saying.

ADV MAHLAPE SELLO: Okay. I take note.

TSHIAMO MICHAEL SEDUMEDI: Now in response to that again indeed the – the bidders responded by submitting either a Bo-Bo or a Co-Co. Now in a case of the required – the bids were for electrics – 599 electrics and – sorry - it was for electrics and for diesels. Now on the electric bidders the table that you see there is an extract from the functionality evaluation that was conducted by the CFET technical because there was a CFET technical and CFET finance. So the
20 technical were evaluating the functionality. In terms of the criteria only those that need 80 percent functionality would progress to a next phase of evaluation. If you cannot do that it means then you are incapable of providing what which Transnet required. Now on the Bo-Bo was to show that indeed it was a requirement of the RFP. The team evaluated all the submissions. This table is a result of them evaluating Bo-Bo.

Five bidders met the 80 percent threshold only (indistinct) was 72 percent. There was a Bo-Bo. In the same box other bidders - in the same bid – other bidders would have had both. So they also evaluated Co-Co submissions. Now in this instance CNR only submitted a Bo-Bo submission. Which is why if you look at the results on page 46 CNR joined (indistinct) in not meeting the requirements. In actual fact it was (indistinct). They did not submit a Bo-Bo – sorry – a Co-Co proposal. Now during that process when you review documents we are advised that Supply Chain Services advised the team that Transnet no longer
 10 requires Bo-Bo submissions. They must only consider Co-Co submissions. So therefore exclude Bo-Bo bidders when you progress to the next stage. Not that led to a situation where at CNR who only submitted a Bo-Bo could not progress to the next phase of evaluation.

ADV MAHLAPE SELLO: Huh-uh.

CHAIRPERSON: Was the requirement not earlier that each bidder should submit both Bo-Bos and Co-Cos?

TSHIAMO MICHAEL SEDUMEDI: And/or.

CHAIRPERSON: Oh it was and/or.

TSHIAMO MICHAEL SEDUMEDI: And /or.

20 **CHAIRPERSON:** Okay.

TSHIAMO MICHAEL SEDUMEDI: In – in actual fact on the diesel side ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: Bidders submitted Co-Co submissions.

CHAIRPERSON: Only?

TSHIAMO MICHAEL SEDUMEDI: Only without any Bo-Bo submissions

...

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: And they proceeded ...

CHAIRPERSON: *Ja.*

TSHIAMO MICHAEL SEDUMEDI: To the next level. So in this instance the only person who could not proceed was CNR because they did not submit any Co-Co proposal.

10 **CHAIRPERSON:** Okay. I think you are – what you said about a minute ago seemed to me to suggest that there was a change of rules?

TSHIAMO MICHAEL SEDUMEDI: Correct.

CHAIRPERSON: Okay. Just talk to that again.

TSHIAMO MICHAEL SEDUMEDI: Okay.

CHAIRPERSON: I must have missed something. I want to understand that.

TSHIAMO MICHAEL SEDUMEDI: Alright. The CFET – because this advert on the minutes of a CFET it says that a decision was taken by Supply Chain Services. They got memorandum from someone at TFR
20 that only Co-Co submissions must be considered and exclude Bo-Bo submissions. So therefore when evaluate (indistinct) you have done this evaluation but do not progress any person with a Bo-Bo because Transnet has taken a decision to procure only Co-Co submissions.

CHAIRPERSON: So – so initially the – in terms of the request for proposals ...

TSHIAMO MICHAEL SEDUMEDI: *Ja.*

CHAIRPERSON: You may – as a bidder you may submit a Bo-Bo or a Co-Co or both.

TSHIAMO MICHAEL SEDUMEDI: Or both, correct.

CHAIRPERSON: *Ja* and then at a certain stage before the evaluation exercises either started or finalised at a certain stage that rule is changed that requirements is changed?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: And it is now said only the evaluation bidders –
10 bidders bids must be evaluated only in relation to Co-Cos?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: So if you submitted a Bo-Bo or Bo-Bos that means you are disqualified now?

TSHIAMO MICHAEL SEDUMEDI: Correct. In actual fact Chair that is what is important. The fact that the CFET at (indistinct) evaluated Bo-Bo because at that stage the rule was not changed.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: Because otherwise they would not have

20 **CHAIRPERSON:** Yes, yes.

TSHIAMO MICHAEL SEDUMEDI: Even bothered to evaluate the Bo-Bo submissions.

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: So the rule was changed after ...

CHAIRPERSON: After the evaluations?

TSHIAMO MICHAEL SEDUMEDI: After the evaluation at least of the ...

CHAIRPERSON: Of some of the ...?

TSHIAMO MICHAEL SEDUMEDI: Of the functionality ...

CHAIRPERSON: Of the functionality?

TSHIAMO MICHAEL SEDUMEDI: Correct yes.

CHAIRPERSON: Okay. So – but subsequent to that the rule was changed to say have no regard to ...

TSHIAMO MICHAEL SEDUMEDI: Bo-Bo,

CHAIRPERSON: A Bo-Bo?

10 **TSHIAMO MICHAEL SEDUMEDI:** Correct.

CHAIRPERSON: Only have regard to Co-Cos?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

CHAIRPERSON: So which meant that if you had been – you had submitted a Bo-Bo or Bo-Bos then you would not proceed?

TSHIAMO MICHAEL SEDUMEDI: Correct. As it is apparent on this table ...

CHAIRPERSON: Yes.

TSHIAMO MICHAEL SEDUMEDI: That indicates that CNR at the bottom ...

20 **CHAIRPERSON:** Got zeros?

TSHIAMO MICHAEL SEDUMEDI: It got zero because there was no submission to be evaluated from them.

CHAIRPERSON: The rules are changing.

ADV MAHLAPE SELLO: Chair?

CHAIRPERSON: Rules are changing. Yes, okay. Proceed.

TSHIAMO MICHAEL SEDUMEDI: Now the conclusion is similar to obviously the – similar that we arrived at for 95 is that it was irregular for Transnet to deviate from the prescribed specifications and the criteria that was stipulated in the RFP because it then deprived Transnet of a benefit of evaluating all competitive bids because in terms of the RFP it did require all those that passed 80 percent to be assessed now on price. Now here we are as Transnet. Now we do not have the benefit of actually seeing if maybe CNR would have been the one of cheaper – I would not say (indistinct) – but it is that opportunity
 10 which was deprived of us in view of the fact that there was now this change in the (indistinct) because I mean the bidders submit their bids in line with what is contained in the specifications. Now if you (indistinct) change the rules of the game it affects the whole motion of fairness and competitiveness of the procurement process.

ADV MAHLAPE SELLO: Is there and document that perhaps sheds light on the reasons for the change introduced by Transnet that they no longer desire Bo-Bo but will confine themselves to Co-Cos?

TSHIAMO MICHAEL SEDUMEDI: On the documents that you peruse that reason is not apparent but I know for a fact that during our
 20 interviews as well we did bring this to the attention of Mr Jiyane was the Chief Procurement Officer and asked him really why as procurement – you are Chief Procurement Officer. A change in the evaluation criteria at this late stage is surely irregular. What was the reason? He said that is (indistinct) that I cannot (indistinct) say. I must just double check what did Transnet – but I know he made mention of a CEO or

somebody who then said in actual fact having thought of the matter he thinks the Co-Co would suitably be better a product for Transnet than Co-Co.

ADV MAHLAPE SELLO: Than Bo-Bo?

TSHIAMO MICHAEL SEDUMEDI: Than Bo-Bo.

CHAIRPERSON: Yes.

ADV MAHLAPE SELL: Yes. It is getting on in the day.

CHAIRPERSON: It has got – it has got to be a Bo-Bo.

ADV MAHLAPE SELLO: Okay. So that – that was the first feature of
10 unlawful change of evaluation - of an evaluation process that you speak
of?

TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: Then moving on then with your slide
presentation.

TSHIAMO MICHAEL SEDUMEDI: This now again is the change that
occurred when there was an evaluation of the financial offers or the
bids - the financial component of the submissions and if - there is a
CFET Report Finance ...

ADV MAHLAPE SELLO: Yes.

20 **TSHIAMO MICHAEL SEDUMEDI:** That appears on EXHIBIT BB4B page
644. This is a document that was used by Mr Callard in his testimony.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: It shows that there was this Transnet
Board approved – (indistinct) approved criteria for (indistinct) the total
cost of ownership. Total cost of ownership is one of the sub elements

within price but what we must indicate is that this criteria was (indistinct) approved by the Board. It must (indistinct) appear on the RFP document itself.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: But they had to seek the Board approval before they could make so. This is the – the table on slide 48 indicates that particular scoring for various elements – price, TCO, the various schedule terms, (indistinct), contractual compliance. Now we note from the report that the team that was evaluating had challenges
10 in evaluating the total cost of ownership. They alleged that different bidders they could not compare apples with apples by certain bidders on maintenance – as an example – you schedule maintenance. Others must unscheduled maintenance and all this. Now again the team then opted to introduce alternative methods of evaluating this element. If you look at ...

ADV MAHLAPE SELLO: Before you go to that. You indicated that the TCO was Board approved?

TSHIAMO MICHAEL SEDUMEDI: It was - TCO and how it was evaluated was a Board approved criteria.

20 **ADV MAHLAPE SELLO:** Okay but you indicated that it did not find reflection in the RFP itself?

TSHIAMO MICHAEL SEDUMEDI: In the RFP they did not necessarily flash out the various elements of TCO which is why (indistinct) to first get the Board approval to say these are the – these are criteria that we are going to use for TCO.

ADV MAHLAPE SELLO: Have you considered the – whether any of the elements of the TCO were required to be catered for in a bid ...

TSHIAMO MICHAEL SEDUMEDI: Look ...

ADV MAHLAPE SELLO: Even if they did not come under the heading “TCO”?

TSHIAMO MICHAEL SEDUMEDI: There was – there was reference in my recollection to the issue of (indistinct) speaks to maintenance issues. There was reference which is why in actual fact the bidders were able to respond to the elements that speak to this item.

- 10 **ADV MAHLAPE SELLO:** So you are saying even if the Chair were to accept that perhaps the TCO could not be imposed on the evaluation process as it was approved because it was not previously shared with the bidders. Insofar as maintenance is concerned the bidders were required to caterer for that (intervenes)?

TSHIAMO MICHAEL SEDUMEDI: That is correct.

ADV MAHLAPE SELLO: Okay.

TSHIAMO MICHAEL SEDUMEDI: (Indistinct) that item was evaluated ...

ADV MAHLAPE SELLO: Okay.

- 20 **TSHIAMO MICHAEL SEDUMEDI:** Because the bidders knew – what is that – that they need to – to submit.

ADV MAHLAPE SELLO: Okay. You may proceed.

TSHIAMO MICHAEL SEDUMEDI: On this slide Chair you have got three scenarios that were there. There is another one on top. I is all the elements of TCO. If you use (indistinct) one you are (indistinct)

TCO as approved all the elements irrespective of the confusion that you might have. You will note – as an example – that there will be – this was from bidder one to seven – they scored differently when the Board approved TCO was used. Also number two they excluded scheduled maintenance – sorry – unscheduled maintenance and bonus points. They changed their – their points differ. Scenario three, when they exclude those the unscheduled maintenance and the scheduled maintenance and a bonus point again. It was an impact on how the bidder fairs. Now again a change in evaluation criteria at this time of
 10 evaluation it was our view that it was irregular because more so if such change has an effect of affecting the scoring that a particular bidder would have. What we know as a matter of fact now that scenario three in actual fact was the one that was eventually adopted moving forward.

ADV MAHLAPE SELLO: Now scenario three was the one adopted?

TSHIAMO MICHAEL SEDUMEDI: Scenario three is the one that was eventually used.

ADV MAHLAPE SELLO: The effect of that was do not evaluate bidders on scheduled and non-scheduled maintenance?

TSHIAMO MICHAEL SEDUMEDI: Correct.

20 **ADV MAHLAPE SELLO:** Notwithstanding the fact that the RFP required them to cost for that maintenance?

TSHIAMO MICHAEL SEDUMEDI: (Indistinct).

ADV MAHLAPE SELLO: As that cost would translate to Transnet as part of the total cost of ownership?

TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Did that result in any advantage to a particular bidder or did that or on the other hand unduly prejudice a particular bidder?

TSHIAMO MICHAEL SEDUMEDI: On the face of it Chair if you look at this slide bidder seven if you use scenario one tops internal scoring at least for this element. It has 14 points. Whereas if you use scenario three that bidder they are no points allocated for it for this particular element. Obviously as we – we – you know – in investigation we did realise that – because we did an exercise of saying if we – because it

10 is never just about one component.

ADV MAHLAPE SELLO: Yes.

TSHIAMO MICHAEL SEDUMEDI: There is another component called delivery schedule – to say if – because after you say Schedule 3 that bidder fell off, bidder number seven, it was never, it never progressed to further stages. We then tried to apply the results of scenario one to a total score, we can confirm that from the look of things in any event that bidder would not have progressed, but the point that he made in our report was that it doesn't matter, don't look at the outcome, focus first on irregularity, the fact that the irregularities would not have made

20 any difference in the outcome should not be an issue, because it is bidders who are unsuccessful who most of the time will be the ones that will raise queries, and surely in our procurement such bidders as well they are entitled to procedural fairness in evaluation.

It doesn't matter whether eventually they are going to win the bid or not, the principle is that changing evaluation mid-stream again is

an irregularity, irrespective of the fact that that would have changed the complexion of the outcome.

ADV MAHLAPE SELLO: The means don't justify ...(intervention)

MR TSHIAMO MICHAEL SEDUMEDI: The means don't justify the end.

ADV MAHLAPE SELLO: Okay, yes you may proceed.

MR TSHIAMO MICHAEL SEDUMEDI: So that is the point that we made on this particular (indistinct) once again there seem to have been a midstream change in the evaluation criteria.

ADV MAHLAPE SELLO: Okay, can we proceed?

10 **MR TSHIAMO MICHAEL SEDUMEDI:** We can proceed. Leaving for another issues of evaluation, the issue of (indistinct) Chair resurfaces on this matter, I won't go through that, by now we are now quite familiar with the requirements.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: We must confirm that when the bidders at stage three submit their bids at least on the face of it they seem to have complied, so there seems to be no issue with the bidders compliance, with at least this 5.1 of the practice note. However during the negotiations the post-tender negotiations as they were called and
20 as they are termed in terms of the Transnet PPM, three of the – because as you can imagine during negotiations prices were going up and down, various issues were introduced, (indistinct) and all that. When we analyse the spreadsheet and Mr Callard in his testimony he made reference to those spreadsheets, when we analyse those spreadsheets the figures that they used for to denote foreign content,

input content as they call it and the content changed from the figures that were there at the beginning.

The results thereof was that three of the four OEM's fell short now of the prescribed local content threshold, in particular CNR instead of meeting the (indistinct) they were now on 37.57, Bombardier and CSR were required to be at 60%, those are the figures that they had as it appears on page 51, only GE met the requirement and that exercise Chair is contained in the slide 52, which we used to calculate that local content. These figures were taken from the spreadsheet that the
 10 negotiation team was using, and we confirmed as well that it is these figures, because obviously we had to first check it is not maybe a draft version which may be seen at a later stage, we were able to check and confirm the prices that appeared on the spreadsheet directly to the contracts that contracts that eventually concluded with the OEM, so that then gave us an assurance that these are spreadsheets, these are the figures that informed, that eventually formed the basis of (indistinct). Based on these figures then indeed it confirmed that, and applying obviously the formula because it's not a (indistinct) you just apply the formula as prescribed in the practice note that tells you how
 20 you must determine local content and that's how we got information of the non-compliance.

ADV MAHLAPE SELLO: Now if you just go a slide back to your 51, when this result obtained that during negotiations CNR fell below the minimum threshold for electrics, no for diesels, and Bombardier and CSR insofar as electrics are concerned also fell beyond the prescribed

threshold what ought to have happened at that junction?

MR TSHIAMO MICHAEL SEDUMEDI: At that juncture these bidders ought to have been disqualified because at this – this happens before award, these bidders ought to have been advised that you are no longer meeting the prescribed minimum threshold so we cannot proceed further, it is either (indistinct) negotiation and they ought to have then at least then adjusted their figures or if they couldn't then we shouldn't have proceeded with them because there was no question and we could have then gone to the second highest bidder to engage with them to
10 ensure that at least that second bidder complies with the requirements and also then meet the commercial offers that Transnet was comfortable with.

ADV MAHLAPE SELLO: Okay, and we know now that CNR, Bombardier and CSR nonetheless went through and succeeded.

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: They were awarded contracts.

MR TSHIAMO MICHAEL SEDUMEDI: That's correct Chair.

ADV MAHLAPE SELLO: Notwithstanding that result.

MR TSHIAMO MICHAEL SEDUMEDI: That's correct Chair. When I
20 spoke earlier about the engagements that we were having with the OEM's this is one of the issues that we are addressing with them Chair.

ADV MAHLAPE SELLO: Okay then if you may proceed. Start from the new topic now.

MR TSHIAMO MICHAEL SEDUMEDI: This is a new topic Chair.

ADV MAHLAPE SELLO: Yes, we have your slide 53.

MR TSHIAMO MICHAEL SEDUMEDI: Slide 53?

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: The purpose of the slide, we will go into the detail but the Chair must just note that when there was an increase in the ETC from 38 to 49 one of the cost elements was an amount of R2.7billion called batch pricing, I will take the Chair through what batch pricing is, we must just note why we are talking about this issue why are you making ...(intervention)

CHAIRPERSON: 2.7billion?

10 **MR TSHIAMO MICHAEL SEDUMEDI:** R2.7billion Chair.

CHAIRPERSON: I think you said million.

MR TSHIAMO MICHAEL SEDUMEDI: This one Chair I know it's billion.

CHAIRPERSON: It's been a long day.

MR TSHIAMO MICHAEL SEDUMEDI: 2.7billion Chair is one of the cost items that contributed to an increase in the ATC, but for us to understand this concept we must first go to Volume 2, page 4552.

ADV MAHLAPE SELLO: 4552?

MR TSHIAMO MICHAEL SEDUMEDI: 4552.

ADV MAHLAPE SELLO: Yes.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Just for orientation purposes that is part of ...(intervention)

CHAIRPERSON: One second. 4552

MR TSHIAMO MICHAEL SEDUMEDI: 4552 Chair.

CHAIRPERSON: On volume 2?

MR TSHIAMO MICHAEL SEDUMEDI: Volume 2.

ADV MAHLAPE SELLO: Yes Chair, is that part of a document starting at 4524?

MR TSHIAMO MICHAEL SEDUMEDI: Yes.

ADV MAHLAPE SELLO: Volume 2 ...(intervention)

CHAIRPERSON: Is it written questionnaire on the middle column?

ADV MAHLAPE SELLO: Yes the first, at the top of the page it has a table.

MR TSHIAMO MICHAEL SEDUMEDI: Yes, yes Chair.

CHAIRPERSON: Okay.

- 10 **MR TSHIAMO MICHAEL SEDUMEDI:** This document is part of essentially the RFP, the RFP document that was issued by Transnet for the electrical locomotives, but similar provisions are contained as well in the diesel. What I just want to bring Chair's attention to ...(intervention)

ADV MAHLAPE SELLO: May I just for the record indicate the RFP, this particular RFP you speak of, of which 4552 is a part starts at page 4524?

MR TSHIAMO MICHAEL SEDUMEDI: Correct.

ADV MAHLAPE SELLO: Is that correct?

- 20 **MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

ADV MAHLAPE SELLO: Thank you, you may proceed.

MR TSHIAMO MICHAEL SEDUMEDI: Under clause 3.1 of that document titled seven year GFB locomotive delivery schedule.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: There's a table there that

indicates on top delivered at – different dates for delivery periods, 2014/15 up until 2019, at the bottom it shows the quantity of locomotives 65, (indistinct) and 44, totally 599, now the narration that explains this clause, the first bullet, Transnet requires flexibility in accessing options for the acquisition of the locomotives. These options may include suspending or postponing a delivery of the locomotives until a later date, or changing quantities. Transnet however does not expect to pay a price premium should it access any of its options, that's what it says here, is that the event that we decide to change quantities

10 as Transnet we do not expect to pay a price premium. We juxtapose that with the second bullet.

ADV MAHLAPE SELLO: At 4553?

MR TSHIAMO MICHAEL SEDUMEDI: Transnet reserves the right to terminate the locomotive acquisition program or any part thereof at any stage during the seven year period should circumstances so dictate. Therefore Transnet isn't obliged to acquire the full amount of the 599 locomotives. Bidders are therefore required to provide break pricing for each of the stages indicated below should Transnet decide to terminate the acquisition process at any of its stages and then there's a

20 table that indicates there are different that the bidders must price to say in the event there's a break in here 2014/15 when the 65 locomotives what will be the price per locomotive, so they will just complete that bottom column to indicate how much would the price per locomotive be, depending on the point where Transnet decides to terminate the program after their agreement has been concluded.

ADV MAHLAPE SELLO: Okay.

MR TSHIAMO MICHAEL SEDUMEDI: So that's what at least was provided for in the bid documents.

ADV MAHLAPE SELLO: So then if we start with you second bullet point and we talk of the notion of break pricing that would arise only in circumstances where there is a live contract?

MR TSHIAMO MICHAEL SEDUMEDI: Correct Chair.

ADV MAHLAPE SELLO: So the parties first contract and in the course of execution of the contract Transnet then seeks to amend either the
10 timeframes, the quantities or volumes of delivery, in that instance the bidders would be entitled to charge a break price?

MR TSHIAMO MICHAEL SEDUMEDI: A break price, if (indistinct) to break or terminated the program in any of those particular years with the applicable number of locos at that particular time.

ADV MAHLAPE SELLO: Okay we understand the notion of break price.

MR TSHIAMO MICHAEL SEDUMEDI: Correct, but what was important for us is this break pricing we flagged the previous bullet that spoke of the fact that in the event that Transnet decides to change quantities it should not pay a price premium.

20 **ADV MAHLAPE SELLO:** Now on that score that on the first, on what point does the first bullet point anticipate Transnet changing the quantity of locomotives is it before or post contract conclusion?

MR TSHIAMO MICHAEL SEDUMEDI: A reading of this clause indicates that obviously this is before the contract is concluded, whereas the second bullet it indicates if in year four or five we decide to terminate

what would be the applicable price per locomotive at that stage, so it is clear that this provision could only have kicked in at the time when the agreement was live.

ADV MAHLAPE SELLO: Okay by this provision is the break pricing?

MR TSHIAMO MICHAEL SEDUMEDI: Correct ja.

ADV MAHLAPE SELLO: Okay, you may proceed.

MR TSHIAMO MICHAEL SEDUMEDI: Just to confirm as well on page 4548 ...(intervention)

ADV MAHLAPE SELLO: Of the same volume?

10 **MR TSHIAMO MICHAEL SEDUMEDI:** Of the same volume.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: That's Volume two?

ADV MAHLAPE SELLO: Volume two Chair.

CHAIRPERSON: 4548?

MR TSHIAMO MICHAEL SEDUMEDI: 4548. The bullet that I want to draw (indistinct) those bullets they start on the previous page being Clause 12, being disclaimers.

ADV MAHLAPE SELLO: And we are still in the RFP?

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Still, this is all contained in the RFP.

ADV MAHLAPE SELLO: Yes.

MR TSHIAMO MICHAEL SEDUMEDI: On paragraph 12, on 4547, respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP, and/or its receipt of a proposal in response to it, in particular please note that

Transnet reserves the following rights. Now we want to go to the one on page 4548 being ...(intervention)

ADV MAHLAPE SELLO: Overleaf?

MR TSHIAMO MICHAEL SEDUMEDI: Overleaf paragraph 13.8 and 13.9, it reserves the right to award a contract for only a portion of the proposed goods which are within the scope of this RFP.

CHAIRPERSON: I'm sorry, did you say ...(intervention)

MR TSHIAMO MICHAEL SEDUMEDI: 13.8 of 4548.

CHAIRPERSON: Oh okay ja, 4548 ja, that's where I am.

- 10 **MR TSHIAMO MICHAEL SEDUMEDI:** So Transnet reserves the right to award a contract for only a portion of the proposed goods which in the scope of this RFP.

ADV MAHLAPE SELLO: And is that – Chair we're at 4548, you're reading 13.8 at the top of 4548?

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Okay, thank you.

MR TSHIAMO MICHAEL SEDUMEDI:

ADV MAHLAPE SELLO:

- 20 **MR TSHIAMO MICHAEL SEDUMEDI:** Transnet has the right to split the award of the contract between more than one supplier, so already at an RFP stage Transnet reserve the right that it may decide in as much as the RFP envisaged the full 599 diesel being awarded to one supplier but it at least reserved the right to split the award between more than one bidder, that was clear at RFP stage and this being clear as well

remember as well when this happens, it will speak to the award, which ordinarily would reduce the quantities (indistinct) that bullet that we read earlier on, it said it doesn't expect to pay a price premium should there be a change in quantities, so at the stage we know when you got the RFP that this is what Transnet contemplates.

ADV MAHLAPE SELLO: So then let's try and understand that stipulation that prior to contracting Transnet reserves the right to reduce the number of locomotives that it eventually acquires, read that with the disclaimers that you've just pointed the Chair to, the sum
10 effect of – would this understanding be correct, that I am going out as Transnet on a tender for 599, if I eventually decide to award 299 and I split it amongst various bidders none of the bidders may penalise me for that decision, is that the sum total of it?

MR TSHIAMO MICHAEL SEDUMEDI: That's correct, that's the sum total, if you get that first bullet that we read earlier on about the price premium.

ADV MAHLAPE SELLO: Okay. Right yes Chair it's been drawn to my attention as well.

CHAIRPERSON: Okay we will adjourn for the day and then as
20 arranged we will – how long do you expect to be with him still?

ADV MAHLAPE SELLO: I should be done Chair by lunch, then the next witness can do the afternoon session.

CHAIRPERSON: Yes, can do the afternoon session.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay, we will start at nine tomorrow morning.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS TO 29 MAY 2019